

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **October 30, 2002**

Wynn Resorts, Limited

(Exact name of registrant as specified in its charter)

Nevada
(State or other jurisdiction incorporation)

000-50028
(Commission File Number)

44-0484987
(IRS Employer Identification No.)

Wynn Las Vegas, LLC

(Exact name of registrant as specified in its charter)

Nevada
(State or other jurisdiction incorporation)

333-98369
(Commission File Number)

88-0494878
(IRS Employer Identification No.)

Wynn Las Vegas Capital Corp.

(Exact name of registrant as specified in its charter)

Nevada
(State or other jurisdiction incorporation)

333-98369
(Commission File Number)

46-0484992
(IRS Employer Identification No.)

and Other Registrants

(See Table of Other Registrants Listed Below)

**3145 Las Vegas Boulevard South,
Las Vegas, NV**
(Address of principal executive offices of each registrant)

89109
(Zip Code)

Registrants' telephone number, including area code **(702) 733-4444**

Not applicable

(Former name or former address, if changed since last report)

Other Registrants

| Exact Name of Registrant as Specified in its Charter | State or Other Jurisdiction of Incorporation or Organization | Commission File Number | I.R.S. Employer Identification Number |
|--|--|------------------------|---------------------------------------|
| Desert Inn Water Company, LLC | Nevada | 333-98369 | 88-0460932 |
| Palo, LLC | Delaware | 333-98369 | 88-0464820 |
| Valvino Lamore, LLC | Nevada | 333-98369 | 88-0459742 |
| Wynn Design & Development, LLC | Nevada | 333-98369 | 88-0462235 |
| Wynn Resorts Holdings, LLC | Nevada | 333-98369 | 88-0460933 |
| World Travel, LLC | Nevada | 333-98369 | 47-0846667 |
| Las Vegas Jet, LLC | Nevada | 333-98369 | 88-0460935 |

The initial public offering of Common Stock, par value \$.01, of Wynn Resorts, Limited and the offering of the 12% second mortgage notes due 2010 co-issued by Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp. and the guarantees of such notes by Wynn Resorts, Limited, Valvino Lamore, LLC, Desert Inn Water Company, LLC, Wynn Design & Development, LLC, Wynn Resorts Holdings, LLC, Las Vegas Jet, LLC, World Travel, LLC and Palo, LLC (collectively, the "Offerings") closed on October 30, 2002. The Registrants are filing this joint Form 8-K to file final versions of certain of the documents previously filed with the Registrants' Registration Statements on Form S-1 (File Nos. 333-90600, 333-98369 and 333-100802) entered into in connection with the closing of the Offerings and the closings of the revolving credit facility, delay draw term loan facility and the furniture, fixtures and equipment loan facility, which also occurred on October 30, 2002.

Item 7. *Exhibits.*

- 1.1 Underwriting Agreement, dated October 25, 2002, by and among Wynn Resorts, Limited and the several Underwriters listed in Schedule I thereto.
- 1.2 Underwriting Agreement, dated October 25, 2002, by and among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp. and the several Underwriters listed in Schedule I thereto.
- 4.1 Indenture, dated as of October 30, 2002, governing the 12% Second Mortgage Notes due 2010 by and among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., Desert Inn Water Company, LLC, Wynn Design & Development, LLC, Wynn Resorts Holdings, LLC, Las Vegas Jet, LLC, World Travel, LLC, Palo, LLC, Valvino Lamore, LLC, Wynn Resorts, Limited and Wells Fargo Bank, National Association, Inc., as trustee.
- 4.2 Form of Second Mortgage Note (included in Exhibit 4.1).
- 4.3 Form of Notation of Guarantee (included in Exhibit 4.1).
- 4.4 Guarantee and Collateral Agreement, dated as of October 30, 2002, made by Valvino Lamore, LLC, Wynn Las Vegas Capital Corp., Palo, LLC, Wynn Resorts Holdings, LLC, Desert Inn Water Company, LLC, World Travel, LLC, Las Vegas Jet, LLC, Wynn Las Vegas, LLC and the other Grantors from time to time party thereto in favor of Wells Fargo Bank, National Association, as Mortgage Notes Indenture Trustee.
- 4.5 Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of October 30, 2002, made by Wynn Resorts Holdings, LLC in favor of Wells Fargo Bank, National Association, as Mortgage Notes Indenture Trustee.
- 4.6 Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of October 30, 2002, made by Valvino Lamore, LLC in favor of Wells Fargo Bank, National Association, as Mortgage Notes Indenture Trustee.
- 4.7 Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of October 30, 2002, made by Palo, LLC in favor of Wells Fargo Bank, National Association, as Mortgage Notes Indenture Trustee.
- 4.8 Deed of Trust, Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of October 30, 2002, made by Wynn Las Vegas, LLC in favor of Wells Fargo Bank, National Association, as Mortgage Notes Indenture Trustee.
- 4.9 Parent Guaranty, dated as of October 30, 2002, by Wynn Resorts, Limited in favor of Wells Fargo Bank, National Association, as Mortgage Notes Indenture Trustee.

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- 10.1 Agreement re: Provision and Use of Water, dated October 21, 2002, by and among Desert Inn Improvement Co., Wynn Resorts Holdings, LLC and Wynn Las Vegas, LLC.
 - 10.2 Agreement re: Use of Real Property, dated as of October 21, 2002, by and between Desert Inn Improvement Co., Wynn Resorts Holdings, LLC and Wynn Las Vegas, LLC.
 - 10.3 Office Building Lease Agreement, dated October 21, 2002 by and between Valvino Lamore, LLC and Wynn Las Vegas, LLC.
 - 10.4 Golf Course Lease Agreement, dated October 21, 2002, by and between Wynn Resorts Holdings, LLC and Wynn Las Vegas, LLC
 - 10.5 Driving Range Lease, dated October 21, 2002, by and between Valvino Lamore, LLC and Wynn Las Vegas, LLC.
 - 10.6 Parking Facility Lease, dated October 21, 2002, by and between Valvino Lamore, LLC and Wynn Las Vegas, LLC.
 - 10.7 Credit Agreement, dated as of October 30, 2002, among Wynn Las Vegas, LLC, the several lenders from time to time parties thereto, Deutsche Bank Securities Inc., Deutsche Bank Trust Company Americas, Banc of America Securities LLC, Bear, Stearns & Co. Inc., Bear Stearns Corporate Lending Inc., Dresdner Bank AG, New York and Grand Cayman Branches and JPMorgan Chase Bank.
 - 10.8 Registration Rights Agreement, dated October 30, 2002, by and between Wynn Resorts, Limited and Stephen A. Wynn.
 - 10.9 Management Agreement, made as of October 30, 2002, by and among Wynn Las Vegas, LLC and the subsidiaries and affiliates listed on Exhibit A thereto and Wynn Resorts, Limited.
 - 10.10 Loan Agreement, dated as of October 30, 2002, by and among Wynn Las Vegas, LLC, Wells Fargo Bank Nevada, N.A., as collateral agent, and the lenders listed on Schedule 1A thereto.

- 10.11 Borrower Security Agreement, dated as of October 30, 2002, by Wynn Las Vegas, LLC, in favor of Wells Fargo Bank Nevada, National Association, as collateral agent.
- 10.12 Form of Intercompany Note, dated October 30, 2002, made by World Travel, LLC in favor of Wynn Las Vegas, LLC.
- 10.13 Aircraft Security Agreement, dated as of October 30, 2002, among Wells Fargo Bank Northwest, National Association, as trustee, World Travel, LLC and Wynn Las Vegas, LLC.
- 10.14 Aircraft Security Agreement Supplement No. 1, dated as of October 30, 2002, among Wells Fargo Bank Northwest, National Association, World Travel, LLC and Wynn Las Vegas, LLC.
- 10.15 Assignment and Assumption Agreement, dated as of October 30, 2002, by and between Wynn Las Vegas, LLC and Wells Fargo Bank Nevada, National Association, as collateral agent.
- 10.16 Completion Guaranty, dated as of October 30, 2002, by Wynn Completion Guarantor, LLC in favor of Deutsche Bank Trust Company Americas, as the Bank Agent, and Wells Fargo Bank, National Association, as Indenture Trustee.
- 10.17 FF&E Intercreditor Agreement, dated as of October 30, 2002, by and among Deutsche Bank Trust Company Americas, as administrative agent, Wells Fargo Bank, National Association, as Indenture Trustee, and Wells Fargo Bank Nevada, National Association, as FF&E agent.
- 10.18 Project Lenders Intercreditor Agreement, dated as of October 30, 2002, by and among Deutsche Bank Trust Company Americas, as administrative agent, and Wells Fargo Bank, National Association, as Indenture Trustee.

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- 10.19 Management Fee Subordination Agreement, dated as of October 30, 2002, made by Wynn Resorts, Limited, Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp. and the subsidiaries and affiliates listed on Exhibit A thereto in favor of Deutsche Bank Trust Company Americas, as administrative agent, Wells Fargo Bank Nevada National Association, as collateral agent, and Wells Fargo Bank, National Association, as trustee.
- 10.20 Guarantee and Collateral Agreement, dated as of October 30, 2002, made by Valvino Lamore, LLC, Wynn Las Vegas Capital Corp., Palo, LLC, Wynn Resorts Holdings, LLC, Desert Inn Water Company, LLC, World Travel, LLC, Las Vegas Jet, LLC, Wynn Las Vegas, LLC and the other Grantors from time to time party thereto in favor of Deutsche Bank Trust Company Americas, as administrative agent.
- 10.21 Parent Guaranty, dated as of October 30, 2002, by Wynn Resorts, Limited in favor of Wells Fargo Bank Nevada, National Association, as collateral agent, the Arrangers, as defined therein, and the Lenders, as defined therein.
- 10.22 Parent Guaranty, dated as of October 30, 2002, by Wynn Resorts, Limited in favor of Deutsche Bank Trust Company Americas, as administrative agent.
- 10.23 Purchase Agreement, dated October 25, 2002, by and between Wynn Resorts, Limited and Stephen A. Wynn.
- 10.24 Purchase Agreement, dated October 25, 2002, by and between Wynn Resorts, Limited and Aruze USA, Inc.
- 10.25 Purchase Agreement, dated October 25, 2002, by and between Wynn Resorts, Limited and Baron Asset Fund.
- 10.26 Purchase Agreement, dated October 25, 2002, by and between Wynn Resorts, Limited and Zenith Insurance Company.
- 10.27 Purchase Agreement, dated October 25, 2002, by and among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp. and Stephen A. Wynn.
- 10.28 Purchase Agreement, dated October 25, 2002, by and among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp. and Aruze USA, Inc.
- 10.29 Master Disbursement Agreement, dated as of October 30, 2002, among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., Wynn Design & Development, LLC, Deutsche Bank Trust Company Americas, as initial Bank Agent, Wells Fargo Bank, National Association, as initial Indenture Trustee, Wells Fargo Bank Nevada, National Association, as initial FF&E Agent and Deutsche Bank Trust Company Americas, as initial Disbursement Agent.
- 10.30 Amended and Restated Continuing Guaranty, dated October 22, 2002, by Austi, Inc. in favor of Wynn Las Vegas, LLC.
- 10.31 Easement Agreement, dated as of October 21, 2002, by and among Wynn Resorts Holdings, LLC, Valvino Lamore, LLC and Wynn Las Vegas, LLC.
- 10.32 Guaranty Agreement, dated as of October 30, 2002, made by Valvino Lamore, LLC, Wynn Las Vegas Capital Corp., Palo, LLC, Wynn Resorts Holdings, LLC, Desert Inn Water Company, LLC, Wynn Design & Development, LLC, World Travel, LLC, Las Vegas Jet, LLC and the other guarantors from time to time party thereto in favor of the Secured Parties as defined therein.
- 10.33 Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of July 2, 2002, made by Valvino Lamore, LLC in favor of Deutsche Bank Trust Company Americas, as administrative agent.

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- 10.34 Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of July 2, 2002, made by Wynn Las Vegas, LLC in favor of Deutsche Bank Trust Company Americas, as administrative agent.
- 10.35 Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of July 2, 2002, made by Palo, LLC in favor of Deutsche Bank Trust Company Americas, as administrative agent.
- 10.36 Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of July 2, 2002, made by Wynn Resorts Holdings, LLC in favor of Deutsche Bank Trust Company Americas, as administrative agent.
- 10.37 Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of October 30, 2002, made by Wynn Las Vegas, LLC in favor of Deutsche Bank Trust Company Americas, as administrative agent.
- 10.38 Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of October 30, 2002, made by Palo, LLC in favor of Deutsche Bank Trust Company Americas, as administrative agent.
- 10.39 Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of October 30, 2002, made by Wynn Resorts Holdings, LLC in favor of Deutsche Bank Trust Company Americas, as administrative agent.
- 10.40 Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of October 30, 2002, made by Valvino Lamore, LLC in favor of Deutsche Bank Trust Company Americas, as administrative agent.
- 10.41 2002 Stock Incentive Plan.
- 99.1 Risk Factors Relating to Investing in the Common Stock, par value \$.01, of Wynn Resorts, Limited.
- 99.2 Risk Factors Relating to Investing in the 12% Second Mortgage Notes Due 2010 co-issued by Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp.

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SIGNATURES

Pursuant to the requirements 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.

WYNN RESORTS, LIMITED

By: /s/ JOHN STRZEMP

Name: John Strzemp
Title: Executive Vice President and Chief Financial Officer

Date: November 15, 2002

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SIGNATURES

Pursuant to the requirements 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.

VALVINO LAMORE, LLC

By: WYNN RESORTS, LIMITED, its member

By: /s/ JOHN STRZEMP

Name: John Strzemp
Title: Executive Vice President and Chief Financial Officer

Date: November 15, 2002

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SIGNATURES

Pursuant to the requirements 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.

WORLD TRAVEL, LLC

By: WYNN LAS VEGAS, LLC, its member
By: WYNN RESORTS HOLDINGS, LLC, its member
By: VALVINO LAMORE, LLC, its member
By: WYNN RESORTS, LIMITED, its member
By: /s/ JOHN STRZEMP

Name: John Strzemp
Title: Executive Vice President and Chief Financial Officer

Date: November 15, 2002

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SIGNATURES

Pursuant to the requirements 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.

LAS VEGAS JET, LLC
By: WYNN LAS VEGAS, LLC, its member
By: WYNN RESORTS HOLDINGS, Llc, its member
By: VALVINO LAMORE, LLC, its member
By: WYNN RESORTS, LIMITED, its member
By: /s/ JOHN STRZEMP

Name: John Strzemp
Title: Executive Vice President and Chief Financial Officer

Date: November 15, 2002

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SIGNATURES

Pursuant to the requirements 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.

WYNN DESIGN & DEVELOPMENT, LLC
By: VALVINO LAMORE, LLC, its member
By: WYNN RESORTS, LIMITED, its member
By: /s/ JOHN STRZEMP

Name: John Strzemp
Title: Executive Vice President and Chief Financial Officer

Date: November 15, 2002

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SIGNATURES

Pursuant to the requirements 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.

DESERT INN WATER COMPANY, LLC
By: VALVINO LAMORE, LLC, its member
By: WYNN RESORTS, LIMITED, its member

By: /s/ JOHN STRZEMP

Name: John Strzemp
Title: Executive Vice President and Chief Financial Officer

Date: November 15, 2002

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SIGNATURES

Pursuant to the requirements 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.

WYNN RESORTS HOLDINGS, LLC

By: VALVINO LAMORE, LLC, its member

By: WYNN RESORTS, LIMITED, its member

By: /s/ JOHN STRZEMP

Name: John Strzemp
Title: Executive Vice President and Chief Financial Officer

Date: November 15, 2002

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SIGNATURES

Pursuant to the requirements 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.

PALO, LLC

By: WYNN RESORTS HOLDINGS, LLC, its member

By: VALVINO LAMORE, LLC, its member

By: WYNN RESORTS, LIMITED, its member

By: /s/ JOHN STRZEMP

Name: John Strzemp
Title: Executive Vice President and Chief Financial Officer

Date: November 15, 2002

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SIGNATURES

Pursuant to the requirements 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.

WYNN LAS VEGAS, LLC

By: WYNN RESORTS HOLDINGS, LLC, its member

By: VALVINO LAMORE, LLC, its member

By: WYNN RESORTS, LIMITED, its member

By: /s/ JOHN STRZEMP

Name: John Strzemp
Title: Executive Vice President and Chief Financial Officer

Date: November 15, 2002

SIGNATURES

Pursuant to the requirements 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.

WYNN LAS VEGAS CAPITAL CORP.

By: /s/ JOHN STRZEMP

Name: John Stzremp

Title: Treasurer

Date: November 15, 2002

QuickLinks

[Item 5. Other Events.](#)

[Item 7. Exhibits .](#)

21,461,154 Shares

WYNN RESORTS, LIMITED

Common Stock

(\$0.01 Par Value)

EQUITY UNDERWRITING AGREEMENT

October 25, 2002

Deutsche Bank Securities Inc.
Bear, Stearns & Co. Inc.
Banc of America Securities LLC
As Representatives of the
Several Underwriters

c/o Deutsche Bank Securities Inc.
31 West 52nd Street
New York, New York 10019

Ladies and Gentlemen:

Wynn Resorts, Limited, a Nevada corporation (the "Company"), proposes to sell to the several underwriters (the "Underwriters") named in *Schedule I* hereto for whom you are acting as representatives (the "Representatives") an aggregate of 21,461,154 shares (the "Firm Shares") of the Company's Common Stock, par value \$0.01 per share (the "Common Stock"). The respective amounts of the Firm Shares to be so purchased by the several Underwriters are set forth opposite their names in *Schedule I* hereto. The Company also proposes to sell at the Underwriters' option an aggregate of up to 3,219,173 additional shares of the Company's Common Stock (the "Option Shares") as set forth below.

As the Representatives, you have advised the Company (a) that you are authorized to enter into this Agreement on behalf of the several Underwriters, and (b) that the several Underwriters are willing, acting severally and not jointly, to purchase the numbers of Firm Shares set forth opposite their respective names in *Schedule I*, plus their pro rata portion of the Option Shares if you elect to exercise the over-allotment option in whole or in part for the accounts of the several Underwriters. The Firm Shares and the Option Shares (to the extent the Underwriters' option is exercised) are herein collectively called the "Shares."

Deutsche Bank Securities Inc. ("Deutsche Bank") has agreed to reserve up to 500,000 of the Shares to be purchased by it under this Agreement for sale to the Company's vendors, employees, family members of employees, customers and other parties related to the Company (collectively, "Participants"), as set forth in the Prospectus (as defined below) under the heading "Underwriting" (the "Directed Share Program"). The Shares to be sold by Deutsche Bank and its affiliates pursuant to the Directed Share Program are referred to hereinafter as the "Directed Shares." Any Directed Shares not orally confirmed for purchase by any Participants by the end of the business day on which this Agreement is executed will be offered to the public by the Underwriters as set forth in the Prospectus.

The term "Executed Transaction Documents" shall mean the documents set forth on *Schedule II* hereto. The term "Closing Transaction Documents" shall mean the documents set forth on *Schedule III* hereto, each of which shall be executed and dated as of the Closing Date (as defined in Section 2(b) herein).

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In consideration of the mutual agreements contained herein and of the interests of the parties in the transactions contemplated hereby, the parties hereto agree as follows:

1. *Representations and Warranties of the Company.*

The Company represents and warrants to each of the Underwriters as follows:

(a) A registration statement on Form S-1 (File No. 333-90600) with respect to the Shares has been prepared by the Company in conformity in all material respects with the requirements of the Securities Act of 1933, as amended (the "Act"), and the rules and regulations (the "Rules and Regulations") of the Securities and Exchange Commission (the "Commission") thereunder and has been filed with the Commission. Copies of such registration statement, including any amendments thereto, the preliminary prospectuses contained therein and the exhibits, financial statements and schedules, as finally amended and revised, have heretofore been delivered by the Company to you. Such registration statement, as amended when it was declared effective by the Commission under the Act and the Rules and Regulations, including the financial statements and schedules thereto and any information omitted therefrom in reliance upon Rule 430A and contained in the Prospectus referred to below and together with any registration statement filed by the Company that is effective upon filing with the Commission pursuant to Rule 462(b) of the Act, is referred to herein as the "Registration Statement." The Registration Statement has become effective under the Act and no post-effective amendment to the Registration Statement has been filed as of the date of this Agreement. "Prospectus" means the form of prospectus first filed with the Commission pursuant to Rule 424(b). Each preliminary prospectus included in the Registration Statement prior to the time it becomes effective is herein referred to as a "Preliminary Prospectus."

(b) The Company has been duly organized and is validly existing as a corporation in good standing under the laws of the state of Nevada, with corporate power and authority to own or lease and operate its properties and conduct its business as described in the Registration Statement and to enter into and to perform

its obligations under this Agreement. Each of the subsidiaries of the Company as listed in Exhibit 21.1 to the Registration Statement (collectively, the "Subsidiaries") has been duly organized and is validly existing as a corporation or limited liability company in good standing under the laws of the jurisdiction of its organization, with corporate or limited liability company power and authority to own or lease and operate its properties and conduct its business as described in the Registration Statement. The Company does not own or control, directly or indirectly, any corporation, association or other entity other than the Subsidiaries listed on Exhibit 21.1 to the Registration Statement. The Company and each of the Subsidiaries are duly qualified to transact business in all jurisdictions in which the conduct of their business requires such qualification, except for such jurisdictions where the failure to so qualify would not, individually or in the aggregate, reasonably be expected to result in any material adverse change in the business, properties, assets, operations, condition (financial or otherwise) or prospects of the Company and its Subsidiaries taken as a whole, whether or not occurring in the ordinary course of business (any such change, a "Material Adverse Change"). The outstanding membership interests and shares of capital stock of each of the Subsidiaries have been duly authorized and validly issued, the shares of capital stock of such Subsidiaries are fully paid and non-assessable and, except as set forth on *Schedule 1(b)*, all such interests and shares are owned by the Company or another Subsidiary free and clear of all liens, encumbrances and equities and claims, except for any lien, encumbrance, equity or claim granted or agreed to be granted pursuant to an Executed Transaction Document or a Closing Transaction Document; and, except as accurately described in all material respects in the Registration Statement or the Prospectus or as set forth on *Schedule 1(b)*, there are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Company or any of its Subsidiaries.

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(c) As of the date hereof, the authorized capital stock of the Company consists only of 400,000,000 shares of Common Stock and 40,000,000 shares of Preferred Stock, par value \$0.01 per share. As of the date hereof, there are 40,000,000 shares of Common Stock and no shares of Preferred Stock outstanding. The outstanding shares of Common Stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable and have been issued in compliance with federal and state securities laws. None of the outstanding shares of Common Stock were issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. The description of the Company's stock option, stock incentive and other stock plans or arrangements, and the options or other rights granted thereunder, set forth in the Registration Statement or the Prospectus fairly presents and accurately presents, in all material respects, the information required to be shown with respect to such plans, arrangements, options and rights. The Shares to be issued and sold by the Company have been duly authorized and when issued and paid for as contemplated herein will be validly issued, fully paid and non-assessable; and, except as set forth in the Registration Statement or the Prospectus, no preemptive rights, rights of first refusal or other similar rights of stockholders or others exist with respect to any of the Shares or the issue and sale thereof by the Company. Neither the filing of the Registration Statement nor the offering or sale of the Shares as contemplated by this Agreement gives rise to any rights for or relating to the registration of any shares of Common Stock.

(d) The table relating to the capitalization of the Company under the heading "Capitalization" in the Prospectus, including the footnotes thereto, (i) with respect to the actual capitalization of Valvino as of June 30, 2002 presents fairly the information contained therein and (ii) with respect to the expected capitalization of the Company as of June 30, 2002 on a pro forma basis giving effect to the sale of the Firm Shares and the expected concurrent sale of second mortgage notes by Wynn Las Vegas, LLC ("Wynn Las Vegas") and Wynn Las Vegas Capital Corp. ("Capital Corp.") and with respect to the expected capitalization of the Company as of June 30, 2002 on a pro forma, as adjusted basis giving effect to the sale of the Firm Shares, the expected concurrent sale of second mortgage notes by Wynn Las Vegas and Capital Corp. and borrowings expected to be necessary to construct the Le Rêve Casino Resort, was prepared in good faith by the Company, and represents the best estimates and assumptions of the Company with respect to the information contained therein. All of the Shares conform to the description thereof contained in the Prospectus. The form of certificate for the Shares conforms to the corporate law of the state of Nevada.

(e) The Commission has not issued an order preventing or suspending the use of any Prospectus relating to the proposed offering of the Shares nor, to the knowledge of the Company or its Subsidiaries, instituted proceedings for that purpose. The Registration Statement, at the time that it became effective and at all subsequent times up to and including the time of closing on the Closing Date (the "Closing Time"), complied, and the Prospectus and any amendments or supplements thereto, as of their respective dates and at all subsequent times up to and including the Closing Time, will comply, in all material respects with the requirements of the Act and the Rules and Regulations. At the time it became effective and at all subsequent times up to and including the Closing Time, the Registration Statement did not contain, and will not contain, any untrue statement of a material fact and did not omit, and will not omit, to state any material fact required to be stated therein or necessary to make the statements therein not misleading. As of its date and at all subsequent times up to and including the Closing Time, the Prospectus, as amended or supplemented by any amendments and supplements thereto (including any Prospectus wrapper for use with offers in Canada) does not contain, and will not contain, any untrue statement of material fact and does not omit, and will not omit, to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided, however*, that the Company makes no representations or warranties as to information contained in or omitted from the Registration Statement or the Prospectus, or any such amendment or supplement, in reliance upon, and in conformity with, written information furnished to the Company by or on behalf

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of any Underwriter through the Representatives, specifically for use in the preparation thereof. There are no contracts or other documents required to be described in the Prospectus or to be filed as exhibits to the Registration Statement which have not been described or filed as required.

(f) The consolidated financial statements of Valvino Lamore, LLC ("Valvino") and its subsidiaries (together, "Valvino Lamore"), together with related notes and schedules as set forth in the Registration Statement and included in the Prospectus, present fairly the consolidated financial position and the results of operations and cash flows of Valvino Lamore, at the indicated dates and for the indicated periods. Such financial statements and related schedules have been prepared in accordance with generally accepted principles of accounting as applied in the United States, consistently applied throughout the periods involved, except as disclosed therein, and all adjustments necessary for a fair presentation of results for such periods have been made. The financial and statistical data included in the Registration Statement and the Prospectus, including such data set forth under the captions "Capitalization" and "Selected Consolidated Financial Data," presents fairly the information shown therein and such data has been compiled on a basis consistent with the financial statements presented therein and the books and records of Valvino Lamore. The pro forma financial information included in the Registration Statement and the Prospectus present fairly in all material respects the information shown therein, have been properly compiled on the pro forma bases described therein, and, in the opinion of the Company, the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions or circumstances referred to therein. No other financial statements or supporting schedules are required to be included in the Registration Statement, and there are no pro forma or as adjusted financial statements which are required to be included in the Registration Statement or Prospectus in accordance with Regulation S-X which have not been included as so required.

(g) Deloitte & Touche LLP, which has certified certain of the financial statements (which term as used in this Agreement includes the related notes thereto) filed with the Commission as part of the Registration Statement and included in the Prospectus, is an independent public accountant as required by the Act and the Rules and Regulations.

(h) There is no action, suit, claim or proceeding pending or, to the knowledge of the Company, threatened (i) against the Company or any of the Subsidiaries or (ii) which has as the subject thereof any officer or director of, or property owned or leased by or to, the Company or any of its Subsidiaries, in each case, before any court or administrative agency or otherwise where, in any such case, (A) there is a reasonable possibility of such action, suit or proceeding being determined adversely to the Company or its Subsidiaries and (B) any such action, suit, claim or proceeding, if so determined adversely, would reasonably be expected to result in a Material Adverse Change, or prevent, adversely affect, hinder or delay (1) the consummation of the transactions contemplated by this Agreement or the performance by the Company or any of its Subsidiaries of their obligations hereunder or (2) the performance by the Company or any of its Subsidiaries of their obligations under any of the Executed Transaction Documents or the Closing Transaction Documents, except, in each case, as otherwise disclosed in the Registration Statement or the Prospectus or, in the case of (2) above, as would not reasonably be expected to result in a Material Adverse Change. Except as otherwise disclosed in the Registration Statement or the Prospectus, neither the Company nor any of its Subsidiaries is involved in any material labor dispute with the employees of the Company or any of its Subsidiaries or predecessors, or with the employees of any principal supplier, contractor or sub-contractor of the Company, and, to the best of the Company's knowledge, no such dispute is threatened or imminent.

(i) Except as disclosed in the Registration Statement or the Prospectus, the Company and its Subsidiaries have good and marketable title in fee simple to all real property and good title to all personal property owned by them or reflected as owned by them in the Registration Statement or the Prospectus, subject to no lien, mortgage, pledge, charge or encumbrance of any kind except those reflected in the consolidated financial statements described in Section 1(f) above or which do not,

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individually or in the aggregate, materially and adversely affect the value of such property and do not, individually or in the aggregate, materially interfere with the use made or proposed to be made of such property by the Company and its Subsidiaries. Except as disclosed in the Registration Statement or the Prospectus, the real property, improvements, equipment and personal property held under lease by the Company or any Subsidiary are held under valid and enforceable leases, with such exceptions as are not material and do not materially interfere with the use made or proposed to be made of such leased real property, improvements, equipment or personal property by the Company or such Subsidiary.

(j) The Company and its Subsidiaries have timely filed all federal, state, local and foreign tax returns which have been required to be filed, all of which tax returns are true, correct and complete in all material respects, and have timely paid all taxes due and payable, except (i) as may be being contested in good faith and by appropriate proceedings and for which the Company and its Subsidiaries have established reserves that are adequate for the payment thereof and are in conformity with generally accepted accounting principles as applied in the United States or (ii) to the extent that the failure to timely file any such tax returns or to timely pay such taxes has not resulted in, and would not reasonably be expected to result in, a Material Adverse Change. All taxes of the Company and its Subsidiaries not yet due and payable have been provided for in the consolidated financial statements described in Section 1(f) above in conformity with generally accepted accounting principles as applied in the United States, and the Company does not know of any actual or proposed additional material tax assessment against the Company or any of its Subsidiaries.

(k) Except as disclosed in the Registration Statement or the Prospectus, since the respective dates as of which information is given in the Registration Statement or the Prospectus, as it may be amended or supplemented, (i) there has not been any Material Adverse Change or any development that would reasonably be expected to result in a Material Adverse Change, (ii) the Company and its Subsidiaries, considered as one entity, have not incurred any material liability or obligation, indirect, direct or contingent, not in the ordinary course of business nor entered into any material transaction or agreement not in the ordinary course of business and (iii) there has been no dividend or distribution of any kind declared, paid or made by the Company or, except for dividends paid to the Company or other Subsidiaries, any of its Subsidiaries on any class of capital stock or repurchase or redemption by the Company or any of its Subsidiaries or any call of capital stock.

(l) Neither the Company nor any of its Subsidiaries is or with the giving of notice or lapse of time or both, will be, in violation of or in default under (i) its charter, by-laws, operating agreement or other organizational document or shareholders' agreement or (ii) the terms of any Executed Transaction Document to which the Company or any of its Subsidiaries is a party or any other security issued by it or them or any agreement, lease, loan, mortgage, contract, indenture or other instrument or obligation to which it or them is a party or by which it or them, or any of its or their properties, is bound (collectively, including the Executed Transaction Documents, the "Agreements and Instruments") and, solely with respect to this clause (ii), which violation or default would reasonably be expected to result in a Material Adverse Change. The execution, delivery and performance of this Agreement and the Executed Transaction Documents to which the Company or any of its Subsidiaries is a party and compliance by the Company and its Subsidiaries with their obligations hereunder and thereunder have been duly authorized by all necessary action of the Company and its Subsidiaries, as applicable. The execution, delivery and performance of the Closing Transaction Documents to which the Company or any of its Subsidiaries will be a party and any other material agreement or instrument entered into or issued or to be entered into or issued by the Company or any of its Subsidiaries on or before the Closing Date in connection with the transactions contemplated thereby and compliance by the Company and its Subsidiaries with their obligations thereunder will have been duly authorized before the Closing Time by all necessary action of the Company and its Subsidiaries, as applicable. The execution, delivery and performance of this Agreement, the Closing Transaction Documents to which the Company or any of its Subsidiaries will be a party and any other material agreement or instrument

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entered into or issued or to be entered into or issued by the Company or any of its Subsidiaries in connection with the transactions contemplated hereby or thereby and compliance by the Company and its Subsidiaries with their obligations hereunder or thereunder do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or a Repayment Event (as defined below) under, or, except with respect to the transactions contemplated by the Registration Statement, result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its Subsidiaries pursuant to, or require the consent of any other party to, the Agreements and Instruments except for such conflicts, breaches or defaults or liens, charges or encumbrances that, singly or in the aggregate, would not reasonably be expected to result in a Material Adverse Change, nor will such execution, delivery, performance or compliance result in any violation of (i) the provisions of the charter, by-laws or any other organizational document of the Company or any of its Subsidiaries, as applicable, or (ii) any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, government instrumentality or court, domestic or foreign, having jurisdiction over it or any of its assets or properties and, solely with respect to this clause (ii),

which violation would reasonably be expected to result in a Material Adverse Change. As used herein, a "Repayment Event" means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its Subsidiaries.

(m) The execution and delivery of, and the performance by the Company of its obligations under, this Agreement has been duly and validly authorized by all necessary corporate action on the part of the Company, and this Agreement has been duly executed and delivered by the Company.

(n) Each of the Executed Transaction Documents to which the Company or any of its Subsidiaries is a party has been duly authorized, executed and delivered by each of the Company and its Subsidiaries that is a party thereto and (except for the Debt Underwriting Agreement, as defined in *Schedule II*) constitutes a valid and binding agreement of each such party, enforceable against each such party in accordance with its terms except (i) as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general equitable principles and (ii) with respect to the Marnell Agreement (as defined in Schedule II hereof), to the extent set forth in the Registration Statement and Prospectus under the heading "Risk Factors—Risks Associated with the Construction of Le Rêve—Certain provisions in the construction contract with Marnell Corrao for construction of Le Rêve may be unenforceable." At the Closing Date, each of the Executed Transaction Documents that is described in the Registration Statement will conform in all material respects to the description thereof contained in the Registration Statement.

(o) Each of the Closing Transaction Documents to which the Company or any of its Subsidiaries is a party will have been duly authorized before the Closing Time by each of the Company and its Subsidiaries that is a party thereto and, at the Closing Date, will have been duly executed and delivered by each such party and will constitute a valid and binding agreement of each such party, enforceable against each such party in accordance with its terms except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general equitable principles. At the Closing Date, each of the Closing Transaction Documents that is described in the Registration Statement will conform in all material respects to the description thereof contained in the Registration Statement.

(p) Each approval, consent, order, authorization, designation, declaration or filing by or with any regulatory, administrative or other governmental body (including, without limitation, the Nevada Gaming Commission, the Nevada State Gaming Control Board, the Clark County Liquor and Gaming Licensing Board, the Public Utilities Commission of Nevada, the Nevada State Engineer's Office and the Macau Special Administrative Region of the People's Republic of China) (together, the

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"Consents") necessary in connection with the execution and delivery by the Company of this Agreement and the consummation of the proposed offering of the Shares (except such additional steps as may be required by the Commission or the National Association of Securities Dealers, Inc. (the "NASD") or such additional steps as may be necessary to qualify the Shares for public offering by the Underwriters under state securities or Blue Sky laws) has been obtained or made and is in full force and effect. Except as disclosed in the Registration Statement or Prospectus or as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change, each Consent necessary in connection with the consummation of the transactions described in the Registration Statement and Prospectus (except such additional steps as may be required by the Commission or the National Association of Securities Dealers, Inc. (the "NASD") or such additional steps as may be necessary to qualify the Shares for public offering by the Underwriters under state securities or Blue Sky laws) (i) has been obtained or made and is in full force and effect or (ii) to the extent any such Consent has not yet been obtained or made, the Company has no reason to believe that such Consent will not be timely obtained or made in accordance with the plans for the Le Rêve Casino Resort that have been prepared to date.

(q) Except as disclosed in the Registration Statement or Prospectus or as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change, (i) the Company and each of its Subsidiaries has obtained and holds all franchises, licenses, leases, permits, approvals, notifications, certifications, registrations, authorizations, exemptions, variances, qualifications, easements, rights of way, liens and other rights, privileges and approvals (including with respect to environmental laws) required under any federal, state, local or foreign law or governmental authority ("Permits") for the ownership or current use of all real property owned or leased by the Company or such Subsidiary and for any other property otherwise currently operated by or on behalf of, or for the benefit of, such entity and for the operation of each of its businesses as presently conducted, (ii) all such Permits are in full force and effect, and the Company and each of its Subsidiaries has performed and observed all requirements of such Permits, (iii) no event has occurred which allows or results in, or after notice or lapse of time would allow or result in, revocation or termination by the issuer thereof or in any other impairment of the rights of the holder of any such Permit, (iv) no such Permits contain any restrictions, either individually or in the aggregate, that are materially burdensome to the Company or any of its Subsidiaries, or to the current operation of any of its businesses or any property currently owned, leased or otherwise operated by such entity, (v) the Company and each of its Subsidiaries reasonably believes that each of its Permits will be timely renewed and complied with, without material expense, and that any additional Permits that may be required of such entity in order to conduct its business as proposed to be conducted will be timely obtained and complied with, without material expense, and (vi) the Company has no knowledge or any reason to believe that any governmental authority is considering limiting, suspending, revoking or renewing any such Permits on terms materially more burdensome than the terms of such Permit as in effect as the date hereof.

(r) Except as otherwise disclosed in the Registration Statement or the Prospectus or as would not reasonably be expected to result in a Material Adverse Change, (i) neither the Company nor any of its Subsidiaries is or has in the past been in violation of any federal, state, local or foreign statute, law, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products (collectively, "Hazardous Materials") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, "Environmental Laws"); (ii) neither the Company nor any of its Subsidiaries nor, to the knowledge of the Company, any third party, has used, released, discharged, generated, manufactured, produced, stored, or disposed

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of in, on, under, or about the real property owned or leased by the Company or any of its Subsidiaries or any improvements thereon (the "Sites") or transported thereto or therefrom, any Hazardous Materials that would reasonably be expected to subject the Company or any of its Subsidiaries to any liability under any Environmental Law; (iii) there are no underground tanks and no Hazardous Materials used, stored or present at, on or near the Sites; (iv) to the knowledge of the Company after due inquiry, there is or has been no condition, circumstance, action, activity or event that could reasonably form the basis of any violation of, or

any liability to the Company or any of its Subsidiaries under, any Environmental Law; (v) there is no pending or, to the knowledge of the Company, threatened, action, proceeding, investigation or inquiry by any regulatory or governmental body or any non-governmental third party with respect to the presence or release of Hazardous Materials, on, from or to the Sites; (vi) the Company has no knowledge of any past or existing violations of any Environmental Laws by any person relating in any way to the Sites; and (vii) neither the Company nor any of its Subsidiaries has received any complaint, order, directive, citation or notice from any governmental body with respect to any Environmental Law.

(s) Except as otherwise disclosed in the Registration Statement or the Prospectus, (i) the Company and its Subsidiaries each own or possess the valid right to use all patents, patent rights, trademarks, trade names, service marks, domain names and copyrights (together with the applications for registrations and registrations therefor), license rights, know-how (including trade secrets and other unpatented and unpatentable proprietary or confidential information, materials, systems or procedures), technologies, inventions, and other intellectual property or proprietary rights (collectively, "Intellectual Property") presently used in their businesses and neither the Company nor any of its Subsidiaries has any reason to believe that it or they will not own or possess or be able to obtain when needed the valid right to use all Intellectual Property necessary to carry on their businesses as presently proposed to be conducted; (ii) neither the Intellectual Property owned or used by, nor the conduct or operation of the businesses (as presently and proposed to be conducted or operated) of, the Company or any of its Subsidiaries has infringed upon, misappropriated or violated, or, if the businesses are conducted or operated as presently intended, will, to the knowledge of the Company or any of its Subsidiaries, infringe upon, misappropriate or violate, any Intellectual Property of any other person or entity; (iii) to the knowledge of the Company, none of the Intellectual Property employed by the Company or any of its Subsidiaries has been obtained or is being used by the Company or any such Subsidiary in violation of any contractual obligation binding on the Company, such Subsidiary or any of their respective officers, directors or employees or otherwise in violation of the rights of any persons, except as would not reasonably be expected to result in a Material Adverse Change; (iv) neither the Company nor any of its Subsidiaries has received any written communications, nor is any action or proceeding pending, alleging that the Company or any such Subsidiary has violated, infringed upon or misappropriated, or, by conducting its business as set forth in the Registration Statement and the Prospectus, would violate, infringe upon or misappropriate, any of the Intellectual Property of any other person or entity; and (v) the Company knows of no material infringement by others of Intellectual Property owned by or licensed to the Company or any of its Subsidiaries.

The Company and its Subsidiaries have taken all reasonable steps necessary to secure their interests in, and protect the secrecy, confidentiality and value of, such Intellectual Property, including without limitation entering into written confidentiality agreements with their employees and contractors. There are no outstanding options, licenses or agreements of any kind relating to the Intellectual Property of the Company or its Subsidiaries that are required to be described in the Prospectus and are not described therein in all material respects. Neither the Company nor any of its Subsidiaries is a party to or bound by any options, licenses or agreements with respect to the Intellectual Property of any other person or entity that are required to be set forth in the Prospectus and are not described therein in all material respects.

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(t) Neither the Company nor any of its Subsidiaries, nor to the Company's knowledge, any of its or their affiliates, has taken or may take, directly or indirectly, any action designed to cause or result in, or which has constituted or which could reasonably be expected to constitute, the stabilization or manipulation of the price of the shares of Common Stock to facilitate the sale or resale of the Shares. The Company acknowledges that the Underwriters may engage in passive market making transactions in the Shares on the Nasdaq National Market in accordance with Regulation M under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

(u) Neither the Company nor any of its Subsidiaries, nor to the Company's knowledge, any of its or their affiliates, has distributed or will distribute, prior to the later of any Option Closing Date and the completion of the Underwriters' distribution of the Shares, any offering material in connection with the offering and sale of the Shares other than a Preliminary Prospectus, the Prospectus or the Registration Statement.

(v) Neither the Company nor any of its Subsidiaries is (i) or (after giving effect to the offering and sale of the Shares contemplated hereunder and the application of the net proceeds from such sale as described in the Prospectus) will be an "investment company" within the meaning of such term under the Investment Company Act of 1940, as amended (the "1940 Act"), and the rules and regulations of the Commission thereunder or (ii) a "holding company," a "subsidiary company" of a "holding company," or an "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company," as such terms are defined in the Public Utilities Holding Company Act of 1935, as amended (the "Public Utilities Act"), or is a "public utility," as such term is defined in the Federal Power Act, as amended (the "Federal Power Act").

(w) The Company and each of its Subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles as applied in the United States and to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(x) The Company and each of its Subsidiaries carry, or are covered by, insurance with insurers of recognized financial responsibility in such amounts, with such deductibles and covering such risks as is commercially reasonable and as the Company and its Subsidiaries deem adequate and prudent for the conduct of their respective businesses (including the construction of the Le Rêve Casino Resort) and the value of their respective properties and as is customary for companies engaged in similar businesses including, but not limited to, policies covering real and personal property owned or leased by the Company and its Subsidiaries against theft, damage, destruction, acts of vandalism and earthquakes. Such insurance coverage (including deductibles, retentions and self-insurance amounts) complies with the insurance coverage required at the Closing Date under the Master Disbursement Agreement by and among Wynn Las Vegas, Capital Corp., Wynn Design & Development, LLC, Deutsche Bank Trust Company Americas, Wells Fargo Bank, National Association and Wells Fargo Bank Nevada, National Association (the "Master Disbursement Agreement"). The Company has no reason to believe that such insurance coverage cannot be renewed as and when such coverage expires or that similar coverage could not be obtained from similar insurers at a cost that would not reasonably be expected to cause a Material Adverse Change (other than as a result of general market conditions).

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(y) Except for matters which would not reasonably be expected to result in a Material Adverse Change, the Company and each of its Subsidiaries is in compliance with all presently applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder ("ERISA"). No "reportable event" (as defined in ERISA) has occurred with respect to any "pension plan" (as defined in

ERISA) for which the Company or any of its Subsidiaries would have any liability. Neither the Company nor any of its Subsidiaries has incurred or expects to incur liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any "pension plan" or (ii) Section 412 or 4971 of the Internal Revenue Code of 1986, as amended, including the regulations and published interpretations thereunder (the "Code"). Except for matters which would not reasonably be expected to result in a Material Adverse Change, each "pension plan" for which the Company or any Subsidiary would have any liability that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.

(z) The Underwriters or Inspection & Valuation International, Inc., in their capacity as a consultant of the Underwriters, have been furnished with a copy of the plans and specifications for the construction of the Le Rêve Casino Resort that have been prepared to date, which plans and specifications are consistent in all material respects with the description thereof contained in the Registration Statement or the Prospectus. The anticipated costs as of the Closing Date and any Option Closing Date, if any, of such construction (including interest, legal, architectural, engineering, planning, zoning, pre-opening and other similar costs) do not exceed (except as a result of rounding adjustments) the amounts allocated for such costs as set forth under the caption "Use of Proceeds" in the Prospectus. In addition, the other amounts set forth under the caption "Use of Proceeds" in the Prospectus are based upon reasonable assumptions as to all matters material to the estimates set forth therein and are not expected by the Company to exceed the amounts set forth for such items.

(aa) The Project Budget (as defined in the Master Disbursement Agreement), as of the Closing Date and any Option Closing Date, if any, (i) is, to the Company's knowledge, based on reasonable assumptions as to all legal and factual matters material to the estimates set forth therein, (ii) is consistent with the provisions of the Operative Documents (as defined in the Master Disbursement Agreement) in all material respects, (iii) has been and will be prepared in good faith and with due care, (iv) sets forth, for each Line Item Category (as defined in the Master Disbursement Agreement), the total costs anticipated to be incurred through Final Completion (as defined in the Master Disbursement Agreement), (v) fairly represents the Company's expectation as to the matters covered thereby as of its date and (vi) sets forth a total amount of costs incurred or expected to be incurred in connection with the development, design, engineering, procurement, installation, construction and opening of the Le Rêve Casino Resort (as described in the Prospectus), including contingencies, which is equal to the Available Funds (as defined in the Master Disbursement Agreement).

(bb) To the Company's knowledge and except as set forth on *Schedule 1(bb)* hereto, there are no affiliations or associations between any member of the NASD and any of the Company's officers, directors or securityholders. There are no business relationships or related-party transactions involving the Company or any of its Subsidiaries or any other person required to be described in the Prospectus which have not been described as required.

(cc) Neither the Company nor any of its Subsidiaries nor, to the best of the Company's knowledge, any director, officer, agent, employee or other person associated with or acting on behalf of the Company or any of its Subsidiaries or any beneficial owner of 10 percent or more of the capital stock of the Company has, with respect to the Company or any of its Subsidiaries, (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (ii) made any unlawful payment to any foreign or domestic government official or employee from corporate funds, (iii) violated or is in violation of any provision of the Foreign Corrupt Practices

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Act of 1977, as amended, or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment.

(dd) The Shares have been approved for inclusion on the Nasdaq National Market, subject only to official notice of issuance.

(ee) No consent, approval, authorization or order of, or qualification or filing with, any court or governmental body or agency (including, without limitation, the Nevada State Gaming Commission, the Nevada State Gaming Control Board, the Clark County Liquor and Gaming Licensing Board, the Public Utilities Commission of Nevada, the Macau Special Administrative Region of the People's Republic of China and any jurisdictions in which Directed Shares are offered), other than those obtained, is required in connection with the offering of the Directed Shares in any U.S. jurisdiction where the Directed Shares are being offered.

(ff) The Company has not offered, or caused Deutsche Bank or its affiliates to offer, Shares to any person pursuant to the Directed Share Program with the specific intent to unlawfully influence (i) a customer or supplier of the Company to alter the customer's or supplier's level or type of business with the Company, or (ii) a trade journalist or publication to write or publish favorable information about the Company or its business.

Any certificate signed by an officer of the Company and delivered to the Representatives, Deutsche Bank or to counsel for the Underwriters shall be deemed to be a representation and warranty by the Company to each Underwriter as to the matters set forth therein.

The Company acknowledges that the Underwriters and, for purposes of the opinions to be delivered pursuant to Section 6 hereof, counsel to the Company and counsel to the Underwriters, will rely upon the accuracy and truthfulness of the foregoing representations and hereby consents to such reliance.

2. *Purchase, Sale and Delivery of the Firm Shares.*

(a) On the basis of the representations, warranties and covenants herein contained, and subject to the conditions herein set forth, the Company agrees to sell to the Underwriters and each Underwriter agrees, severally and not jointly, to purchase, at a price of \$12.09 per share, the number of Firm Shares set forth opposite the name of each Underwriter in *Schedule I* hereof, subject to adjustments in accordance with Section 8 hereof.

(b) Payment for the Firm Shares to be sold hereunder is to be made by wire transfer of immediately available funds against delivery of certificates therefor to the Representatives for the several accounts of the Underwriters. Such payment and delivery are to be made through the facilities of The Depository Trust Company, New York, New York at 10:00 a.m., New York time, on the third business day after the date of this Agreement or at such other time and date not later than five business days thereafter as you and the Company shall agree upon, such time and date being herein referred to as the "Closing Date." (As used herein, "business day" means a day on which the New York Stock Exchange is open for trading and on which banks in New York, New York are open for business and are not permitted by law or executive order to be closed.) Time shall be of the essence, and delivery at the time and place specified in this Agreement is a further condition to the obligations of the Underwriters.

(c) In addition, on the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company hereby grants an option to the several Underwriters to purchase the Option Shares at the price per share as set forth in the first paragraph of this Section 2. The option granted hereby may be exercised in whole or in part by giving written notice (i) at any time before the Closing Date and (ii) only once thereafter within 30 days after the date of this Agreement, by you, as Representatives of the several Underwriters, to the Company setting forth

the number of Option Shares as to which the several Underwriters are exercising the option and the time and date at which such certificates are to be delivered. The time and date at which certificates for Option Shares are to be delivered shall be determined by the Representatives but shall not be earlier than three nor later than 10 full business days after the exercise of such option, nor in any event prior to the Closing Date (such time and date being herein referred to as the "Option Closing Date"). If the date of exercise of the option is three or more days before the Closing Date, the notice of exercise shall set the Closing Date as the Option Closing Date. The number of Option Shares to be purchased by each Underwriter shall be in the same proportion to the total number of Option Shares being purchased as the number of Firm Shares being purchased by such Underwriter bears to the total number of Firm Shares, adjusted by you in such manner as to avoid fractional shares. The option with respect to the Option Shares granted hereunder may be exercised only to cover over-allotments in the sale of the Firm Shares by the Underwriters. You, as Representatives of the several Underwriters, may cancel such option at any time prior to its expiration by giving joint written notice of such cancellation to the Company. To the extent, if any, that the option is exercised, payment for the Option Shares shall be made on the Option Closing Date by wire transfer of immediately available funds through the facilities of The Depository Trust Company in New York, New York drawn to the order of the Company.

3. *Offering by the Underwriters.*

It is understood that the several Underwriters are to make a public offering of the Firm Shares as soon after this Agreement has been executed as the Representatives, in their sole judgment, deem it advisable to do so. The Firm Shares are to be initially offered to the public at the initial public offering price set forth in the Prospectus. The Representatives may from time to time thereafter change the public offering price and other selling terms; provided, however, that nothing in this Section 3 shall affect the Underwriters' obligations pursuant to Section 2 hereof. To the extent, if at all, that any Option Shares are purchased pursuant to Section 2 hereof, the Underwriters will offer them to the public on the foregoing terms.

It is further understood that you will act as the Representatives for the Underwriters in the offering and sale of the Shares in accordance with a Master Agreement Among Underwriters entered into by you and the several other Underwriters.

4. *Covenants of the Company.*

The Company covenants and agrees with the several Underwriters that:

(a) The Company shall (i) use its best efforts to cause the Registration Statement to become effective or, if the procedure in Rule 430A of the Rules and Regulations is followed, to prepare and timely file with the Commission under Rule 424(b) of the Rules and Regulations a Prospectus in a form approved by the Representatives containing information previously omitted at the time of effectiveness of the Registration Statement in reliance on Rule 430A of the Rules and Regulations and (ii) not file any amendment to the Registration Statement or supplement to the Prospectus of which the Representatives shall not previously have been advised and furnished with a copy or to which the Representatives shall have reasonably objected in writing or which is not in compliance with the Rules and Regulations.

(b) The Company shall advise the Representatives promptly (i) when the Registration Statement or any post-effective amendment thereto shall have become effective, (ii) of receipt of any comments from the Commission, (iii) of any request of the Commission for amendment of the Registration Statement or for supplement to the Prospectus or for any additional information, and (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto or of any order preventing or suspending the use of any preliminary prospectus or the Prospectus, or of any proceedings to remove, suspend or terminate

from listing or quotation the Common Stock from any securities exchange upon which it is listed for trading or included or designated for quotation, or of the threatening or initiation of any proceedings for any of such purposes. The Company shall make every reasonable effort to prevent the issuance of any such stop order preventing or suspending the use of the Prospectus and to obtain as soon as possible the lifting thereof, if issued.

(c) The Company shall cooperate with the Representatives and counsel for the Underwriters to qualify the Shares for sale under (or obtain exemptions from the application of the qualification requirements of) the securities laws of such jurisdictions as the Representatives may reasonably have designated and shall make such applications, file such documents, and furnish such information as may be reasonably required for that purpose, provided the Company shall not be required to qualify as a foreign corporation or to file a general consent to service of process in any jurisdiction where it is not now so qualified or required to file such a consent. The Company shall, from time to time, prepare and file such statements, reports, and other documents, as are or may be required to continue such qualifications in effect for so long a period as the Representatives may reasonably request for distribution of the Shares. The Company shall advise the Representatives promptly of the suspension of the qualification or registration of (or any such exemption relating to) the Shares for offering, sale or trading in any jurisdiction or any initiation of threat of any proceeding for any such purpose, and in the event of the issuance of any order suspending such qualification, registration or exemption, the Company shall use its best efforts to obtain the withdrawal thereof at the earliest possible moment.

(d) The Company shall deliver to, or upon the order of, the Representatives, from time to time, as many copies of any Preliminary Prospectus as the Representatives may reasonably request. The Company shall deliver to, or upon the order of, the Representatives during the period when delivery of a Prospectus is required under the Act, as many copies of the Prospectus in final form, or as thereafter amended or supplemented, as the Representatives may reasonably request. The Company shall deliver to the Representatives at or before the Closing Date, three signed copies of the Registration Statement and all amendments thereto including all exhibits filed therewith, and shall deliver to the Representatives such number of copies of the Registration Statement (including such number of copies of the exhibits filed therewith that may reasonably be requested) and of all amendments thereto, as the Representatives may reasonably request.

(e) The Company shall comply with the Act and the Rules and Regulations, and the Exchange Act, and the rules and regulations of the Commission thereunder, so as to permit the completion of the distribution of the Shares as contemplated in this Agreement and the Prospectus. If during the period in which a prospectus is required by law to be delivered by an Underwriter or dealer, any event shall occur as a result of which, in the judgment of the Company or in the reasonable opinion of the Underwriters, it becomes necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances existing at the time the Prospectus is delivered to a purchaser, not misleading, or, if it is necessary at any time to amend or supplement the Prospectus to comply with any law, the Company promptly shall prepare and file with the Commission an appropriate amendment to the Registration Statement

or supplement to the Prospectus so that the Prospectus as so amended or supplemented shall not, in the light of the circumstances when it is so delivered, be misleading, or so that the Prospectus shall comply with the law.

(f) The Company shall make generally available to its security holders and to the Representatives, as soon as it is practicable to do so, but in any event not later than 15 months after the effective date of the Registration Statement, an earnings statement (which need not be audited) in reasonable detail, covering a period of at least 12 consecutive months beginning after the effective date of the Registration Statement, which earnings statement shall satisfy the requirements of Section 11(a) of the Act and Rule 158 of the Rules and Regulations and shall advise you in writing when such statement has been so made available.

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(g) Prior to the Closing Date, the Company shall furnish to the Underwriters, as soon as they have been prepared by or are available to the Company, a copy of any unaudited interim financial statements of the Company or any of its Subsidiaries for any period subsequent to the period covered by the most recent financial statements appearing in the Registration Statement and the Prospectus.

(h) During the period commencing on the date hereof and ending on the 180th day following the date of this Agreement, the Company shall not, without the prior written consent of the Representatives (which consent may be withheld at the sole discretion of the Representatives), directly or indirectly, sell, offer, contract or grant any option to sell, pledge, transfer or establish an open "put equivalent position" within the meaning of Rule 16a-1(h) under the Exchange Act, or otherwise dispose of or transfer, or announce the offering of, or file any registration statement under the Securities Act in respect of, any shares of Common Stock, options or warrants to acquire shares of the Common Stock or securities exchangeable or exercisable for or convertible into shares of Common Stock (other than as contemplated by this Agreement with respect to the Shares); *provided, however*, that the Company may issue shares of its Common Stock or options to purchase its Common Stock, or Common Stock upon exercise of options, pursuant to any stock option, stock incentive or other stock plan or arrangement described in the Registration Statement or the Prospectus and may file a registration statement in respect thereof, but only if the holders of such shares, options, or shares issued upon exercise of such options, agree in writing not to sell, offer, dispose of or otherwise transfer any such shares or options during such 180 day period without the prior written consent of the Representatives (which consent may be withheld at the sole discretion of the Representatives).

(i) The Company shall use its best efforts to include the Shares on the Nasdaq National Market.

(j) The Company has caused each of its officers, directors and stockholders (excluding Baron Asset Fund) and Aruze Corp. to furnish to you, on or prior to the date of this Agreement, a letter or letters, in substantially the form of *Exhibit A* hereto ("Lockup Agreements").

(k) The Company shall apply the net proceeds of its sale of the Shares as set forth in the Prospectus under the caption "Use of Proceeds" and shall file such reports with the Commission with respect to the sale of the Shares and the application of the proceeds therefrom as may be required in accordance with Rule 463 under the Act.

(l) The Company shall not invest, or otherwise use the proceeds received by the Company from its sale of the Shares in such a manner as would require the Company or any of the Subsidiaries to register as an investment company under the 1940 Act.

(m) The Company shall maintain a transfer agent and a registrar for the Common Stock.

(n) The Company shall not take, directly or indirectly, any action designed to cause or result in, or that has constituted or could reasonably be expected to constitute, the stabilization or manipulation of the price of any securities of the Company.

(o) The Company shall comply with all applicable securities laws and, except where the failure to comply would not reasonably be expected to result in a Material Adverse Change, all other applicable laws, rules and regulations, in each case, in connection with the Directed Share Program in each jurisdiction in which the Directed Shares are offered.

5. *Costs and Expenses.*

The Company shall pay all costs, expenses and fees incident to the performance of the obligations of the Company under this Agreement, including, without limiting the generality of the foregoing, the following: accounting fees of the Company; the fees and disbursements of counsel for the Company; the cost of printing and delivering to, or as requested by, the Underwriters copies of the Registration Statement, Preliminary Prospectuses, the Prospectus, the Underwriters' Selling Memorandum, the Underwriters' Invitation Letter, the Listing Application, the Blue Sky Survey and any supplements or

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amendments thereto; the filing fees of the Commission; the filing fees and expenses (including reasonable legal fees and disbursements) incident to securing any required review by the NASD of the terms of the sale of the Shares; the fees and expenses associated with including the shares on the Nasdaq National Market; and expenses, including the reasonable fees and disbursements of counsel for the Underwriters, to the extent incurred in connection with the qualification of the Shares under state securities or Blue Sky laws or the provincial securities laws of Canada. The Company agrees to pay all costs and expenses of the Underwriters incident to the offer and sale of Directed Shares by the Underwriters to employees and persons having business and other relationships with the Company and its Subsidiaries. The Company shall not, however, be required to pay for any of the Underwriters other expenses including (a) the fees and expenses of their counsel (other than those related to qualification under NASD regulation, state securities or Blue Sky laws and the Directed Share Program), (b) other professional fees (excluding the fees and expenses of Inspection & Valuation International, Inc.), (c) the customary costs and expenses of the roadshow and any other meetings with prospective investors, (d) the costs and expenses of travel of the Representatives and the other Underwriters (e) the costs and expenses of any other consultants and experts specifically retained by the Representatives (other than Inspection & Valuation International, Inc.) and (f) all arrangements relating to the preparation, issuance and delivery of any certificates evidencing the Shares, including the fees of any transfer agent or similar entity, except in all cases that, if the sale of the Shares pursuant to Section 2 hereof shall not be consummated because the conditions in Section 6 hereof are not satisfied, because this Agreement is terminated by the Representatives pursuant to Section 10 hereof, or by reason of any failure, refusal or inability on the part of the Company to perform any undertaking or satisfy any condition of this Agreement or to comply with any of the terms hereof on its part to be performed, unless such failure, refusal or inability is due primarily to any default or omission of any Underwriter, the Company shall reimburse the several Underwriters for reasonable out-of-pocket

expenses, including fees and disbursements of counsel, reasonably incurred in connection with investigating, marketing and proposing to market the Shares or in contemplation of performing their obligations hereunder; provided, however, that the Company shall not in any event be liable to any of the several Underwriters for damages on account of loss of anticipated profits from the sale by them of the Shares.

6. *Conditions of Obligations of the Underwriters.*

The several obligations of the Underwriters to purchase the Firm Shares on the Closing Date and the Option Shares, if any, on an Option Closing Date are subject to the accuracy, as of the Closing Date or such Option Closing Date, as the case may be, of the representations and warranties of the Company contained herein, and to the performance by the Company of its covenants and obligations hereunder and to the following additional conditions:

(a) The Registration Statement and all post-effective amendments thereto shall have become effective and any and all filings required by Rule 424 and Rule 430A of the Act shall have been made within the applicable time period prescribed by, and in compliance with, the Rules and Regulations, and any request of the Commission for additional information (to be included in the Registration Statement or otherwise) shall have been disclosed to the Representatives and complied with. No stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been taken or, to the knowledge of the Company, shall be contemplated or threatened by the Commission and no injunction, restraining order or order of any nature by a federal, state or foreign court of competent jurisdiction shall have been issued as of the Closing Date which would prevent the issuance of the Shares. The NASD shall have raised no objections to the fairness and reasonableness of the underwriting terms and arrangements.

(b) The Representatives shall have received on the Closing Date or an Option Closing Date, as the case may be, (i) the opinion of Irell & Manella LLP, counsel for the Company, dated the Closing Date or the Option Closing Date, as the case may be, addressed to the Underwriters in form and

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substance reasonably satisfactory to counsel to the Underwriters, substantially in the form of *Exhibit B* hereto, and (ii) from Irell & Manella LLP, counsel for the Company, dated the Closing Date, copies of the legal opinions delivered by such firm to (A) the administrative agent under the Credit Agreement, (B) the collateral agent under the FF&E Facility, and (C) the representatives of the underwriters of the second mortgage notes concurrently being offered by Wynn Las Vegas and Capital Corp., accompanied in each case by a reliance letter in favor of the Underwriters, permitting the Underwriters to rely on each of the enforceability opinions contained in such legal opinions, on the terms and subject to the provisions contained in such opinions.

(c) The Representatives shall have received on the Closing Date or an Option Closing Date, as the case may be, the opinion of Schreck Brignone, special Nevada counsel for the Company, dated the Closing Date or the Option Closing Date, as the case may be, addressed to the Underwriters in form and substance reasonably satisfactory to counsel to the Underwriters, substantially in the form of *Exhibit C* hereto.

(d) The Representatives shall have received on the Closing Date or an Option Closing Date, as the case may be, the opinion of Manuel Alexandre de Oliveira Correia da Silva, special Macau counsel for Wynn Resorts (Macau) S.A., dated the Closing Date or the Option Closing Date, as the case may be, addressed to the Underwriters in form and substance reasonably satisfactory to counsel to the Underwriters, substantially in the form of *Exhibit D* hereto.

(e) The Representatives shall have received on the Closing Date or an Option Closing Date, as the case may be, the opinion of Fulbright & Jaworski, special regional counsel for Wynn Resorts (Macau) S.A., dated the Closing Date or the Option Closing Date, as the case may be, addressed to the Underwriters in form and substance reasonably satisfactory to counsel to the Underwriters, substantially in the form of *Exhibit E* hereto.

(f) The Representatives shall have received on the Closing Date or an Option Closing Date, as the case may be, the opinion of special Isle of Man counsel for certain Subsidiaries of the Company reasonably acceptable to the Representatives, dated the Closing Date or the Option Closing Date, as the case may be, addressed to the Underwriters in form and substance reasonably satisfactory to counsel to the Underwriters, substantially in the form of *Exhibit F* hereto.

(g) The Representatives shall have received on the Closing Date or an Option Closing Date, as the case may be, the opinion of Hoosenally and Neo, special Hong Kong counsel for Wynn Resorts (Macau) Limited, dated the Closing Date or the Option Closing Date, as the case may be, addressed to the Underwriters in form and substance reasonably satisfactory to counsel to the Underwriters, substantially in the form of *Exhibit G* hereto.

(h) The Representatives shall have received on the Closing Date or an Option Closing Date, as the case may be, the opinion of Lionel Sawyer & Collins, counsel for Aruze USA, Inc. ("Aruze USA"), dated the Closing Date or the Option Closing Date, as the case may be, addressed to the Underwriters in form and substance reasonably satisfactory to counsel to the Underwriters, substantially in the form of *Exhibit H* hereto.

(i) The Representatives shall have received on the Closing Date or an Option Closing Date, as the case may be, the opinion of Nagashima Ohno & Tsunematsu, counsel for Aruze Corp. and Mr. Kazuo Okada, dated the Closing Date or the Option Closing Date, as the case may be, addressed to the Underwriters in form and substance reasonably satisfactory to counsel to the Underwriters, substantially in the form of *Exhibit I* hereto.

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(j) The Representatives shall have received on the Closing Date or an Option Closing Date, as the case may be, the opinion of Hale Lane, Nevada public utilities counsel for the Company, dated the Closing Date or the Option Closing Date, as the case may be, addressed to the Underwriters in form and substance reasonably satisfactory to counsel to the Underwriters, substantially in the form of *Exhibit J* hereto.

(k) The Representatives shall have received from Latham & Watkins, counsel for the Underwriters, an opinion dated the Closing Date or an Option Closing Date, as the case may be, in form and substance reasonably satisfactory to the Representatives.

(l) The Representatives shall have received at or prior to the Closing Date from Latham & Watkins a memorandum or summary, in form and substance satisfactory to the Representatives, with respect to the qualification for offering and sale by the Underwriters of the Shares under the state securities or Blue Sky laws of such jurisdictions as the Representatives may reasonably have designated to the Company.

(m) You shall have received, on each of the date hereof, the Closing Date and, if applicable, any Option Closing Date, a letter dated the date hereof, the Closing Date or the Option Closing Date, as the case may be, in form and substance satisfactory to you, of Deloitte & Touche LLP confirming that they are independent public accountants within the meaning of the Act and the applicable published Rules and Regulations thereunder and stating that in their opinion the financial statements and schedules examined by them and included in the Registration Statement and the Prospectus comply in form in all material respects with the applicable accounting requirements of the Act and the related published Rules and Regulations; and containing such other statements and information as is ordinarily included in accountants' "comfort letters" to Underwriters, delivered pursuant to Statement of Accounting Standards No. 72 (or any successor bulletin), with respect to the financial statements and certain financial and statistical information contained in the Registration Statement and Prospectus.

(n) The Representatives shall have received on the Closing Date and, if applicable, an Option Closing Date, as the case may be, a certificate or certificates of the Chief Executive Officer or President and the Chief Financial Officer of the Company to the effect that, as of the Closing Date or the Option Closing Date, as the case may be, each of them severally represents as follows:

(i) the Registration Statement has become effective under the Act and no stop order suspending the effectiveness of the Registration Statement has been issued, and no proceedings for such purpose have been taken or are, to his or her knowledge, contemplated or threatened by the Commission;

(ii) the representations and warranties of the Company contained in Section 1 hereof are true and correct as of the Closing Date or the Option Closing Date, as the case may be;

(iii) he or she has carefully examined the Registration Statement and the Prospectus and, in his or her opinion, as of the effective date of the Registration Statement, the information contained in the Registration Statement, including the financial statements and other financial information included therein, was true, complete and correct in all material respects, and such Registration Statement and Prospectus did not omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading;

(iv) the Company has complied with all the agreements hereunder and satisfied all the conditions on its part to be performed or satisfied hereunder at or prior to such Closing Date; and

(v) since the respective dates as of which information is given in the Registration Statement and Prospectus and prior to the Closing Date and, with respect to the Option Shares, the applicable Option Closing Date, there has not occurred any Material Adverse Change or any development that would reasonably be expected to result in a Material Adverse Change.

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(o) The Company shall have furnished to the Representatives such further certificates and documents confirming the representations and warranties, covenants and conditions contained herein and related matters as the Representatives may reasonably have requested.

(p) For the period from and after the date of this Agreement and prior to the Closing Date and, with respect to the Option Shares, any Option Closing Date, in the judgment of the Representatives there shall not have occurred any Material Adverse Change.

(q) The Firm Shares and Option Shares, if any, have been approved for designation upon notice of issuance on the Nasdaq National Market.

(r) The Lockup Agreements described in Section 4(j) are in full force and effect and on or before the date of this Agreement the Company shall have delivered fully executed copies of the Lockup Agreements to the Representatives.

(s) All fees and expenses which the Company or any of its Subsidiaries has agreed to pay pursuant to the Amended and Restated Engagement Letter dated as of June 14, 2002 between Valvino, Wynn Resorts Holdings, LLC, Wynn Las Vegas and the Representatives and which, pursuant to such engagement letter, are required to be paid at or prior to Closing, shall have been paid.

(t) The purchase of (i) the shares of Common Stock from the Company in accordance with the terms of the Affiliate Purchase Agreements (as defined in *Schedule II* hereof), dated as of the date hereof, by the purchasers named therein, shall be consummated concurrently with the Closing hereunder and (ii) the second mortgage notes of Wynn Las Vegas and Capital Corp. directly from the Wynn Las Vegas and Capital Corp. in accordance with the terms of the Affiliate Note Purchase Agreements (as defined in *Schedule II* hereof), dated as of the date hereof, by the purchasers named therein.

(u) All of the Executed Transaction Documents and Closing Transaction Documents shall have been executed and shall be in full force and effect and the Representatives shall have received fully executed copies thereof, and neither the Company nor any of its Subsidiaries shall be in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of the Executed Transaction Documents and the Closing Transaction Documents, and no condition shall exist that, with the giving of notice or the lapse of time, or both, would constitute such a default, except in each case where the consequences of such default or defaults, if any, would not reasonably be expected to result in a Material Adverse Change.

(v) On the date hereof, the Debt Underwriting Agreement (as defined in *Schedule II* hereof) shall have been executed by the parties thereto and, on the Closing Date, Wynn Las Vegas and Capital Corp. shall have consummated the issuance and sale of an aggregate principal amount of \$370 million of their Second Mortgage Notes due 2010 and shall have received the proceeds therefrom of approximately \$333 million after deducting underwriting discounts and commissions.

(w) The Company shall not have knowledge that any party shall have failed at or prior to the Closing Date to perform or comply with any of the agreements contained in any of the Executed Transaction Documents or Closing Transaction Documents and required to be performed or complied with by such party at or prior to the Closing Date and, if applicable, any Option Closing Date unless such failure would not reasonably be expected to result in a Material Adverse Change.

(x) The Representatives shall have received on the Closing Date and, if applicable, an Option Closing Date, as the case may be, an executed certificate dated the Closing Date or Option Closing Date, as applicable, from Stephen A. Wynn addressed to the Underwriters and stating that it can be relied on by Latham & Watkins, counsel to Underwriters, and counsel and any special counsel to the Company, which certificate provides that the execution and delivery by Mr. Wynn of the Wynn Put Agreement and the Buy-Sell Agreement, and the performance by him of his obligations thereunder, do

not (i) breach any agreement or instrument with a value in excess of \$10.0 million to which he is a party, (ii) breach any other agreement or instrument to which he is a party if that breach would subject him to a penalty or a payment requirement in excess of \$10.0 million, or (3) result in a default under any loan agreement or guarantee or other debt for borrowed money in excess of \$10.0 million to which he is a party.

The opinions and certificates mentioned in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in all material respects satisfactory to the Representatives and to Latham & Watkins, counsel for the Underwriters.

If any of the conditions hereinabove provided for in this Section 6 shall not have been fulfilled when and as required by this Agreement to be fulfilled, the obligations of the Underwriters hereunder may be terminated by the Representatives by notifying the Company of such termination in writing at or prior to the Closing Date or Option Closing Date, as the case may be.

In such event, the Company and the Underwriters shall not be under any obligation to each other (except to the extent provided in Sections 5 and 8 hereof).

7. *Indemnification.*

(a) The Company agrees:

(i) to indemnify and hold harmless each Underwriter and its affiliates, and each person, if any, who controls any Underwriter within the meaning of either Section 15 of the Act or Section 20 of the Exchange Act, against any losses, claims, damages or liabilities to which such Underwriter, affiliate or any such controlling person may become subject under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) arise out of or are based upon (A) any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement or any amendment or supplement thereto or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, (B) any untrue statement or alleged untrue statement of any material fact contained in any Preliminary Prospectus or the Prospectus or any amendment or supplement thereto (including any Prospectus wrapper for use with offers in Canada) or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading or (C) any act or failure to act, or any alleged act or failure to act by any Underwriter in connection with, or relating in any manner to, the Shares or the offering contemplated hereby, and which is included as part of or referred to in any loss, claim, damage, liability or action arising out of or based upon matters covered by clause (A) or (B) above (provided, that the Company shall not be liable under this clause (C) to the extent that it is determined in a final judgment by a court of competent jurisdiction that such loss, claim, damage, liability or action resulted directly from any such acts or failures to act undertaken or omitted to be taken by such Underwriter through its gross negligence or willful misconduct); *provided, however*, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement, or omission or alleged omission made in the Registration Statement, any Preliminary Prospectus, the Prospectus, or such amendment or supplement, in reliance upon and in conformity with written information furnished to the Company by or through the Representatives specifically for use in the preparation thereof; and *provided, further*, that the Company will not be liable to any Underwriter with respect to any such untrue statement or alleged untrue statement or omission or alleged omission made in any Preliminary Prospectus to the extent that (1) such loss, claim, damage, or liability results from an untrue statement of a material fact or an omission of a material fact contained in the Preliminary Prospectus, which untrue statement or omission was corrected in the final Prospectus, (2) the Company had previously furnished sufficient quantities of

the final Prospectus to such Underwriter within a reasonable amount of time prior to such sale, and (3) such Underwriter failed to deliver the final Prospectus, if required by law to have so delivered it, and such delivery would have been a complete defense against the person asserting such loss, claim, liability, expense or damage; and

(ii) to reimburse each Underwriter and each such affiliate or controlling person upon demand for any legal or other out-of-pocket expenses reasonably incurred by such Underwriter, affiliate or such controlling person in connection with investigating or defending any such loss, claim, damage or liability, action or proceeding or in responding to a subpoena or governmental inquiry related to the offering of the Shares, whether or not such Underwriter, affiliate or controlling person is a party to any action or proceeding. In the event that it is finally judicially determined that the Underwriters were not entitled to receive payments for legal and other expenses pursuant to this subparagraph, the Underwriters will promptly return all sums that had been advanced pursuant hereto. The indemnity obligations under this Section 7(a) will be in addition to any liability which such Company may otherwise have.

(b) Each Underwriter severally and not jointly agrees to indemnify and hold harmless the Company, each of its directors, each of its officers who have signed the Registration Statement, and each person, if any, who controls the Company within the meaning of the Act, against any losses, claims, damages or liabilities to which the Company or any such director, officer or controlling person may become subject under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement or any amendment or supplement thereto or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or (ii) any untrue statement or alleged untrue statement of any material fact contained in any Preliminary Prospectus or the Prospectus or any amendment or supplement thereto or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, and will reimburse any legal or other expenses reasonably incurred by the Company or any such director, officer or controlling person in connection with investigating, defending against or appearing as a third party witness in connection with any such loss, claim, damage, liability, action or proceeding or in responding to a subpoena or governmental inquiry related to the offering of the Shares, whether or not the Company or such director, officer or controlling person is a party to any action or proceeding; *provided, however*, that each Underwriter will be liable in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission has been made in the Registration Statement, any Preliminary Prospectus, the Prospectus or such amendment or supplement, in reliance upon and in conformity with written information furnished to the Company by or through the Representatives specifically for use in the preparation thereof. This indemnity agreement will be in addition to any liability which such Underwriter may otherwise have.

(c) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to this Section 7, such person (the "indemnified party") shall promptly notify the person against whom such indemnity may be sought (the "indemnifying party") in writing. No indemnification provided for in Section 7(a), (b) or (d) shall be available to any party who shall fail to give notice as provided in this Section 7(c) if the party to whom notice was not given was unaware of the proceeding to which such notice would have related and was materially prejudiced by the failure to give such notice, and the failure to give such notice shall not relieve the indemnifying party or parties from any liability which it or they may have to the indemnified party for contribution or otherwise than on account of the provisions of Section 7(a), (b) or (d). In case any such proceeding shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and,

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to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party and shall pay as incurred the reasonable fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel at its own expense. Notwithstanding the foregoing, the indemnifying party shall pay as incurred (or within 30 days of presentation) the reasonable fees and expenses of the counsel retained by the indemnified party in the event (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel, (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party, and the indemnified party shall have reasonably concluded that a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such proceeding or that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party or (iii) the indemnifying party shall have failed to assume the defense and employ counsel reasonably acceptable to the indemnified party within a reasonable period of time after notice of commencement of the action. It is understood that the indemnifying party shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees and expenses of more than one separate firm for all such indemnified parties. Such firm shall be designated in writing by you in the case of parties indemnified pursuant to Section 7(a) or (d) and by the Company in the case of parties indemnified pursuant to Section 7(b). The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. In addition, the indemnifying party will not, without the prior written consent of the indemnified party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding of which indemnification may be sought hereunder (whether or not any indemnified party is an actual or potential party to such claim, action or proceeding) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action or proceeding.

(d) The Company and each of its Subsidiaries, whether direct or indirect, jointly and severally, agree to indemnify and hold harmless Deutsche Bank and each person, if any, who controls Deutsche Bank within the meaning of either Section 15 of the Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) (i) caused by any untrue statement or alleged untrue statement of a material fact contained in any material prepared by or with the consent of the Company for distribution to Participants in connection with the Directed Share Program, or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading; (ii) caused by the failure of any Participant to pay for and accept delivery of Directed Shares that the Participant has agreed to purchase; or (iii) related to, arising out of, or in connection with the Directed Share Program other than losses, claims, damages or liabilities (or expenses relating thereto) that are finally judicially determined to have resulted from the gross negligence or willful misconduct of Deutsche Bank; *provided, however*, that in the case of clause (i) above, the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement, or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Company by or through the Representatives specifically for inclusion therein. The indemnity agreement set forth in this paragraph shall be in addition to any liabilities that the Company and each of its Subsidiaries may otherwise have.

(e) To the extent the indemnification provided for in this Section 7 is unavailable to or insufficient to hold harmless an indemnified party under Section 7(a), (b) or (d) above in respect of any losses,

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claims, damages or liabilities (or actions or proceedings in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other from the offering of the Shares. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions or proceedings in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the table on the cover page of the Prospectus. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or the Underwriters on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Underwriters agree that it would not be just and equitable if contributions pursuant to this Section 7(e) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 7(e). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions or proceedings in respect thereof) referred to above in this Section 7(e) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (e), (i) no Underwriter shall be required to contribute any amount in excess of the underwriting discounts and commissions applicable to the Shares purchased by such Underwriter and (ii) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this Section 7(e) to contribute are several in proportion to their respective underwriting obligations and not joint.

(f) Any losses, claims, damages, liabilities or expenses for which an indemnified party is entitled to indemnification or contribution under this Section 7 shall be paid by the indemnifying party to the indemnified party as such losses, claims, damages, liabilities or expenses are incurred. The indemnity and contribution agreements contained in this Section 7 and the representations and warranties of the Company set forth in this Agreement shall remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of any Underwriter or any person controlling any Underwriter, the Company, its directors or officers or any persons controlling the Company, (ii) acceptance of any Shares and payment therefore hereunder and (iii) any termination of this Agreement. A successor to any Underwriter, or any person controlling any Underwriter, or to the Company, its directors or officers, or any person controlling the Company, shall be entitled to the benefits of the indemnity, contribution and reimbursement agreements contained in this Section 7.

8. *Default by Underwriters.*

If on the Closing Date or any Option Closing Date, as the case may be, any Underwriter shall fail to purchase and pay for the portion of the Shares which such Underwriter has agreed to purchase and pay for on such date (otherwise than by reason of any default on the part of the Company), you, as Representatives of the Underwriters, shall use your reasonable efforts to procure within 36 hours

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thereafter one or more of the other Underwriters, or any others, to purchase from the Company such amounts as may be agreed upon and upon the terms set forth herein, the Shares which the defaulting Underwriter or Underwriters failed to purchase. If during such 36 hours you, as such Representatives, shall not have procured such other Underwriters, or any others, to purchase the Shares agreed to be purchased by the defaulting Underwriter or Underwriters, then (a) if the aggregate number of shares with respect to which such default shall occur does not exceed 10% of the Shares to be purchased on the Closing Date or any Option Closing date, as the case may be, the other Underwriters shall be obligated, severally, in proportion to the respective numbers of Shares which they are obligated to purchase hereunder, to purchase the Shares which such defaulting Underwriter or Underwriters failed to purchase, or (b) if the aggregate number of shares of Shares with respect to which such default shall occur exceeds 10% of the Shares to be purchased on the Closing Date or any Option Closing Date, as the case may be, the Company or you as the Representatives of the Underwriters shall have the right, by written notice given within the next 36-hour period to the parties to this Agreement, to terminate this Agreement without liability on the part of the non-defaulting Underwriters or of the Company except to the extent provided in Sections 5 and 8 hereof (provided that if such default occurs solely with respect to Option Shares after the Closing Date, this Agreement will not terminate as to the Firm Shares or any Option Shares purchased prior to such termination). In the event of a default by any Underwriter or Underwriters, as set forth in this Section 8, the Closing Date or Option Closing Date, as the case may be, may be postponed for such period, not exceeding seven days, as you, as Representatives, may determine in order that the required changes in the Registration Statement or in the Prospectus or in any other documents or arrangements may be effected. As used in this Agreement, the term "Underwriter" includes any person substituted for a defaulting Underwriter. Any action taken under this Section 8 shall not relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

9. *Notices.*

All communications hereunder shall be in writing and, except as otherwise provided herein, shall be mailed, delivered, telecopied or telegraphed and confirmed as follows: if to the Underwriters, to Deutsche Bank Securities Inc., 31 West 52nd Street New York, New York 10019; Attention: Syndicate Manager and General Counsel; if to the Company, to Wynn Resorts, Limited, 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109; Attention: General Counsel.

10. *Termination.* This Agreement may be terminated by you:

(a) by notice to the Company at any time prior to the Closing Date or any Option Closing Date (if different from the Closing Date and then only as to Option Shares) if any of the following has occurred: (i) since the respective dates as of which information is given in the Registration Statement and the Prospectus, in the judgment of the Representatives, any Material Adverse Change or any development that would reasonably be expected to result in a Material Adverse Change, (ii) any attack on, or any outbreak or escalation of hostilities or acts of terrorism involving, the United States or declaration of war or national emergency or other national or international calamity or crisis or change in economic or political conditions if the effect of such attack, outbreak, escalation, acts, declaration, emergency, calamity, crisis or change on the financial markets of the United States would, in the Representatives' judgment, make it impracticable or inadvisable to market the Shares in the manner and on the terms described in the Prospectus or to enforce contracts for the sale of the Shares, (iii) the suspension or material limitation of trading in securities generally or other instruments on the New York Stock Exchange, the American Stock Exchange or the Nasdaq National Market or other exchange or limitation on prices for securities or other instruments on the New York Stock Exchange, the American Stock Exchange or the Nasdaq National Market, (iv) the enactment, publication, decree or other promulgation of any statute, regulation, rule or order of any court or other governmental authority which in your opinion materially and adversely affects or may materially and adversely affect the business or operations of the Company, (v) the declaration of a banking moratorium by United

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States or New York or Nevada state authorities, (vi) any downgrading, or placement on any watch list for possible downgrading, in the rating of any of the Company's debt securities by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the Exchange Act), (vii) the suspension of trading of any securities of the Company by any exchange, the Nasdaq National Market, the Commission, or any other governmental authority (viii) the enactment, publication, decree or other promulgation of any statute, regulation, rule or order of any court or other governmental authority which in your opinion materially and adversely affects, or will materially and adversely affect, the business, prospects, financial condition or results of operations of the Company and its Subsidiaries, taken as a whole or (ix) the Company shall have sustained a loss by strike, fire, flood, earthquake, accident or other calamity of such character as in the judgment of the Representatives may interfere materially with the conduct of the business and operations of the Company regardless of whether or not such loss shall have been insured; or

(b) as provided in Sections 6 and 8 of this Agreement.

11. *Successors.*

This Agreement has been and is made solely for the benefit of the Underwriters and the Company and their respective successors, executors, administrators, heirs and assigns, and the officers, directors, employees and controlling persons referred to herein, and no other person will have any right or obligation

hereunder. No purchaser of any of the Shares from any Underwriter shall be deemed a successor or assign merely because of such purchase.

12. *Information Provided by Underwriters.*

The Company and the Underwriters acknowledge and agree that the only information furnished or to be furnished by any Underwriter to the Company for inclusion in any Prospectus or the Registration Statement consists of the information set forth in the fourth, eleventh through sixteenth and eighteenth paragraphs under the caption "Underwriting" in the Prospectus.

13. *Partial Enforceability.*

The invalidity or unenforceability of any Section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other Section, paragraph or provision hereof. If any Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable and to effect the original intent of the parties hereto.

14. *Choice of Law; Consent to Jurisdiction.*

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. To the fullest extent permitted by applicable law, you hereby irrevocably submit to the nonexclusive jurisdiction of the courts of the State of New York located in the Borough of Manhattan and the United States District Court for the Southern District of New York in respect of any suit, action or proceeding arising out of or relating to the provisions of this Agreement and irrevocably agree that all claims in respect of any such suit, action or proceeding may be heard and determined in any such court. The parties hereto hereby waive, to the fullest extent permitted by applicable law, any objection that they may now or hereafter have to the laying of venue of any such suit, action or proceeding brought in any such court, and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

15. *Miscellaneous.*

The reimbursement, indemnification and contribution agreements contained in this Agreement and the representations, warranties and covenants in this Agreement shall remain in full force and effect regardless of (a) any termination of this Agreement, (b) any investigation made by or on behalf of any

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Underwriter or controlling person thereof, or by or on behalf of the Company or its directors or officers and (c) delivery of and payment for the Shares under this Agreement.

This Agreement may be executed in two or more counterparts (including by facsimile), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

If the foregoing letter is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicates hereof, whereupon it will become a binding agreement among the Company and the several Underwriters in accordance with its terms.

(Signature page to follow)

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Very truly yours,

WYNN RESORTS, LIMITED

/s/ Ronald Kramer

Name: Ronald Kramer
Title: President

The foregoing Underwriting Agreement is hereby confirmed and accepted as of the date first above written.

DEUTSCHE BANK SECURITIES INC.
BEAR, STEARNS & CO. INC.
BANC OF AMERICA SECURITIES LLC

As Representatives of the several Underwriters listed on
Schedule I

By: DEUTSCHE BANK SECURITIES INC.

Authorized Officer

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SCHEDULE I

Schedule of Underwriters

| Underwriter | Number of Firm Shares to be Purchased |
|---|--|
| Deutsche Bank Securities Inc. | 4,141,118 |
| Bear, Stearns & Co. Inc. | 4,141,118 |
| Banc of America Securities LLC | 4,141,118 |
| J.P. Morgan Securities Inc. | 3,369,738 |
| Dresdner Kleinwort Wasserstein Securities LLC | 3,369,738 |
| Jefferies & Company, Inc. | 199,581 |
| Lazard Freres & Co. LLC | 199,581 |
| SG Cowen Securities Corporation | 199,581 |
| Thomas Weisel Partners LLC | 199,581 |
| CIBC World Markets Corp. | 140,000 |
| Credit Suisse First Boston Corporation | 140,000 |
| Goldman, Sachs & Co. | 140,000 |
| Salomon Smith Barney Inc. | 140,000 |
| UBS Warburg LLC | 140,000 |
| Cantor Fitzgerald & Co. | 100,000 |
| Fulcrum Global Partners LLC | 100,000 |
| Gabelli & Company, Inc. | 100,000 |
| Gerard Klauer Mattison & Co., Inc. | 100,000 |
| JMP Securities LLC | 100,000 |
| Neuberger & Berman LLC | 100,000 |
| Parker/Hunter Incorporated | 100,000 |
| C.E. Unterberg, Towbin | 100,000 |
| TOTAL | 21,461,154 |

Schedule I

SCHEDULE II

EXECUTED TRANSACTION DOCUMENTS

Construction and Other Third Party Project Agreements

(a) Agreement for Guaranteed Maximum Price Construction Services, effective as of June 4, 2002, between Wynn Las Vegas, LLC ("Wynn Las Vegas") and Marnell Corrao Associates, Inc. for Le Rêve (the "Marnell Agreement");

- (b) Amended and Restated Continuing Guaranty, dated October 22, 2002, by Austi, Inc. in favor of Wynn Las Vegas;
- (c) Design Build Agreement, effective as of June 6, 2002, by and between Wynn Las Vegas and Bomel Construction Co., Inc.;
- (d) Professional Design Services Agreement, effective as of October 5, 2001, between Wynn Design & Development ("Wynn Design") and Marnell Architect (fka A.A. Marnell II, Ltd.);
- (e) Professional Design Services Agreement between Wynn Design and Lochsa Engineering;
- (f) Professional Design Services Agreement between Wynn Design and Martin & Peltyn, Inc.;
- (g) Professional Design Services Agreement between Wynn Design and Carter & Burgess (Civil Engineer);
- (h) Professional Design Services Agreement, dated as of February 4, 2002, between Wynn Design and JBA Consulting Engineers (Mechanical, Plumbing and Electrical Design and Engineering Services);
- (i) Professional Design Services Agreement, dated as of February 4, 2002, between Wynn Design and JBA Consulting Engineers (Low Voltage Systems Design Services);
- (j) Professional Design Services Agreement, dated as of June 24, 2002, between Wynn Design and JBA Consulting Engineers (Mechanical Design Engineering Services);
- (k) Agreement, dated January 25, 2001, between Holdings and Calitri Services and Licensing Limited Liability Company;
- (l) Trademark/Service Mark Purchase Agreement, dated June 7, 2001, between Wynn Resorts Holdings, LLC and The STAD Trust;

Affiliate Project Agreements

- (m) Second Amended and Restated Art Rental and Licensing Agreement, dated September 18, 2002, by and between Mr. Stephen A. Wynn and Holdings;
- (n) Lease Agreement, dated November 1, 2001, by and between Valvino Lamore, LLC and Wynn Resorts Holdings, LLC ("Holdings");
- (o) Driving Range Lease, dated as of October 21, 2002, by and between Valvino Lamore, LLC ("Valvino") and Wynn Las Vegas;
- (p) Parking Facility Lease, dated as of October 21, 2002, by and between Valvino and Wynn Las Vegas;
- (q) Lease Agreement, dated as of October 21, 2002, by and between Valvino and Wynn Las Vegas (Building Lease);
- (r) Golf Course Lease Agreement, dated as of October 21, 2002, by and among Holdings, Palo, LLC ("Palo") and Wynn Las Vegas;

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- (s) Easement Agreement, dated as of October 21, 2002, by and among Holdings, Valvino and Wynn Las Vegas (Shuttle);
- (t) Employment Agreement, dated as of October 4, 2002, by and between Stephen A. Wynn and the Company (the "Wynn Employment Agreement");

Equity Agreements

- (u) Stockholders Agreement, dated as of April 11, 2002, among Mr. Stephen A. Wynn, Baron Asset Fund ("Baron") and Aruze USA, Inc. ("Aruze USA") (the "Stockholders Agreement");
- (v) Share Purchase Agreement, dated as of April 16, 2001, by and between Valvino and Baron;
- (w) Contribution Agreement, dated April 1, 2001, between Mr. Stephen A. Wynn and Valvino with respect to Wynn Resorts Holdings, LLC, and Assignment, dated April 1, 2001, made by Mr. Stephen A. Wynn in favor of Valvino;
- (x) Purchase Agreement, made as of May 30, 2002, between Mr. Stephen A. Wynn and Valvino;
- (y) Purchase Agreement, made as of April 1, 2001, between Mr. Stephen A. Wynn and Valvino;
- (z) Share Purchase Agreement, dated as of June 10, 2002, by and between Valvino and Kenneth R. Wynn Family Trust dated February 20, 1985 (the "Kenneth R. Wynn Family Trust");
- (aa) Contribution Agreement, made as of June 10, 2002, by and among Mr. Stephen A. Wynn, Aruze USA, Baron (on behalf of each of the Baron Asset Fund Series and the Baron Growth Fund Series), the Kenneth R. Wynn Family Trust and the Company;
- (bb) Buy-Sell Agreement, dated as of June 13, 2002, by and among Mr. Stephen A. Wynn, Mr. Kazuo Okada, Aruze USA and Aruze Corp. (the "Buy-Sell Agreement");
- (cc) Agreement, dated as of June 13, 2002, by and between Mr. Stephen A. Wynn and the Company (the "Wynn Put Agreement");
- (dd) Purchase Agreement, dated the date of this Agreement, by and among Wynn Resorts, Limited and Aruze USA, and countersigned by Mr. Stephen A. Wynn, Mr. Kazuo Okada and Aruze Corp. (the "Aruze USA Purchase Agreement");

(ee) Purchase Agreement, dated the date of this Agreement, by and among Wynn Resorts, Limited and Mr. Stephen A. Wynn (the "Wynn Purchase Agreement");

(ff) Purchase Agreement, dated the date of this Agreement, by and among Wynn Resorts, Limited, Baron Asset Fund, on behalf of the Baron Growth Fund Series, and Baron Asset Fund, on behalf of the Baron Small Cap Fund Series (in such capacities, "Baron") (the "Baron Purchase Agreement");

(gg) Purchase Agreement, dated the date of this Agreement, by and among Wynn Resorts, Limited and Zenith National Insurance Corp. (or an affiliate thereof) ("Zenith") (the "Zenith Purchase Agreement" and, together with the Aruze USA Purchase Agreement, the Wynn Purchase Agreement and the Baron Purchase Agreement, the "Affiliate Purchase Agreements");

Debt Agreements

(hh) Underwriting Agreement, dated as of the date hereof, by and among the Representatives (as defined therein), Wynn Las Vegas and Wynn Las Vegas Capital Corp. ("Capital Corp.") with respect to the second mortgage notes (the "Notes") of Wynn Las Vegas and Capital Corp. (the "Debt Underwriting Agreement");

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Governing Documents

(ii) Second Amended and Restated Articles of Incorporation of the Company, as amended through the date of this Agreement or the Closing Date, as applicable;

(jj) First Amended and Restated Articles of Organization of Wynn Las Vegas, as amended through the date of this Agreement or the Closing Date, as applicable;

(kk) First Amended and Restated Articles of Organization of Holdings, as amended through the date of this Agreement or the Closing Date, as applicable;

(ll) First Amended and Restated Articles of Organization of Valvino Lamore, LLC, as amended through the date of this Agreement or the Closing Date, as applicable;

(mm) First Amended and Restated Articles of Organization of Wynn Design, as amended through the date of this Agreement or the Closing Date, as applicable;

(nn) First Amended and Restated Articles of Organization of World Travel, LLC, as amended through the date of this Agreement or the Closing Date, as applicable;

(oo) First Amended and Restated Articles of Organization of Las Vegas Jet, LLC, as amended through the date of this Agreement or the Closing Date, as applicable;

(pp) First Amended and Restated Articles of Incorporation of Desert Inn Improvement Co. ("DI Improvement Co."), as amended through the date of this Agreement or the Closing Date, as applicable;

(qq) First Amended and Restated Articles of Organization of Desert Inn Water Company, LLC, as amended through the date of this Agreement or the Closing Date, as applicable;

(rr) Certificate of Formation of Palo, as amended through the date of this Agreement or the Closing Date, as applicable;

(ss) First Amended and Restated Articles of Incorporation of Capital Corp., as amended through the date of this Agreement or the Closing Date, as applicable;

(tt) Articles of Organization of Wynn Completion Guarantor, LLC (the "Completion Guarantor"), as amended through the date of this Agreement or the Closing Date, as applicable;

Macau Agreements

(uu) Concession Contract for the Operation of Games of Chance or Other games in Casinos in the Macau Special Administrative Region, dated June 24, 2002, between the Macau Special Administrative Region and Wynn Resorts (Macau), S.A. (the "Concession Contract");

Other Agreements

(vv) Distribution Agreement and Assignment, effective as of October 17, 2002, between Valvino and the Company;

(ww) Purchase Agreement by and among Wynn Las Vegas, Capital Corp. and Aruze USA relating to the Notes (the "Aruze USA Note Purchase Agreement"); and

(xx) Purchase Agreement, dated the date of this Agreement, by and among Wynn Las Vegas, Capital Corp. and Mr. Stephen A. Wynn relating to the Notes (the "Wynn Note Purchase Agreement" and together with the Aruze Note Purchase Agreement, the "Affiliate Note Purchase Agreements").

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SCHEDULE III

CLOSING TRANSACTION DOCUMENTS

Credit Agreement Documents

(a) Credit Agreement among Wynn Las Vegas, the several banks and other financial institutions or entities from time to time parties thereto, Deutsche Bank Securities Inc., as lead arranger and joint book running manager, Deutsche Bank Trust Company Americas, as administrative agent (the "Administrative Agent") and swing line lender, Banc of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York and Caymen Island Branches, as arranger and joint documentation agent and JP Morgan Chase Bank, as joint documentation agent (the "Credit Agreement");

(b) Guarantee and Collateral Agreement by and between Wynn Las Vegas and each other Loan Party (as defined in the Master Disbursement Agreement) (other than DI Improvement Co.) in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement (the "Guarantee and Collateral Agreement");

(c) Local Bank Collateral Account Agreement by and between Wynn Las Vegas, Capital Corp., Wynn Design, the Administrative Agent and the entity named therein as custodian and securities intermediary;

(d) Bank Company Collateral Agreement by and between Wynn Las Vegas, Capital Corp., Wynn Design, the Administrative Agent and Deutsche Bank Trust Company Americas, as custodian and securities intermediary ("Securities Intermediary");

(e) Bank Completion Guaranty Collateral Account Agreement by and between Wynn Completion Guarantor, LLC, the Administrative Agent and the Securities Intermediary;

(f) Collateral Agency Agreement by and between the Administrative Agent, the Indenture Trustee and Bank of America, N.A. as Collateral Agent for the benefit of the Administrative Agent and the Indenture Trustee (the "Collateral Agency Agreement");

(g) the Intellectual Property Security Agreement(s) entered into pursuant to the Guarantee and Collateral Agreement;

(h) Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by Palo in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement;

(i) Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by Wynn Las Vegas in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement;

(j) Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by Holdings in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement;

(k) Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by Valvino in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement;

(l) Indemnity Agreement executed by Palo in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement regarding environmental indemnity;

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(m) Indemnity Agreement executed by Wynn Las Vegas in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement regarding environmental indemnity;

(n) Indemnity Agreement executed by Holdings in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement regarding environmental indemnity;

(o) Indemnity Agreement executed by Valvino in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement regarding environmental indemnity;

(p) Parent Guarantee by the Company in favor of the Administrative Agent;

(q) Notes issued to the lenders under the Credit Agreement;

(r) UCC Financing Statement of Wynn Las Vegas, LLC, in favor of the Administrative Agent;

(s) UCC Financing Statement of Valvino Lamore, LLC, in favor of the Administrative Agent;

(t) UCC Financing Statement of Capital Corp, in favor of the Administrative Agent;

(u) UCC Financing Statement of Palo, LLC, in favor of the Administrative Agent;

(v) UCC Financing Statement of Wynn Holdings in favor of the Administrative Agent;

(w) UCC Financing Statement of Desert Inn Water Company, LLC, in favor of the Administrative Agent;

- (x) UCC Financing Statement of Wynn Design LLC, in favor of the Administrative Agent;
- (y) UCC Financing Statement of World Travel, LLC, in favor of the Administrative Agent;
- (z) UCC Financing Statement of Las Vegas Jet, LLC, in favor of the Administrative Agent;
- (aa) UCC Financing Statement of Wynn Completion Guarantor, LLC in favor of the Administrative Agent;
- (bb) UCC-1 Fixture Filing of Valvino in favor of the Administrative Agent;
- (cc) UCC-1 Fixture Filing of Wynn Las Vegas in favor of the Administrative Agent;
- (dd) UCC-1 Fixture Filing of Palo, LLC in favor of the Administrative Agent;
- (ee) UCC-1 Fixture Filing of Holdings in favor of the Administrative Agent;

Second Mortgage Note Documents

- (ff) Indenture among Wynn Las Vegas, Capital Corp., the Restricted Entities (as defined therein) and Wells Fargo Bank, National Association, as trustee (the "Indenture Trustee"), with respect to the Notes (the "Indenture");
- (gg) Guarantees of the Notes by the Guarantors (as defined in the Indenture);
- (hh) Second Mortgage Notes due 2010 issued pursuant to the Indenture;
- (ii) Guarantee and Collateral Agreement by and between Wynn Las Vegas and the other Grantors (as defined therein) in favor of the Indenture Trustee on behalf of the holders of Notes;
- (jj) Local Second Mortgage Notes Collateral Account Agreement by and between Wynn Las Vegas, Capital Corp., Wynn Design, the Indenture Trustee and the entity named therein as custodian and securities intermediary;
- (kk) Second Mortgage Notes Company Collateral Account Agreement by and between Wynn Las Vegas, Capital Corp., Wynn Design, the Indenture Trustee and the Securities Intermediary;

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- (ll) Second Mortgage Notes Completion Guaranty Collateral Account Agreement by and between Wynn Completion Guarantor, LLC, the Indenture Trustee and the Securities Intermediary;
 - (mm) Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by Palo in favor of the Indenture Trustee;
 - (nn) Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by Wynn Las Vegas in favor of the Indenture Trustee;
 - (oo) Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by Holdings in favor of the Indenture Trustee;
 - (pp) Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by Valvino in favor of the Indenture Trustee;
 - (qq) Indemnity Agreement executed by Palo in favor of the Indenture Trustee regarding environmental indemnity;
 - (rr) Indemnity Agreement executed by Wynn Las Vegas in favor of the Indenture Trustee regarding environmental indemnity;
 - (ss) Indemnity Agreement executed by Holdings in favor of the Indenture Trustee regarding environmental indemnity;
 - (tt) Indemnity Agreement executed by Valvino in favor of the Indenture Trustee regarding environmental indemnity;
 - (uu) Parent Guarantee by the Company in favor of the Indenture Trustee;
 - (vv) UCC Financing Statement of Wynn Las Vegas, LLC, in favor of the Indenture Trustee;
 - (ww) UCC Financing Statement of Valvino in favor of the Indenture Trustee
 - (xx) UCC Financing Statement of Capital Corp in favor of the Indenture Trustee;
 - (yy) UCC Financing Statement of Palo in favor of the Indenture Trustee;
 - (zz) UCC Financing Statement of Holdings in favor of the Indenture Trustee;
 - (aaa) UCC Financing Statement of Desert Inn Water Company, LLC, in favor of the Indenture Trustee;
 - (bbb) UCC Financing Statement of Wynn Design in favor of the Indenture Trustee;
 - (ccc) UCC Financing Statement of World Travel, LLC, in favor of the Indenture Trustee;
 - (ddd) UCC Financing Statement of Las Vegas Jet, LLC, in favor of the Indenture Trustee;

- (eee) UCC Financing Statement of Wynn Completion Guarantor, LLC in favor of the Indenture Trustee;
- (fff) UCC-1 Fixture Filing of Valvino in favor of the Indenture Trustee;
- (ggg) UCC-1 Fixture Filing of Wynn Las Vegas in favor of the Indenture Trustee;
- (hhh) UCC-1 Fixture Filing of Palo, LLC in favor of the Indenture Trustee;
- (iii) UCC-1 Fixture Filing of Holdings in favor of the Indenture Trustee;

Schedule III-3

FF&E Facility Documents

- (jjj) FF&E Loan Agreement (the "Loan Agreement") by and among Wynn Las Vegas, Wells Fargo Bank Nevada, National Association, as collateral agent ("Collateral Agent") and the FF&E lenders party thereto (the "FF&E Facility");
- (kkk) Borrower Security Agreement by and among Wynn Las Vegas and the Collateral Agent for the lenders under the Loan Agreement;
- (lll) Notes issued to the lenders under the FF&E Facility;
- (mmm) Guaranty Agreement by and among Valvino, Capital Corp., Palo, LLC, Wynn Resorts, Desert Inn Water Company, LLC, Wynn Design, World Travel, LLC, Las Vegas Jet, LLC and the other guarantors from time to time party thereto (the "Guaranty Agreement");
- (nnn) Aircraft Security Agreement by and among Wells Fargo Northwest, National Association as Trustee of that certain Trust created under the Trust Agreement ("Aircraft Trustee"), Wynn Las Vegas and World Travel, LLC;
- (ooo) Assignment and Assumption Agreement by and among Wynn Las Vegas and the Collateral Agent;
- (ppp) Amended and Restated Aircraft Operating Agreement by and among the Aircraft Trustee and World Travel, LLC;
- (qqq) UCC Financing Statements of Wynn Las Vegas and the guarantors party to the Guaranty Agreement;
- (rrr) FF&E Collateral Account Agreement among Wynn Las Vegas, the Collateral Agent, the entity named therein as securities intermediary and the other parties party thereto;
- (sss) Lien Release providing for the release of the liens on the Existing Aircraft granted by World Travel, LLC in favor of Bank of America, N.A.;
- (ttt) Intercompany Note made by World Travel, LLC in favor of Wynn Las Vegas;
- (uuu) Parent Guarantee by the Company in favor of the Collateral Agent;

Multi-Creditor Documents

- (vvv) Intercreditor Agreement by and among the Trustee under the Indenture and the Administrative Agent on behalf of the lenders under the Credit Agreement;
- (www) Intercreditor Agreement by and among the Trustee under the Indenture, the Administrative Agent on behalf of the lenders under the Credit Agreement, and the Collateral Agent acting on behalf of the FF&E lenders pursuant to the FF&E Facility;
- (xxx) Master Disbursement Agreement by and among Wynn Las Vegas, Capital Corp., Wynn Design, the Administrative Agent, Deutsche Bank Trust Company Americas, as the Disbursement Agent, the Indenture Trustee and the Collateral Agent (the "Master Disbursement Agreement");
- (yyy) Completion Guaranty by Wynn Completion Guarantor, LLC for the benefit of the Administrative Agent and the Indenture Trustee;
- (zzz) Management Fees Subordination Agreement by and among Wynn Las Vegas, Capital Corp. and Wynn Resorts, Limited, in favor of the Trustee under the Indenture, the Administrative Agent on behalf of the lenders under the Credit Agreement and the agent on behalf of the lenders under the FF&E Facility;

Schedule III-4

Project Agreements

- (aaaa) License Agreement between Desert Inn Improvement Co., Wynn Las Vegas and the Company with respect to the use of the golf course land;
- (bbbb) Agreement Regarding Provision of Water and Use of Water by and among DI Improvement Co., Holdings, and Wynn Las Vegas;
- (cccc) Management Agreement by and between Wynn Las Vegas and the Company;
- (dddd) Production Services Agreement, if any, between Wynn Las Vegas and Productions du Dragon, S.A. (or an affiliate thereof) entered into on or after the date of this Agreement and on or before the Closing Date;

(eeee) License Agreement, if any, between Wynn Las Vegas and Calitri Services and Licensing Limited Liability Company, entered into on or after the date of this Agreement and on or before the Closing Date; and

(ffff) Agreement for Use of Real Property by and between DI Improvement Co., Wynn Las Vegas and Holdings.

Schedule III-5

SCHEDULE 1(b)

SUBSIDIARY OWNERSHIP AND CERTAIN RIGHTS

Stockholders Agreement, dated as of April 11, 2002, among Stephen A. Wynn, Baron Asset Fund and Aruze USA, Inc.

Buy-Sell Agreement, dated as of June 13, 2002, by and among Stephen A. Wynn, Kazuo Okada, Aruze USA, Inc. and Aruze Corp.

Agreement, dated as of June 13, 2002, by and between Stephen A. Wynn and Wynn Resorts, Limited

Shareholders' Agreement, dated as of October 15, 2002, by and among Wynn Resorts (Macau), Limited, Wynn Resorts International, Ltd., Wong Chi Seng, and Wynn Resorts (Macau) S.A.

Share Subscription and Shareholders' Agreement, dated as of October 15, 2002, by and among S.H.W. & Co. Limited, SKKG Limited, L'Arc de Triomphe Limited, Classic Wave Limited, Yani Kwan Yan Chi, Li Tai Foon, Kwan Yan Ming, Wong Chi Seng, and Wynn Resorts International, Ltd. and Wynn Resorts (Macau) Holdings, Ltd.

Schedule 1(b)

SCHEDULE 1(bb)

NASD AFFILIATIONS

1. From July 1999 to October 2001, Ronald Kramer served as a managing director at Dresdner Kleinwort Wasserstein, Inc. and its predecessor ("Dresdner"). In November 2001, shortly after Mr. Kramer's departure from Dresdner, Dresdner and Mr. Kramer entered into an arrangement providing that if a certain investment banking client with whom Mr. Kramer had developed a relationship while at Dresdner (the "Unrelated Client") consummated a financing, Mr. Kramer would receive a percentage of any net fees the Unrelated Client paid to Dresdner. In exchange, Mr. Kramer agreed to provide certain financial consulting and advisory services to the Unrelated Client. Dresdner also agreed to reimburse Mr. Kramer for any out-of-pocket expenses incurred in the provision of such services. Approximately six months after leaving Dresdner, Mr. Kramer became Director and President of the Company. Neither the Company nor the offering of the Shares has any relation to or connection with the Unrelated Client or the arrangement between Dresdner and Mr. Kramer. On September 23, 2002, the Unrelated Client, with Dresdner acting as initial purchaser, priced a \$153 million private placement of 14.5% senior notes due 2009. The private placement closed on October 8, 2002. Mr. Kramer will receive no more than \$375,000 pursuant to the consulting arrangement, to be paid by January 8, 2003 (approximately 90 days after closing).

2. Baron Asset Fund, which owned a 4.992% interest in the Company as of June 30, 2002, is an affiliate of Baron Capital, Inc., an NASD Member.

Schedule 1(bb)

EXHIBIT A

FORM OF LOCKUP AGREEMENT

, 2002

Wynn Resorts, Limited
3145 Las Vegas Boulevard South
Las Vegas, NV 89109

Deutsche Bank Securities Inc.
Bear, Stearns & Co. Inc.
Banc of America Securities LLC

As representatives of the several underwriters,
c/o Deutsche Bank Securities Inc.
One South Street
Baltimore, Maryland 21202

Ladies and Gentlemen:

The undersigned understands that Deutsche Bank Securities Inc., Bear, Stearns & Co. Inc. and Banc of America Securities LLC, as representatives (the "Representatives") of the several underwriters (the "Underwriters"), propose to enter into an Underwriting Agreement with Wynn Resorts, Limited (the

"Company"), providing for the public offering (the "Public Offering") by the Underwriters, including the Representatives, of common stock (the "Common Stock") of the Company.

To induce the Underwriters that may participate in the Public Offering to continue their efforts in connection with the Public Offering, the undersigned agrees that, without the prior written consent of the Representatives, the undersigned will not, directly or indirectly offer, pledge, sell, contract to sell (including making any short sale or covering any short position), sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of any shares of Common Stock (including, without limitation, shares of Common Stock of the Company that may be deemed to be beneficially owned by the undersigned on the date hereof in accordance with the rules and regulations of the Securities and Exchange Commission, shares of Common Stock that may be issued upon exercise of a stock option or warrant and any other security convertible into or exercisable or exchangeable for Common Stock) or enter into any Hedging Transaction (as defined below) relating to the Common Stock (each of the foregoing referred to as a "Disposition") for a period from the date hereof until and including the date that is 180 days after the date of the final prospectus relating to the Public Offering (the "Lock-Up Period"). The foregoing restriction is expressly intended to preclude the undersigned from engaging in any Hedging Transaction or other transaction that is designed to or reasonably expected to lead to or result in a Disposition during the Lock-Up Period even if the securities would be disposed of by someone other than the undersigned, but is not intended to impose any obligations on the undersigned with respect to any actions by [in Mr. Wynn's agreement: Aruze USA, Inc.] [in Aruze USA, Inc.'s agreement: Stephen A. Wynn], who may share beneficial ownership of the securities in question. "Hedging Transaction" means any swap or other arrangement (including, without limitation, any put or call option) that transfers to another, in whole or in part, any economic consequences of ownership of the Common Stock.

Notwithstanding the foregoing, the undersigned may transfer (a) (i) up to \$200,000 of Common Stock that the undersigned acquires in the Public Offering, the value of which shall be calculated at the close of trading on the Nasdaq National Market on each date the undersigned sells such Common Stock; or (ii) shares of Common Stock acquired in open market transactions by the undersigned after the completion of the Public Offering and (b) any or all of the shares of Common Stock or other

Exhibit A-1

Company securities if the transfer is (i) by gift, will or intestacy; (ii) to a member or members of his or her immediate family or to a trust the beneficiaries of which are exclusively the undersigned and/or a member or members of his or her immediate family (for purposes of this paragraph, "immediate family" shall mean a spouse, lineal descendant, father, mother, brother or sister, niece, nephew, mother-in-law, father-in-law, sister-in-law or brother-in-law of the transferor, in each case whether by birth or adoption and including stepchildren); (iii) the purchase by Stephen A. Wynn of Common Stock owned by Aruze USA, Inc. or any transferee thereof, pursuant to the Buy-Sell Agreement, dated as of June 13, 2002, among Stephen A. Wynn, Kazuo Okada, Aruze USA, Inc. and Aruze Corp. and the Agreement, dated as of June 13, 2002 between Stephen A. Wynn and Wynn Resorts, Limited; or (iv) by distribution to partners, members or shareholders of the undersigned; provided, however, that in the case of a transfer pursuant to clause (b) above, it shall be a condition to the transfer that the transferee execute an agreement stating that the transferee is receiving and holding the securities subject to the provisions of this letter agreement.

The undersigned agrees that the Company may, and that the undersigned will, (i) with respect to any shares of Common Stock or other Company securities for which the undersigned is the record holder, cause the transfer agent for the Company to note stop transfer instructions on the transfer books and records of the Company against the transfer of such securities except in compliance with the foregoing restrictions and (ii) with respect to any shares of Common Stock or other Company securities for which the undersigned is the beneficial holder but not the record holder, cause the record holder of such securities to cause the transfer agent for the Company to note stop transfer instructions on the transfer books and records of the Company against the transfer of such securities except in compliance with the foregoing restrictions.

In addition, the undersigned hereby waives any and all notice requirements and rights with respect to registration of securities pursuant to any agreement, understanding or otherwise setting forth the terms of any security of the Company held by the undersigned, including any registration rights agreement to which the undersigned and the Company may be party, provided that such waiver shall apply only to the proposed offering, and any other action taken by the Company in connection with the proposed offering.

The undersigned hereby agrees that, to the extent that the terms of this letter agreement conflict with or are in any way inconsistent with any registration rights agreement to which the undersigned and the Company may be a party, this letter agreement supersedes such registration rights agreement.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this letter agreement. All authority herein conferred or agreed to be conferred shall survive the death or incapacity of the undersigned and any obligations of the undersigned shall be binding upon the heirs, personal representatives, successors and assigns of the undersigned.

Notwithstanding anything herein to the contrary, it is understood that if the Public Offering has not occurred prior to December 31, 2002, or immediately upon written notification from the Company to Deutsche Bank Securities, Inc. that the Company is terminating the Public Offering, this agreement shall automatically terminate and the restrictions contained herein shall be of no further force or effect.

Signature: _____

Print Name: _____

Exhibit A-2

QuickLinks

[EQUITY UNDERWRITING AGREEMENT](#)

[SCHEDULE I Schedule of Underwriters](#)

[SCHEDULE II EXECUTED TRANSACTION DOCUMENTS](#)

[SCHEDULE III CLOSING TRANSACTION DOCUMENTS](#)
[SCHEDULE 1\(b\) SUBSIDIARY OWNERSHIP AND CERTAIN RIGHTS](#)
[SCHEDULE 1\(bb\) NASD AFFILIATIONS](#)
[EXHIBIT A FORM OF LOCKUP AGREEMENT, 2002](#)

**WYNN LAS VEGAS, LLC
WYNN LAS VEGAS CAPITAL CORP.**

\$364,612,000

12.0% Second Mortgage Notes due 2010

UNDERWRITING AGREEMENT

October 25, 2002

Deutsche Bank Securities Inc.
Banc of America Securities LLC
Bear, Stearns & Co. Inc.
Dresdner Kleinwort Wasserstein - Grantchester, Inc.
As Representatives of the
Several Underwriters

c/o Deutsche Bank Securities Inc.
31 West 52nd Street
New York, New York 10019

Ladies and Gentlemen:

Wynn Las Vegas, LLC, a Nevada limited liability company (the "Company"), and Wynn Las Vegas Capital Corp., a Nevada corporation ("Capital Corp.," and together with the Company, the "Issuers"), propose to issue and sell to the several underwriters (the "Underwriters") named in *Schedule I* hereto for whom you are acting as representatives (the "Representatives") an aggregate of \$364,612,000 principal amount of their Second Mortgage Notes due 2010 (the "Notes") having the terms identified on *Schedule II* hereto. The Notes will be guaranteed (the "Guarantees") by each of the entities listed on *Schedule III* hereto (each, a "Guarantor" and collectively, the "Guarantors" and, together with the Issuers, the "Wynn Parties"). The Notes are to be issued pursuant to the terms of an indenture to be dated as of October 30, 2002 (the "Indenture") among the Issuers, the Guarantors and Wells Fargo Bank, National Association, as trustee (the "Trustee").

As the Representatives, you have advised the Issuers (a) that you are authorized to enter into this Agreement on behalf of the several Underwriters, and (b) that the several Underwriters are willing, acting severally and not jointly, to purchase the aggregate principal amount of Notes set forth opposite their respective names in *Schedule I*.

The term "Executed Transaction Documents" shall mean the documents set forth on *Schedule IV* hereto. The term "Closing Transaction Documents" shall mean the documents set forth on *Schedule V* hereto, each of which shall be executed and dated as of the Closing Date (as defined below). Capitalized terms used but not defined herein shall have the meanings given to such terms in the Preliminary Prospectus (as defined herein) included in Amendment No. 9 to the Registration Statement under the section entitled "Description of the Second Mortgage Notes—Certain Definitions."

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In consideration of the mutual agreements contained herein and of the interests of the parties in the transactions contemplated hereby, the parties hereto agree as follows:

1. *Representations and Warranties of the Wynn Parties.*

Each of the Wynn Parties jointly and severally represents and warrants to each of the Underwriters as follows:

(a) A registration statement on Form S-1 (File No. 333-98369) with respect to the Notes has been prepared by the Issuers in conformity in all material respects with the requirements of the Securities Act of 1933, as amended (the "Act"), and the rules and regulations (the "Rules and Regulations") of the Securities and Exchange Commission (the "Commission") thereunder, and the Trust Indenture Act of 1939, as amended, and the Rules and Regulations of the Commission thereunder (the "Trust Indenture Act"), and has been filed with the Commission. Copies of such registration statement, including any amendments thereto, the preliminary prospectuses contained therein and the exhibits, financial statements and schedules, as finally amended and revised, have heretofore been delivered by the Issuers to you. Such registration statement, as amended when it was declared effective by the Commission under the Act and the Rules and Regulations, including the financial statements and schedules thereto and any information omitted therefrom in reliance upon Rule 430A and contained in the Prospectus referred to below and together with any registration statement filed by the Issuers that is effective upon filing with the Commission pursuant to Rule 462(b) of the Act, is referred to herein as the "Registration Statement." The Registration Statement has become effective under the Act and no post-effective amendment to the Registration Statement has been filed as of the date of this Agreement. "Prospectus" means the form of prospectus first filed with the Commission pursuant to Rule 424(b). Each preliminary prospectus included in the Registration Statement prior to the time it becomes effective is herein referred to as a "Preliminary Prospectus."

(b) Each of the Wynn Parties has been duly organized and is validly existing as a corporation or limited liability company in good standing under the laws of the state of its organization, with corporate or limited liability company power and authority to own or lease and operate its properties and conduct its business as described in the Registration Statement and to enter into and to perform its obligations under this Agreement. Each of the subsidiaries of any of the Wynn Parties listed on Exhibits 21.1 through 21.9 to the Registration Statement that is not also a Wynn Party (collectively, the "Subsidiaries") has been duly organized and is

validly existing as a corporation or limited liability company in good standing under the laws of the jurisdiction of its organization, with corporate or limited liability company power and authority to own or lease and operate its properties and conduct its business as described in the Registration Statement. None of the Wynn Parties owns or controls, directly or indirectly, any corporation, association or other entity other than the subsidiaries listed on Exhibits 21.1 through 21.9 to the Registration Statement. Each of the Wynn Parties and each of the Subsidiaries is duly qualified to transact business in all jurisdictions in which the conduct of its business requires such qualification, except for such jurisdictions where the failure to so qualify would not, individually or in the aggregate, reasonably be expected to (i) result in any material adverse change in the business, properties, assets, operations, condition (financial or otherwise) or prospects of, (A) the Wynn Entities taken as a whole or (B) the Issuers, Wynn Travel, LLC and Las Vegas Jet, LLC, taken as a whole, or (ii) result in or adversely affect the validity, enforceability or priority of the Liens purported to be created by the Collateral Documents, in each case whether or not occurring in the ordinary course of business (any such change, a "Material Adverse Change"). The outstanding membership interests and shares of capital stock of each of the subsidiaries listed on Exhibits 21.1 through 21.9 to the Registration Statement have been duly authorized and validly issued, the shares of capital stock of such subsidiaries are fully paid and non-assessable and, except as set forth on *Schedule 1(b)*, all such interests and shares are owned by such Wynn Party free and clear of all liens, encumbrances and equities and claims, except for any lien, encumbrance, equity or claim granted or

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agreed to be granted pursuant to an Executed Transaction Document or a Closing Transaction Document; and, except as accurately described in all material respects in the Registration Statement or the Prospectus or as set forth on *Schedule 1(b)*, there are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of any of the Wynn Parties or any of the Subsidiaries.

(c) All issued and outstanding shares of capital stock of each of the Wynn Parties have been duly authorized and validly issued and are fully paid and non-assessable and have been issued in compliance with federal and state securities laws. None of the outstanding shares of capital stock of the Wynn Parties was issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of any such Wynn Party. There are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Wynn Parties, or Desert Inn Improvement Co. ("DIIC" and, together with the Wynn Parties and the Completion Guarantor, the "Wynn Group Members") other than those accurately described in all material respects in the Registration Statement or the Prospectus. The description of Wynn Resorts, Limited's stock option, stock incentive and other stock plans or arrangements, and the options or other rights granted thereunder, set forth in the Registration Statement or the Prospectus fairly presents and accurately presents, in all material respects, the information required to be shown with respect to such plans, arrangements, options and rights.

(d) The table relating to the capitalization of the Wynn Entities under the heading "Capitalization" in the Prospectus, including the footnotes thereto, (i) with respect to the actual capitalization of the Wynn Entities as of June 30, 2002 presents fairly the information contained therein and (ii) with respect to the expected capitalization of the Wynn Entities as of June 30, 2002 on a pro forma basis giving effect to the sale of the Notes and the expected contribution by Wynn Resorts, Limited to the Company of proceeds from the concurrent initial public offering of common stock of Wynn Resorts, Limited, presents fairly the information contained therein, and with respect to the expected capitalization of the Wynn Entities as of June 30, 2002 on a pro forma, as adjusted basis giving effect to the sale of the Notes, the expected contribution by Wynn Resorts, Limited to the Company of proceeds from the concurrent initial public offering of common stock of Wynn Resorts, Limited and borrowings expected to be necessary to construct the Le Rêve Casino Resort, was prepared in good faith by the Issuers, and represents the best estimates and assumptions of the Issuers with respect to the information contained therein.

(e) The Notes have been duly authorized by the Issuers and when issued, authenticated and delivered to and paid for by the Underwriters in accordance with this Agreement and the Indenture, will have been duly executed, issued and delivered by the Issuers and, assuming the due authentication, execution and delivery of the Notes by the Trustee, will constitute valid and legally binding obligations of each of the Issuers, entitled to the benefits provided by the Indenture, under which they are to be issued, subject, as to enforcement, to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or to general equitable principles. The Indenture has been duly authorized by the Issuers and the Guarantors and when executed and delivered by the Issuers and the Guarantors, and assuming the due authorization, execution and delivery thereof by the Trustee, will constitute a valid and legally binding instrument of each of the Issuers and the Guarantors, enforceable against the Issuers and the Guarantors in accordance with its terms, subject, as to enforcement, to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or to general equitable principles. The Notes and the Indenture will conform in all material respects to the descriptions thereof in the Registration Statement and the Prospectus.

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(f) The Guarantees have been duly authorized by the Guarantors, and when executed and delivered in accordance with the terms of the Indenture and when the Notes and Guarantees are duly issued, authenticated and delivered in accordance with the terms of the Indenture and the Notes and delivered to and paid for by the Underwriters in accordance with the terms of this Agreement and the Indenture, will constitute the valid and legally binding obligations of the Guarantors, enforceable against the Guarantors in accordance with their terms, subject, as to enforcement, to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or to general equitable principles. The Guarantees will conform in all material respects to the descriptions thereof in the Registration Statement and the Prospectus.

(g) The Commission has not issued an order preventing or suspending the use of any Prospectus relating to the proposed offering of the Notes nor, to the knowledge of the Wynn Parties, instituted proceedings for that purpose. The Registration Statement, at the time that it became effective and at all subsequent times up to and including the time of closing on the Closing Date (the "Closing Time"), complied, and the Prospectus and any amendments or supplements thereto, as of their respective dates and at all subsequent times up to and including the Closing Time, will comply, in all material respects with the requirements of the Act and the Rules and Regulations. At the time it became effective and at all subsequent times up to and including the Closing Time, the Registration Statement did not contain, and will not contain, any untrue statement of a material fact and did not omit, and will not omit, to state any material fact required to be stated therein or necessary to make the statements therein not misleading. As of its date and at all subsequent times up to and including the Closing Time, the Prospectus, as amended or supplemented by any amendments and supplements thereto (including any Prospectus wrapper for use with offers in Canada) does not contain, and will not contain, any untrue statement of material fact and does not omit, and will not omit, to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided, however*, that the Wynn Parties make no representations or warranties as to information contained in or omitted from the Registration Statement or the Prospectus, or any such amendment or supplement, in reliance upon, and in conformity with, written information furnished to the Wynn Parties by or on behalf of any Underwriter through the

Representatives, specifically for use in the preparation thereof. There are no contracts or other documents required to be described in the Prospectus or to be filed as exhibits to the Registration Statement which have not been described or filed as required.

(h) The consolidated financial statements of Valvino Lamore, LLC ("Valvino") and its subsidiaries (together, "Valvino Lamore") and of the Company, in each case together with related notes and schedules as set forth in the Registration Statement and included in the Prospectus, present fairly the consolidated financial position and the results of operations and cash flows of Valvino Lamore and the Company, as applicable, at the indicated dates and for the indicated periods. Such financial statements and related schedules have been prepared in accordance with generally accepted principles of accounting as applied in the United States, consistently applied throughout the periods involved, except as disclosed therein, and all adjustments necessary for a fair presentation of results for such periods have been made. The financial and statistical data included in the Registration Statement and the Prospectus, including such data set forth under the captions "Capitalization" and "Selected Consolidated Financial Data," presents fairly the information shown therein and such data has been compiled on a basis consistent with the financial statements presented therein and the books and records of Valvino Lamore and the Company, as applicable. The pro forma financial information included in the Registration Statement and the Prospectus present fairly in all material respects the information shown therein, have been properly compiled on the pro forma bases described therein, and, in the opinion of the Issuers, the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions or circumstances referred to therein. No other financial statements or supporting schedules are required to be included in the Registration Statement, and there are no pro forma or as adjusted financial statements which are

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required to be included in the Registration Statement or Prospectus in accordance with Regulation S-X which have not been included as so required.

(i) Deloitte & Touche LLP, which has certified certain of the financial statements (which term as used in this Agreement includes the related notes thereto) filed with the Commission as part of the Registration Statement and included in the Prospectus, is an independent public accountant as required by the Act and the Rules and Regulations.

(j) There is no action, suit, claim or proceeding pending or, to the knowledge of the Wynn Parties, threatened (i) against any of the Wynn Group Members or (ii) which has as the subject thereof any officer or director of, or property owned or leased by or to, any of the Wynn Group Members, in each case, before any court or administrative agency or otherwise where, in any such case, (A) there is a reasonable possibility of such action, suit or proceeding being determined adversely to such Wynn Group Member and (B) any such action, suit, claim or proceeding, if so determined adversely, would reasonably be expected to result in a Material Adverse Change, or prevent, adversely affect, hinder or delay the (1) consummation of the transactions contemplated by this Agreement or the performance by any of the Wynn Group Members of their obligations hereunder or (2) the performance by any of the Wynn Group Members of their obligations under any of the Executed Transaction Documents or the Closing Transaction Documents, except, in each case, as otherwise disclosed in the Registration Statement or the Prospectus or, in the case of (2) above, as would not reasonably be expected to result in a Material Adverse Change. Except as otherwise disclosed in the Registration Statement or the Prospectus, none of the Wynn Group Members is involved in any material labor dispute with the employees of any of the Wynn Group Members or any of their predecessors, or with the employees of any principal supplier, contractor or sub-contractor of any of the Wynn Group Members and, to the best of the Wynn Parties' knowledge, no such dispute is threatened or imminent.

(k) Except as disclosed in the Registration Statement or the Prospectus, the Wynn Group Members have good and marketable title in fee simple to all real property and good title to all personal property owned by them or reflected as owned by them in the Registration Statement or the Prospectus, subject to no lien, mortgage, pledge, charge or encumbrance of any kind except those reflected in the consolidated financial statements described in Section 1(h) above or which do not, individually or in the aggregate, materially and adversely affect the value of such property and do not, individually or in the aggregate, materially interfere with the use made or proposed to be made of such property by the Wynn Group Members. Except as disclosed in the Registration Statement or Prospectus, the real property, improvements, equipment and personal property held under lease by the Wynn Group Members are held under valid and enforceable leases, with such exceptions as are not material and do not materially interfere with the use made or proposed to be made of such leased real property, improvements, equipment or personal property by such Wynn Group Members.

(l) The Wynn Group Members have timely filed all federal, state, local and foreign tax returns which have been required to be filed, all of which tax returns are true, correct and complete in all material respects, and have timely paid all taxes due and payable, except (i) as may be being contested in good faith and by appropriate proceedings and for which the applicable Wynn Group Member has established reserves that are adequate for the payment thereof and are in conformity with generally accepted accounting principles as applied in the United States or (ii) to the extent that the failure to timely file any such tax returns or to timely pay such taxes has not resulted in, and would not reasonably be expected to result in, a Material Adverse Change. All taxes of the Wynn Group Members not yet due and payable have been provided for in the consolidated financial statements described in Section 1(h) above in conformity with generally accepted accounting principles as applied in the United States, and the Wynn Parties do not know of any actual or proposed additional material tax assessment against any Wynn Group Member.

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(m) Except as disclosed in the Registration Statement or the Prospectus, since the respective dates as of which information is given in the Registration Statement or the Prospectus, as it may be amended or supplemented, (i) there has not been any Material Adverse Change or any development that would reasonably be expected to result in a Material Adverse Change and (ii) the Wynn Group Members, considered as one entity, have not incurred any material liability or obligation, indirect, direct or contingent, not in the ordinary course of business nor entered into any material transaction or agreement not in the ordinary course of business.

(n) None of the Wynn Group Members is or with the giving of notice or lapse of time or both, will be, in violation of or in default under (i) its charter, by-laws, operating agreement or other organizational document or shareholders' agreement or (ii) the terms of any Executed Transaction Document to which any of the Wynn Group Members is a party or any other security issued by it or any agreement, lease, loan, mortgage, contract, indenture or other instrument or obligation to which it is a party or by which it, or any of its properties, is bound (collectively, including the Executed Transaction Documents, the "Agreements and Instruments") and, solely with respect to this clause (ii), which violation or default would reasonably be expected to result in a Material Adverse Change. The execution, delivery and performance of this Agreement and the Executed Transaction Documents to which any of the Wynn Group Members is a party and compliance by any of the Wynn Group Members with their obligations hereunder or thereunder have been duly authorized by all necessary action of the Wynn Group Members, as applicable. The execution, delivery and performance of the Closing Transaction Documents to which any of the Wynn Group Members will be a party and any other material agreement or instrument entered into or issued or to be entered into or issued by any Wynn Group Member on or before the

Closing Date in connection with the transactions contemplated thereby and compliance by the Wynn Group Members with their obligations thereunder will have been duly authorized before the Closing Time by all necessary action of the Wynn Group Members, as applicable. The execution, delivery and performance of this Agreement, the Closing Transaction Documents to which any of the Wynn Group Members will be a party and any other material agreement or instrument entered into or issued or to be entered into or issued by any of the Wynn Group Members in connection with the transactions contemplated hereby or thereby and compliance by the Wynn Group Members with their obligations hereunder or thereunder and do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or a Repayment Event (as defined below) under, or, except with respect to the transactions contemplated by the Registration Statement, result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of any Wynn Group Members pursuant to, or require the consent of any other party to, the Agreements and Instruments except for such conflicts, breaches or defaults or liens, charges or encumbrances that, singly or in the aggregate, would not reasonably be expected to result in a Material Adverse Change, nor will such execution, delivery, performance or compliance result in any violation of (i) the provisions of the charter, by-laws or any other organizational document of any Wynn Group Members, as applicable, or (ii) any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, government instrumentality or court, domestic or foreign, having jurisdiction over it or any of its assets or properties and, solely with respect to this clause (ii), which violation would reasonably be expected to result in a Material Adverse Change. As used herein, a "Repayment Event" means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by any Wynn Group Members.

(o) The execution and delivery of, and the performance by the Wynn Parties of their obligations under, this Agreement have been duly and validly authorized by all necessary corporate or limited liability company action on the part of each of the Wynn Parties, and this Agreement has been duly executed and delivered by each of the Wynn Parties.

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(p) Each of the Executed Transaction Documents to which any Wynn Group Member is a party has been duly authorized, executed and delivered by each of the Wynn Group Members that is a party thereto and (except for the Equity Underwriting Agreement, as defined in Schedule IV) constitutes a valid and binding agreement of each such party, enforceable against each such party in accordance with its terms except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general equitable principles. At the Closing Date, each of the Executed Transaction Documents that is described in the Registration Statement will conform in all material respects to the description thereof contained in the Registration Statement.

(q) Each of the Closing Transaction Documents to which any of the Wynn Group Members is a party will have been duly authorized before the Closing Time by each of the Wynn Group Members that is a party thereto and, at the Closing Date, will have been duly executed and delivered by each such party and will constitute a valid and binding agreement of each such party, enforceable against each such party in accordance with its terms except (i) as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general equitable principles and (ii) with respect to the Marnell Agreement (as defined in Schedule IV hereof), to the extent set forth in the Registration Statement and Prospectus under the heading "Risk Factors—Risks Associated with Our Construction of Le Rêve—Certain provisions in the construction contract with Marnell Corrao for construction of Le Rêve may be unenforceable." At the Closing Date, each of the Closing Transaction Documents that is described in the Registration Statement will conform in all material respects to the description thereof contained in the Registration Statement.

(r) Each approval, consent, order, authorization, designation, declaration or filing by or with any regulatory, administrative or other governmental body (including, without limitation, the Nevada Gaming Commission, the Nevada State Gaming Control Board, the Clark County Liquor and Gaming Licensing Board, the Public Utilities Commission of Nevada and the Nevada State Engineers Office) (together, the "Consents") necessary in connection with the execution and delivery by the Wynn Parties of this Agreement and the consummation of the proposed offering of the Notes (except such additional steps as may be required by the Commission or the National Association of Securities Dealers, Inc. (the "NASD") or such additional steps as may be necessary to qualify the Notes for public offering by the Underwriters under state securities or Blue Sky laws) has been obtained or made and is in full force and effect. Except as disclosed in the Registration Statement or Prospectus or as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change, each Consent necessary in connection with the consummation of the transactions described in the Registration Statement and Prospectus (except such additional steps as may be required by the Commission or the National Association of Securities Dealers, Inc. (the "NASD") or such additional steps as may be necessary to qualify the Notes for public offering by the Underwriters under state securities or Blue Sky laws) (i) has been obtained or made and is in full force and effect or (ii) to the extent any such Consent has not yet been obtained or made, none of the Wynn Parties has any reason to believe that such Consent will not be timely obtained or made in accordance with the plans for the Le Rêve Casino Resort that have been prepared to date.

(s) Except as disclosed in the Registration Statement or Prospectus or as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change, (i) each of the Wynn Group Members has obtained and holds all franchises, licenses, leases, permits, approvals, notifications, certifications, registrations, authorizations, exemptions, variances, qualifications, easements, rights of way, liens and other rights, privileges and approvals (including with respect to environmental laws) required under any federal, state, local or foreign law or governmental authority ("Permits") for the ownership or current use of all real property owned or leased by any such Wynn Group Member and for any other property otherwise currently operated by or on behalf of, or for the

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benefit of, such entity and for the operation of each of its businesses as presently conducted, (ii) all such Permits are in full force and effect, and each of the Wynn Group Members has performed and observed all requirements of such Permits, (iii) no event has occurred which allows or results in, or after notice or lapse of time would allow or result in, revocation or termination by the issuer thereof or in any other impairment of the rights of the holder of any such Permit, (iv) no such Permits contain any restrictions, either individually or in the aggregate, that are materially burdensome to any of the Wynn Group Members, or to the current operation of any of their businesses or any property currently owned, leased or otherwise operated by such entity, (v) each of the Wynn Group Members reasonably believes that each of its Permits will be timely renewed and complied with, without material expense, and that any additional Permits that may be required of such entity in order to conduct its business as proposed to be conducted will be timely obtained and complied with, without material expense, and (vi) none of the Wynn Group Members has any knowledge or any reason to believe that any governmental authority is considering limiting, suspending, revoking or renewing any such Permits on terms materially more burdensome than the terms of such Permit as in effect on the date hereof.

(t) Except as otherwise disclosed in the Registration Statement or the Prospectus or as would not reasonably be expected to result in a Material Adverse Change, (i) none of the Wynn Group Members is or has in the past been in violation of any federal, state, local or foreign statute, law, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products (collectively, "Hazardous Materials") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, "Environmental Laws"); (ii) none of the Wynn Group Members or, to the knowledge of any Wynn Party, any third party, has used, released, discharged, generated, manufactured, produced, stored, or disposed of in, on, under, or about the real property owned or leased by any of the Wynn Group Members or any improvements thereon (the "Sites") or transported thereto or therefrom, any Hazardous Materials that would reasonably be expected to subject any of the Wynn Group Members to any liability under any Environmental Law; (iii) there are no underground tanks and no Hazardous Materials used, stored or present at, on or near the Sites; (iv) to the knowledge of any of the Wynn Parties after due inquiry, there is or has been no condition, circumstance, action, activity or event that could reasonably form the basis of any violation of, or any liability to any of the Wynn Group Members under, any Environmental Law; (v) there is no pending or, to the knowledge of any of the Wynn Parties, threatened, action, proceeding, investigation or inquiry by any regulatory or governmental body or any non-governmental third party with respect to the presence or release of Hazardous Materials, on, from or to the Sites; (vi) none of the Wynn Parties has any knowledge of any past or existing violations of any Environmental Laws by any person relating in any way to the Sites; and (vii) none of the Wynn Group Members has received any complaint, order, directive, citation or notice from any governmental body with respect to any Environmental Law.

(u) Except as otherwise disclosed in the Registration Statement or the Prospectus, (i) the Wynn Group Members each own or possess the valid right to use all patents, patent rights, trademarks, trade names, service marks, domain names and copyrights (together with the applications for registrations and registrations therefor), license rights, know-how (including trade secrets and other unpatented and unpatentable proprietary or confidential information, materials, systems or procedures), technologies, inventions, and other intellectual property or proprietary rights (collectively, "Intellectual Property") presently used in their businesses and none of the Wynn Parties has any reason to believe that the Wynn Group Members will not own or possess or be able to obtain when needed the valid right to use all Intellectual Property necessary to carry on their businesses as presently proposed to be conducted; (ii) neither the Intellectual Property owned or used by, nor the conduct or operation of the businesses

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(as presently and proposed to be conducted or operated) of, the Wynn Group Members has infringed upon, misappropriated or violated, or, if the businesses are conducted or operated as presently intended, will, to the knowledge of any of the Wynn Parties, infringe upon, misappropriate or violate, any Intellectual Property or other right of any other person or entity; (iii) to the knowledge of the Wynn Parties, none of the Intellectual Property employed by any Wynn Group Member has been obtained or is being used by any such Wynn Group Member in violation of any contractual obligation binding on such Wynn Group Member or any of their respective officers, directors or employees or otherwise in violation of the rights of any persons, except as would not reasonably be expected to result in a Material Adverse Change; (iv) none of the Wynn Group Members has received any written communications, nor is any action or proceeding pending, alleging that any such Wynn Group Member has violated, infringed upon or misappropriated, or, by conducting its business as set forth in the Registration Statement and the Prospectus, would violate, infringe upon or misappropriate, any of the Intellectual Property of any other person or entity; and (v) none of the Wynn Parties knows of any material will have been duly authorized before the Closing Time infringement by others of Intellectual Property owned by or licensed to any of the Wynn Group Members.

The Wynn Group Members have taken all reasonable steps necessary to secure their interests in, and protect the secrecy, confidentiality and value of, such Intellectual Property, including without limitation entering into written confidentiality agreements with their employees and contractors. There are no outstanding options, licenses or agreements of any kind relating to the Intellectual Property of the Wynn Group Members that are required to be described in the Prospectus and are not described therein in all material respects. None of the Wynn Group Members is a party to or bound by any options, licenses or agreements with respect to the Intellectual Property of any other person or entity that are required to be set forth in the Prospectus and are not described therein in all material respects.

(v) None of the Wynn Group Members, or to the knowledge of any of the Wynn Parties, any of their affiliates, has taken or may take, directly or indirectly, any action designed to cause or result in, or which has constituted or which could reasonably be expected to constitute, the stabilization or manipulation of the price of any security of either of the Issuers. The Issuers acknowledge that the Underwriters may engage in passive market making transactions in the Notes in accordance with Regulation M under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

(w) None of the Wynn Group Members, or to any of the Wynn Parties' knowledge, any of their affiliates, has distributed or will distribute, prior to the completion of the Underwriters' distribution of the Notes, any offering material in connection with the offering and sale of the Notes other than a Preliminary Prospectus, the Prospectus or the Registration Statement.

(x) None of the Wynn Group Members is (i) or (after giving effect to the offering and sale of the Notes contemplated hereunder and the application of the net proceeds from such sale as described in the Prospectus) will be an "investment company" within the meaning of such term under the Investment Company Act of 1940, as amended (the "1940 Act"), and the rules and regulations of the Commission thereunder, (ii) a "holding company," a "subsidiary company" of a "holding company," or an "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company," as such terms are defined in the Public Utilities Holding Company Act of 1935, as amended (the "Public Utilities Act"), (iii) a "public utility," as such term is defined in the Federal Power Act, as amended (the "Federal Power Act"), or (iv) subject to regulation under any federal or state statute or regulation limiting or conditioning its ability to incur or guarantee indebtedness.

(y) None of the Wynn Parties or any agent thereof acting on the behalf of them has taken, and none of them will take, any action that might cause this Agreement or the issuance or sale of the Notes to violate Regulation T (12 C.F.R. Part 220), Regulation U (12 C.F.R. Part 221) or Regulation X (12 C.F.R. Part 224) of the Board of Governors of the Federal Reserve System.

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(z) Each of the Wynn Group Members maintains a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles as applied in the United States and to maintain accountability for assets, (iii) access to

assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(aa) Each of the Wynn Parties and DIIC carry, or are covered by, insurance with insurers of recognized financial responsibility in such amounts, with such deductibles and covering such risks as is commercially reasonable and as the Wynn Parties and DIIC deem adequate and prudent for the conduct of their respective businesses (including the construction of the Le Rêve Casino Resort) and the value of their respective properties and as is customary for companies engaged in similar businesses including, but not limited to, policies covering real and personal property owned or leased by the Wynn Parties and DIIC against theft, damage, destruction, acts of vandalism and earthquakes. Such insurance coverage (including deductibles, retentions and self-insurance amounts) complies with the insurance coverage required at the Closing Date under the Master Disbursement Agreement by and among the Company, Capital Corp., Wynn Design & Development, LLC, Deutsche Bank Trust Company Americas, Wells Fargo Bank, National Association and Wells Fargo Bank Nevada, National Association (the "Master Disbursement Agreement"). The Wynn Parties have no reason to believe that such insurance coverage cannot be renewed as and when such coverage expires or that similar coverage could not be obtained from similar insurers at a cost that would not reasonably be expected to cause a Material Adverse Change (other than as a result of general market conditions).

(bb) Except for matters which would not reasonably be expected to result in a Material Adverse Change, each of the Wynn Group Members is in compliance with all presently applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder ("ERISA"). No "reportable event" (as defined in ERISA) has occurred with respect to any "pension plan" (as defined in ERISA) for which any Wynn Group Members would have any liability. None of the Wynn Group Members has incurred or expects to incur liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any "pension plan" or (ii) Section 412 or 4971 of the Internal Revenue Code of 1986, as amended, including the regulations and published interpretations thereunder (the "Code"). Except for matters which would not reasonably be expected to result in a Material Adverse Change, each "pension plan" for which any Wynn Group Members would have any liability that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.

(cc) The Underwriters, or Inspection & Valuation International, Inc., in their capacity as a consultant of the Underwriters, have been furnished with a copy of the plans and specifications for the construction of the Le Rêve Casino Resort that have been prepared to date, which plans and specifications are consistent in all material respects with the description thereof contained in the Registration Statement or the Prospectus. The anticipated costs as of the Closing Date of such construction (including interest, legal, architectural, engineering, planning, zoning, pre-opening and other similar costs) do not exceed (except as a result of rounding adjustments) the amounts allocated for such costs as set forth under the caption "Use of Proceeds" in the Prospectus. In addition, the other amounts set forth under the caption "Use of Proceeds" in the Prospectus are based upon reasonable assumptions as to all matters material to the estimates set forth therein and are not expected by the Wynn Parties to exceed the amounts set forth for such items.

(dd) The Project Budget (as defined in the Master Disbursement Agreement), as of the Closing Date, (i) is, to the knowledge of the Wynn Parties, based on reasonable assumptions as to all legal and

factual matters material to the estimates set forth therein, (ii) is consistent with the provisions of the Operative Documents (as defined in the Master Disbursement Agreement) in all material respects, (iii) has been and will be prepared in good faith and with due care, (iv) sets forth, for each Line Item Category (as defined in the Master Disbursement Agreement), the total costs anticipated to be incurred through Final Completion (as defined in the Master Disbursement Agreement), (v) fairly represents the Wynn Parties' expectation as to the matters covered thereby as of its date and (vi) sets forth a total amount of costs incurred or expected to be incurred in connection with the development, design, engineering, procurement, installation, construction and opening of the Le Rêve Casino Resort (as described in the Prospectus), including contingencies, which is equal to the Available Funds (as defined in the Master Disbursement Agreement).

(ee) To the knowledge of the Wynn Parties and except as set forth on Schedule 1(ee) hereto, there are no affiliations or associations between any member of the NASD and any of the Wynn Parties' officers, directors or securityholders. There are no business relationships or related-party transactions involving any of the Wynn Group Members or any other person required to be described in the Prospectus which have not been described as required.

(ff) None of the Wynn Group Members or, to the best of the knowledge of the Wynn Parties, any director, officer, agent, employee or other person associated with or acting on behalf of any of the Wynn Group Members or any beneficial owner of 10 percent or more of the capital stock of any of the Wynn Parties has, with respect to any of the Wynn Group Members, (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (ii) made any unlawful payment to any foreign or domestic government official or employee from corporate funds, (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977, as amended, or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment.

(gg) The Indenture has been qualified under the Trust Indenture Act.

(hh) The Issuers (considered together) and each of the Wynn Parties is, and on the Closing Date and after giving effect to the incurrence of all indebtedness (including the Notes and the Guarantees) and obligations being incurred in connection with the Closing Transaction Documents as described in the Registration Statement and the Prospectus will be and will continue to be, Solvent. For purposes of this Agreement, "Solvent" means, when used with respect to any Person, as of any date of determination, (i) the amount of the "present fair saleable value" of the assets of such Person will, as of such date, exceed the amount of all "liabilities of such Person, contingent or otherwise," as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (ii) the present fair saleable value of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, (iii) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, (iv) such Person will be able to pay its debts as they mature, and (v) such Person is not insolvent within the meaning of any applicable federal and state laws governing determinations of the insolvency of debtors. For purposes of this definition, (A) "debt" means liability on a "claim," and (B) "claim" means any (1) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (2) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

(ii) No Deed of Trust encumbers improved real property which is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968.

(jj) Subject to Section 6(kk) with respect to real property Collateral and Section 6(ll) with respect to intellectual property Collateral, each of the Collateral Documents is effective to create in favor of the Trustee, for the benefit of the holders of the Notes, a legal, valid and enforceable security interest in the Collateral described therein and proceeds and products thereof. In the case of the Pledged Stock (as defined in the applicable Collateral Document), when any stock or other ownership certificates representing such Pledged Stock are delivered to the Trustee, and in the case of the other Collateral described in the Collateral Documents, when financing statements in appropriate form are filed as contemplated by the Collateral Documents (which financing statements have been duly completed and delivered to the Trustee), the Collateral Documents shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the applicable Wynn Parties in such Collateral and the proceeds and products thereof, as security for the Obligations of the applicable Wynn Parties, in each case prior and superior in right to any other Person (except Permitted Liens).

(kk) Each of the Deeds of Trust is effective to create in favor of the Trustee, for the benefit of the holders of the Notes, a legal, valid and enforceable Lien on, and security interest in, the Collateral described therein and proceeds and products thereof, and when the Deeds of Trust are filed in the appropriate real property records, each such Deed of Trust shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the applicable Wynn Parties in the Collateral described therein and the proceeds and products thereof, as security for the Obligations of the applicable Wynn Parties, in each case prior and superior in right to any other Person (except Permitted Liens).

(ll) Each Intellectual Property Security Agreement is effective to create in favor of the Trustee, for the benefit of the holders of the Notes, a legal, valid and enforceable security interest in the Collateral described therein and proceeds and products thereof. Upon the filing of (i) each Intellectual Property Security Agreement in the appropriate indexes of the United States Patent and Trademark Office relative to patents and trademarks (within three (3) months after the Closing Date), and the United States Copyright Office relative to copyrights (within thirty (30) days after the Closing Date), together with provision for payment of all requisite fees, and (ii) financing statements in appropriate form for filing as contemplated by the Intellectual Property Security Agreements (which financing statements have been duly completed and delivered to the Trustee) each Intellectual Property Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the applicable Wynn Parties in the Collateral specified therein and the proceeds and products thereof, as security for the Obligations of the applicable Wynn Parties, in each case prior and superior in right to any other Person (except Permitted Liens).

(mm) Upon execution and delivery of the Collateral Documents and completion of the filings and recordings described in Sections 6(jj), (kk), and (ll), the security interests created in favor of the Trustee for the benefit of the holders of the Notes pursuant to the Collateral Documents will constitute valid, perfected first priority security interests (subject to Permitted Liens) in the Collateral subject thereto.

Any certificate signed by an officer of any of the Wynn Parties and delivered to the Representatives, Deutsche Bank or to counsel for the Underwriters shall be deemed to be a representation and warranty by such Wynn Party to each Underwriter as to the matters set forth therein.

The Wynn Parties acknowledge that the Underwriters and, for purposes of the opinions to be delivered pursuant to Section 6 hereof, counsel to the Wynn Parties and counsel to the Underwriters, will rely upon the accuracy and truthfulness of the foregoing representations and hereby consents to such reliance.

2. *Purchase, Sale and Delivery of the Notes.*

(a) On the basis of the representations, warranties and covenants herein contained, and subject to the conditions herein set forth, the Issuers agree to sell to the Underwriters and each Underwriter agrees, severally and not jointly, to purchase, at the purchase price set forth on *Schedule II* hereto (the "Purchase Price"), the principal amount of Notes set forth opposite the name of each Underwriter in *Schedule I* hereto.

(b) The Notes shall be registered by the Trustee in the name of the nominee of the Depository Trust Company ("DTC"), Cede & Co. ("Cede & Co."), and credited to the accounts of such of its participants as the Representatives shall request, upon notice to the Company at least 48 hours prior to the Closing Date, with any transfer taxes payable in connection with the transfer of the Notes to the Underwriters duly paid, and deposited with the Trustee as custodian for DTC on the Closing Date, against payment by or on behalf of the Underwriters to the account of the Company of the aggregate Purchase Price therefor by wire transfer in immediately available funds.

(c) Such payment and delivery are to be made through the facilities of DTC, New York, New York at 10:00 a.m., New York time, on the third business day after the date of this Agreement or at such other time and date not later than five business days thereafter as you and the Company shall agree upon, such time and date being herein referred to as the "Closing Date." (As used herein, "business day" means a day on which the New York Stock Exchange is open for trading and on which banks in New York, New York are open for business and are not permitted by law or executive order to be closed.) Time shall be of the essence, and delivery at the time and place specified in this Agreement is a further condition to the obligations of the Underwriters.

3. *Offering by the Underwriters.*

It is understood that the several Underwriters are to make a public offering of the Notes as soon after this Agreement has been executed as the Representatives, in their sole judgment, deem it advisable to do so. The Notes are to be initially offered to the public as set forth in the Prospectus. The Representatives may from time to time thereafter change the public offering price and other selling terms; provided, however, that nothing in this Section 3 shall affect the Underwriters obligations pursuant to Section 2 hereof.

It is further understood that you will act as the Representatives for the Underwriters in the offering and sale of the Notes in accordance with a Master Agreement Among Underwriters entered into by you and the several other Underwriters.

4. *Covenants of the Issuers.*

The Issuers covenant and agree with the several Underwriters that:

(a) The Issuers shall (i) use their best efforts to cause the Registration Statement to become effective or, if the procedure in Rule 430A of the Rules and Regulations is followed, to prepare and timely file with the Commission under Rule 424(b) of the Rules and Regulations a Prospectus in a form approved by the Representatives containing information previously omitted at the time of effectiveness of the Registration Statement in reliance on Rule 430A of the Rules and Regulations and (ii) not file any amendment to the Registration Statement or supplement to the Prospectus of which the Representatives shall not previously have been advised and furnished with a copy or to which the Representatives shall have reasonably objected in writing or which is not in compliance with the Rules and Regulations.

(b) The Issuers shall advise the Representatives promptly (i) when the Registration Statement or any post-effective amendment thereto shall have become effective, (ii) of receipt of any comments from the Commission, (iii) of any request of the Commission for amendment of the Registration Statement

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or for supplement to the Prospectus or for any additional information, and (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto or of any order preventing or suspending the use of any preliminary prospectus or the Prospectus, or of the threatening or initiation of any proceedings for any of such purposes. The Issuers shall make every reasonable effort to prevent the issuance of any such stop order preventing or suspending the use of the Prospectus and to obtain as soon as possible the lifting thereof, if issued.

(c) The Issuers shall cooperate with the Representatives and counsel for the Underwriters to qualify the Notes for sale under (or obtain exemptions from the application of the qualification requirements of) the securities laws of such jurisdictions as the Representatives may reasonably have designated and shall make such applications, file such documents, and furnish such information as may be reasonably required for that purpose, provided the Issuers shall not be required to qualify as a foreign corporation or to file a general consent to service of process in any jurisdiction where it is not now so qualified or required to file such a consent. The Issuers shall, from time to time, prepare and file such statements, reports, and other documents, as are or may be required to continue such qualifications in effect for so long a period as the Representatives may reasonably request for distribution of the Notes. The Issuers shall advise the Representatives promptly of the suspension of the qualification or registration of (or any such exemption relating to) the Notes for offering, sale or trading in any jurisdiction or any initiation of threat of any proceeding for any such purpose, and in the event of the issuance of any order suspending such qualification, registration or exemption, the Issuers shall use their best efforts to obtain the withdrawal thereof at the earliest possible moment.

(d) The Issuers shall deliver to, or upon the order of, the Representatives, from time to time, as many copies of any Preliminary Prospectus as the Representatives may reasonably request. The Issuers shall deliver to, or upon the order of, the Representatives during the period when delivery of a Prospectus is required under the Act, as many copies of the Prospectus in final form, or as thereafter amended or supplemented, as the Representatives may reasonably request. The Issuers shall deliver to the Representatives at or before the Closing Date, four signed copies of the Registration Statement and all amendments thereto including all exhibits filed therewith, and shall deliver to the Representatives such number of copies of the Registration Statement (including such number of copies of the exhibits filed therewith that may reasonably be requested) and of all amendments thereto, as the Representatives may reasonably request.

(e) The Issuers shall comply with the Act and the Rules and Regulations, the Exchange Act, and the rules and regulations of the Commission thereunder, and the Trust Indenture Act, so as to permit the completion of the distribution of the Notes as contemplated in this Agreement and the Prospectus. If during the period in which a prospectus is required by law to be delivered by an Underwriter or dealer, any event shall occur as a result of which, in the judgment of the Company or in the reasonable opinion of the Underwriters, it becomes necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances existing at the time the Prospectus is delivered to a purchaser, not misleading, or, if it is necessary at any time to amend or supplement the Prospectus to comply with any law, the Issuers promptly shall prepare and file with the Commission an appropriate amendment to the Registration Statement or supplement to the Prospectus so that the Prospectus as so amended or supplemented shall not, in the light of the circumstances when it is so delivered, be misleading, or so that the Prospectus shall comply with the law.

(f) Each of the Wynn Parties shall make generally available to their security holders and to the Representatives, as soon as it is practicable to do so, but in any event not later than 15 months after the effective date of the Registration Statement, an earnings statement (which need not be audited) in reasonable detail, covering a period of at least 12 consecutive months beginning after the effective date of the Registration Statement, which earnings statement shall satisfy the requirements of Section 11(a)

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of the Act and Rule 158 of the Rules and Regulations and shall advise you in writing when such statement has been so made available.

(g) Prior to the Closing Date, the Issuers shall furnish to the Underwriters, as soon as they have been prepared by or are available to the Issuers, a copy of any unaudited interim financial statements of any of the Wynn Group Members for any period subsequent to the period covered by the most recent financial statements appearing in the Registration Statement and the Prospectus.

(h) So long as any of the Notes are outstanding, the Issuers will furnish to the several Underwriters, promptly upon their becoming available, copies of all reports and other communications (financial or otherwise) furnished by the Issuers or the Guarantors to the Trustee of the holders of the Notes and copies of any reports or financial statements furnished to or filed by the Issuers or the Guarantors with the Commission.

(i) Each of the officers, directors and stockholders of Wynn Resorts, Limited, (excluding Baron Asset Fund) and Aruze Corp. shall have executed, and the Issuers shall have furnished to you, on or prior to the date of this Agreement, a letter or letters, in substantially the form of *Exhibit A* hereto ("Lockup Agreements").

(j) The Issuers shall apply the net proceeds of its sale of the Notes as set forth in the Prospectus under the caption "Use of Proceeds" and shall file such reports with the Commission with respect to the sale of the Notes and the application of the proceeds therefrom as may be required in accordance with Rule 463 under the Act.

(k) The Issuers shall not invest, or otherwise use the proceeds received by the Issuers from its sale of the Notes in such a manner as would require any of the Wynn Group Members to register as an investment company under the 1940 Act.

(l) The Wynn Parties will not voluntarily claim, and will resist actively all attempts to claim, the benefit of any usury laws against any holder of Notes.

(m) None of the Wynn Parties will publicly announce any intention to, or will itself, without the prior written consent of the Representatives, on behalf of the Underwriters, (i) offer, pledge, sell, offer to sell, contract to sell, sell any option or contract to purchase, purchase any option to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any debt securities issued or guaranteed by any of the Wynn Parties (other than the Notes and the notes issued under the Credit Agreement and the FF&E Facility) or any securities exercisable or exchangeable for debt securities issued or guaranteed by any of the Wynn Parties, for a period beginning from the date hereof and continuing to and including the date which is 180 days after the date hereof.

(n) None of the Wynn Parties shall take, directly or indirectly, any action designed to cause or result in, or that has constituted or could reasonably be expected to constitute, the stabilization or manipulation of the price of any securities of any of the Wynn Parties.

5. *Costs and Expenses.*

The Company shall pay all costs, expenses and fees incident to the performance of the obligations of the Wynn Parties under this Agreement, including, without limiting the generality of the foregoing, the following: accounting fees of the Wynn Parties; the fees and disbursements of counsel for the Wynn Parties; the cost of printing and delivering to, or as requested by, the Underwriters copies of the Registration Statement, Preliminary Prospectuses, the Prospectus, the Underwriters' Selling Memorandum, the Underwriters' Invitation Letter, the Blue Sky Survey and any supplements or amendments thereto; the filing fees of the Commission; the filing fees and expenses (including reasonable legal fees and disbursements) incident to securing any required review by the NASD of the terms of the sale of the Notes; and expenses, including the reasonable fees and disbursements of

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counsel for the Underwriters, to the extent incurred in connection with the qualification of the Notes under state securities or Blue Sky laws or the provincial securities laws of Canada. The Company shall not, however, be required to pay for any of the Underwriters other expenses including (a) the fees and expenses of their counsel (other than those related to qualification under NASD regulation and state securities or Blue Sky laws), (b) other professional fees (excluding the fees and expenses of Inspection & Valuation International, Inc.), (c) the customary costs and expenses of the roadshow and any other meetings with prospective investors, (d) the costs and expenses of travel of the Representatives and the other Underwriters (e) the costs and expenses of any other consultants and experts specifically retained by the Representatives (other than Inspection & Valuation International, Inc.) and (f) all arrangements relating to the preparation, issuance and delivery of any certificates evidencing the Notes, including the fees of any trustee or similar entity, except in all cases that, if the sale of the Notes pursuant to Section 2 hereof shall not be consummated because the conditions in Section 6 hereof are not satisfied, because this Agreement is terminated by the Representatives pursuant to Section 10 hereof, or by reason of any failure, refusal or inability on the part of any of the Wynn Parties to perform any undertaking or satisfy any condition of this Agreement or to comply with any of the terms hereof on its part to be performed, unless such failure, refusal or inability is due primarily to any default or omission of any Underwriter, the Company shall reimburse the several Underwriters for reasonable out-of-pocket expenses, including fees and disbursements of counsel, reasonably incurred in connection with investigating, marketing and proposing to market the Notes or in contemplation of performing their obligations hereunder; provided, however, that the Company shall not in any event be liable to any of the several Underwriters for damages on account of loss of anticipated profits from the sale by them of the Notes.

6. *Conditions of Obligations of the Underwriters.*

The several obligations of the Underwriters to purchase the Notes on the Closing Date are subject to the accuracy, as of the Closing Date of the representations and warranties of the Wynn Parties contained herein, and to the performance by the Wynn Parties of their covenants and obligations hereunder and to the following additional conditions:

(a) The Registration Statement and all post-effective amendments thereto shall have become effective and any and all filings required by Rule 424 and Rule 430A of the Act shall have been made within the applicable time period prescribed by, and in compliance with, the Rules and Regulations, and any request of the Commission for additional information (to be included in the Registration Statement or otherwise) shall have been disclosed to the Representatives and complied with. No stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been taken or, to the knowledge of the Issuers, shall be contemplated or threatened by the Commission and no injunction, restraining order or order of any nature by a federal, state or foreign court of competent jurisdiction shall have been issued as of the Closing Date which would prevent the issuance of the Notes. The NASD shall have raised no objections to the fairness and reasonableness of the underwriting terms and arrangements.

(b) The Representatives shall have received on the Closing Date (i) the opinion of Irell & Manella LLP, counsel for the Wynn Parties, dated the Closing Date, addressed to the Underwriters in form and substance reasonably satisfactory to counsel to the Underwriters, substantially in the form of *Exhibit B* hereto, and (ii) from Irell & Manella LLP, counsel for the Wynn Parties, dated the Closing Date, copies of the legal opinions delivered by such firm to (A) the administrative agent under the Credit Agreement, (B) the collateral agent under the FF&E Facility, and (C) the representatives of the underwriters of the Wynn Resorts, Limited initial public offering of its common stock, accompanied in each case by a reliance letter in favor of the Underwriters, permitting the Underwriters to rely on each of the enforceability opinions contained in such legal opinions, on the terms and subject to the provisions contained in such opinions.

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(c) The Representatives shall have received on the Closing Date the opinion of Schreck Brignone, special Nevada counsel for the Wynn Parties, dated the Closing Date, addressed to the Underwriters in form and substance reasonably satisfactory to counsel to the Underwriters, substantially in the form of *Exhibit C* hereto.

(d) The Representatives shall have received on the Closing Date the opinion of Manuel Alexandre de Oliveira Correia da Silva, special Macau counsel for Wynn Resorts (Macau) S.A., dated the Closing Date addressed to the Underwriters in form and substance reasonably satisfactory to counsel to the Underwriters, substantially in the form of *Exhibit D* hereto.

(e) The Representatives shall have received on the Closing Date the opinion of Fulbright & Jaworski, special regional counsel for Wynn Resorts (Macau) S.A., dated the Closing Date addressed to the Underwriters in form and substance reasonably satisfactory to counsel to the Underwriters, substantially in the form

of *Exhibit E* hereto.

(f) The Representatives shall have received on the Closing Date the opinion of Lionel Sawyer & Collins, counsel for Aruze USA, dated the Closing Date, addressed to the Underwriters in form and substance reasonably satisfactory to counsel to the Underwriters, substantially in the form of *Exhibit F* hereto.

(g) The Representatives shall have received on the Closing Date the opinion of Nagashima Ohno & Tsunematsu, counsel for Aruze Corporation and Mr. Kazuo Okada, dated the Closing Date, addressed to the Underwriters in form and substance reasonably satisfactory to counsel to the Underwriters, substantially in the form of *Exhibit G* hereto.

(h) The Representatives shall have received on the Closing Date the opinion of Hale Lane, Nevada public utilities counsel for the Wynn Parties, dated the Closing Date addressed to the Underwriters in form and substance reasonably satisfactory to counsel to the Underwriters, substantially in the form of *Exhibit H* hereto.

(i) The Representatives shall have received from Latham & Watkins, counsel for the Underwriters, an opinion dated the Closing Date, in form and substance reasonably satisfactory to the Representatives.

(j) The Representatives shall have received at or prior to the Closing Date from Latham & Watkins a memorandum or summary, in form and substance satisfactory to the Representatives, with respect to the qualification for offering and sale by the Underwriters of the Notes under the state securities or Blue Sky laws of such jurisdictions as the Representatives may reasonably have designated to the Issuers.

(k) You shall have received, on each of the date hereof and the Closing Date, a letter dated the date hereof or the Closing Date, as the case may be, in form and substance satisfactory to you, of Deloitte & Touche LLP confirming that they are independent public accountants within the meaning of the Act and the applicable published Rules and Regulations thereunder and stating that in their opinion the financial statements and schedules examined by them and included in the Registration Statement and the Prospectus comply in form in all material respects with the applicable accounting requirements of the Act and the related published Rules and Regulations; and containing such other statements and information as is ordinarily included in accountants' "comfort letters" to Underwriters, delivered pursuant to Statement of Accounting Standards No. 72 (or any successor bulletin), with respect to the financial statements and certain financial and statistical information contained in the Registration Statement and Prospectus.

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(l) The Representatives shall have received on the Closing Date a certificate or certificates of the Chief Executive Officer or President and the Chief Financial Officer of each of the Wynn Parties or, in the case of any Wynn Party that does not have officers holding such positions or positions of similar authority, of the Chief Executive Officer or President and Chief Financial Officer of the immediate or ultimate parent of such entity on behalf of such entity, to the effect that, as of the Closing Date, each of them severally represents as follows:

(i) the Registration Statement has become effective under the Act and no stop order suspending the effectiveness of the Registration Statement has been issued, and no proceedings for such purpose have been taken or are, to his or her knowledge, contemplated or threatened by the Commission;

(ii) the representations and warranties of such Wynn Party contained in Section 1 hereof are true and correct as of the Closing Date;

(iii) he or she has carefully examined the Registration Statement and the Prospectus and, in his or her opinion, as of the effective date of the Registration Statement, the information contained in the Registration Statement, including the financial statements and other financial information included therein, was true, complete and correct in all material respects, and such Registration Statement and Prospectus did not omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading;

(iv) such Wynn Party has complied with all the agreements hereunder and satisfied all the conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date; and

(v) since the respective dates as of which information is given in the Registration Statement and Prospectus and prior to the Closing Date, there has not occurred any Material Adverse Change or any development that would reasonably be expected to result in a Material Adverse Change;

(m) The Wynn Parties shall have furnished to the Representatives such further certificates and documents confirming the representations and warranties, covenants and conditions contained herein and related matters as the Representatives may reasonably have requested.

(n) For the period from and after the date of this Agreement and prior to the Closing Date, in the judgment of the Representatives there shall not have occurred any Material Adverse Change.

(o) The Lockup Agreements described in Section 4(i) are in full force and effect and on or before the date of this Agreement the Company shall have delivered fully executed copies of the Lockup Agreements to the Representatives.

(p) All fees and expenses which any of the Wynn Parties, Wynn Resorts, Limited or the Completion Guarantor has agreed to pay pursuant to the Amended and Restated Engagement Letter dated as of June 14, 2002 between Valvino, Holdings, the Company and the Representatives (other than Dresdner Kleinwort Wasserstein - Grantchester, Inc.) and which, pursuant to such engagement letter, are required to be paid at or prior to Closing, shall have been paid.

(q) Subsequent to the execution and delivery of this Agreement (i) no downgrading shall have occurred in the rating accorded the Issuers' debt securities by any "nationally recognized statistical rating organization," as that term is defined by the Commission for purposes of Rule 436(g)(2) of the rules and regulations pursuant to the Act and (ii) no such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the Issuers' debt securities.

(r) All of the Executed Transaction Documents and Closing Transaction Documents shall have been executed and shall be in full force and effect and the Representatives shall have received fully

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executed copies thereof, and none of the Wynn Group Members or Wynn Resorts, Limited shall be in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of the Executed Transaction Documents and the Closing Transaction Documents, and no condition shall exist that, with the giving of notice or the lapse of time, or both, would constitute such a default, except in each case where the consequences of such default or defaults, if any, would not reasonably be expected to result in a Material Adverse Change.

(s) No Wynn Group Member shall have any knowledge that any party shall have failed at or prior to the Closing Date to perform or comply with any of the agreements contained in any of the Executed Transaction Documents or Closing Transaction Documents and required to be performed or complied with by such party at or prior to the Closing Date unless such failure would not reasonably be expected to result in a Material Adverse Change.

(t) The Wynn Parties shall have delivered to the Trustee on behalf of the holders of the Notes, a lender's A.L.T.A. policy of title insurance, or a commitment irrevocably agreeing to issue such policy, in the amount of \$370,000,000. Each such policy or commitment shall (i) include such endorsements as are required by the Representatives, (ii) be reinsured by such reinsurance as is satisfactory to the Representatives, (iii) be issued by the title insurer in form and substance, and subject to only such exceptions, satisfactory to the Representatives.

(u) The Representatives shall have received the Phase I environmental assessment for the Site and the Site Easements dated August 14, 2002 (the "Phase I Report"), the Phase II Environmental Site Assessment for the Golf Course Land and the Golf Course Land easements (the "Phase II Report") conducted by Terracon and dated September 11, 2002 and that certain reliance letter from Terracon dated October, 2002.

(v) The Representatives shall have received the results of a recent lien, tax lien, judgment and litigation search in each of the jurisdictions or offices (including, without limitation, in the United States Patent and Trademark Office and the United States Copyright Office) in which Uniform Commercial Code financing statements or other filings or recordings should be made to evidence or perfect (with the priority required under the Collateral Documents) security interests in all assets and property of the Wynn Parties, and such search shall reveal no Liens on any of the assets of the Wynn Parties except for Permitted Liens.

(w) Each document (including, without limitation, any Uniform Commercial Code financing statement) required by the Collateral Documents or under law or reasonably requested by the Trustee to be filed, registered or recorded in order to create in favor of the Trustee, for the benefit of the holders of the Notes, a perfected Lien on, and security interest in, the Collateral described therein, prior and superior in right to any Lien of any other Person (other than Permitted Liens), shall have been delivered to the Trustee in proper form for filing, registration or recordation.

(x) On the date hereof, the Equity Underwriting Agreement (as defined in *Schedule IV* hereof) shall have been executed by the parties thereto and, on the Closing Date, Wynn Resorts, Limited shall have consummated the initial public offering and sale of shares of its common stock, shall have received the proceeds therefrom of approximately \$430.5 million after deducting underwriting discounts and commissions and shall have contributed approximately \$375 million of the net proceeds therefrom to the Company.

(y) The purchase of (i) the shares of common stock from Wynn Resorts, Limited in accordance with the terms of the Affiliate Purchase Agreements (as defined in *Schedule IV* hereof), dated as of the date hereof, by the purchasers named therein, shall be consummated concurrently with the Closing hereunder and (ii) the Notes directly from the Issuers in accordance with the terms of the Affiliate Note Purchase Agreements (as defined in *Schedule IV* hereof), dated as of the date hereof, by the purchasers named therein.

(z) The Representatives shall have received on the Closing Date an executed certificate dated the Closing Date from Stephen A. Wynn addressed to the Underwriters and stating that it can be relied on by Latham & Watkins, counsel to Underwriters, and counsel and any special counsel to the Wynn Parties, which certificate provides that the execution and delivery by Mr. Wynn of the Wynn Put Agreement and the Buy-Sell Agreement, and the performance by him of his obligations thereunder, do not (i) breach any agreement or instrument with a value in excess of \$10.0 million to which he is a party, (ii) breach any other agreement or instrument to which he is a party if that breach would subject him to a penalty or a payment requirement in excess of \$10.0 million, or (3) result in a default under any loan agreement or guarantee or other debt for borrowed money in excess of \$10.0 million to which he is a party.

The opinions and certificates mentioned in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in all material respects satisfactory to the Representatives and to Latham & Watkins, counsel for the Underwriters.

If any of the conditions hereinabove provided for in this Section 6 shall not have been fulfilled when and as required by this Agreement to be fulfilled, the obligations of the Underwriters hereunder may be terminated by the Representatives by notifying the Company of such termination in writing at or prior to the Closing Date.

In such event, the Wynn Parties and the Underwriters shall not be under any obligation to each other (except to the extent provided in Sections 5 and 8 hereof).

7. Indemnification.

(a) Each of the Wynn Parties, jointly and severally, agree:

(i) to indemnify and hold harmless each Underwriter and its affiliates, and each person, if any, who controls any Underwriter within the meaning of either Section 15 of the Act or Section 20 of the Exchange Act, against any losses, claims, damages or liabilities to which such Underwriter, affiliate or any such controlling person may become subject under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) arise out of or are based upon (A) any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement or any amendment or supplement thereto or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, (B) any untrue statement or alleged untrue statement of any material fact contained in any Preliminary Prospectus or the Prospectus or any amendment or supplement thereto (including any Prospectus wrapper for use with offers in Canada) or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading or (C) any act or failure to act, or any alleged act or failure to act by any Underwriter in connection with, or relating in any manner to, the Notes or the offering contemplated hereby, and which is included as part of or referred to in any loss,

claim, damage, liability or action arising out of or based upon matters covered by clause (A) or (B) above (provided, that the Wynn Parties shall not be liable under this clause (C) to the extent that it is determined in a final judgment by a court of competent jurisdiction that such loss, claim, damage, liability or action resulted directly from any such acts or failures to act undertaken or omitted to be taken by such Underwriter through its gross negligence or willful misconduct); *provided, however*, that the Wynn Parties will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement, or omission or alleged omission made in the Registration Statement, any Preliminary Prospectus, the Prospectus, or such amendment or supplement, in reliance upon and in conformity with written information furnished to the Wynn Parties by or through the Representatives specifically for use in the preparation thereof; and *provided, further*, that the Wynn Parties will not

be liable to any Underwriter with respect to any such untrue statement or alleged untrue statement or omission or alleged omission made in any Preliminary Prospectus to the extent that (1) such loss, claim, damage, or liability results from an untrue statement of a material fact or an omission of a material fact contained in the Preliminary Prospectus, which untrue statement or omission was corrected in the final Prospectus, (2) the Wynn Parties had previously furnished sufficient quantities of the final Prospectus to such Underwriter within a reasonable amount of time prior to such sale, and (3) such Underwriter failed to deliver the final Prospectus, if required by law to have so delivered it, and such delivery would have been a complete defense against the person asserting such loss, claim, liability, expense or damage; and

(ii) to reimburse each Underwriter and each such affiliate or controlling person upon demand for any legal or other out-of-pocket expenses reasonably incurred by such Underwriter, affiliate or such controlling person in connection with investigating or defending any such loss, claim, damage or liability, action or proceeding or in responding to a subpoena or governmental inquiry related to the offering of the Notes, whether or not such Underwriter, affiliate or controlling person is a party to any action or proceeding. In the event that it is finally judicially determined that the Underwriters were not entitled to receive payments for legal and other expenses pursuant to this subparagraph, the Underwriters will promptly return all sums that had been advanced pursuant hereto. The indemnity obligations under this Section 7(a) will be in addition to any liability which each such Wynn Party may otherwise have.

(b) Each Underwriter severally and not jointly agrees to indemnify and hold harmless the Wynn Parties, each of their directors, each of their officers who have signed the Registration Statement, and each person, if any, who controls the Wynn Parties within the meaning of the Act, against any losses, claims, damages or liabilities to which the Wynn Parties or any such director, officer or controlling person may become subject under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement or any amendment or supplement thereto or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or (ii) any untrue statement or alleged untrue statement of any material fact contained in any Preliminary Prospectus or the Prospectus or any amendment or supplement thereto or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, and will reimburse any legal or other expenses reasonably incurred by the Wynn Parties or any such director, officer or controlling person in connection with investigating, defending against or appearing as a third party witness in connection with any such loss, claim, damage, liability, action or proceeding or in responding to a subpoena or governmental inquiry related to the offering of the Notes, whether or not the Wynn Parties or such director, officer or controlling person is a party to any action of proceeding; *provided, however*, that each Underwriter will be liable in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission has been made in the Registration Statement, any Preliminary Prospectus, the Prospectus or such amendment or supplement, in reliance upon and in conformity with written information furnished to the Wynn Parties by or through the Representatives specifically for use in the preparation thereof. This indemnity agreement will be in addition to any liability which such Underwriter may otherwise have.

(c) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to this Section 7, such person (the "indemnified party") shall promptly notify the person against whom such indemnity may be sought (the "indemnifying party") in writing. No indemnification provided for in Section 7(a) or (b) shall be available to any party who shall fail to give notice as provided in this Section 7(c) if the party to whom notice was not given was unaware of the proceeding to which such notice would have related and was

materially prejudiced by the failure to give such notice, and the failure to give such notice shall not relieve the indemnifying party or parties from any liability which it or they may have to the indemnified party for contribution or otherwise than on account of the provisions of Section 7(a) or (b). In case any such proceeding shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party and shall pay as incurred the reasonable fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel at its own expense. Notwithstanding the foregoing, the indemnifying party shall pay as incurred (or within 30 days of presentation) the reasonable fees and expenses of the counsel retained by the indemnified party in the event (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel, (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party, and the indemnified party shall have reasonably concluded that a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such proceeding or that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party or (iii) the indemnifying party shall have failed to assume the defense and employ counsel reasonably acceptable to the indemnified party within a reasonable period of time after notice of commencement of the action. It is understood that the indemnifying party shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees and expenses of more than one separate firm for all such indemnified parties. Such firm shall be designated in writing by you in the case of parties indemnified pursuant to Section 7(a) and by the Wynn Parties in the case of parties indemnified pursuant to Section 7(b). The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. In addition, the indemnifying party will not, without the prior written consent of the indemnified party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding of which indemnification may be sought hereunder (whether or not any indemnified party is an actual or potential party to such claim, action or proceeding) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action or proceeding.

(d) To the extent the indemnification provided for in this Section 7 is unavailable to or insufficient to hold harmless an indemnified party under Section 7(a) or (b) above in respect of any losses, claims, damages or liabilities (or actions or proceedings in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Wynn Parties on the one hand and the Underwriters on the other from the offering of the Notes. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Wynn Parties on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions or proceedings in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Wynn Parties on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Wynn Parties bear to the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the table on the cover page of the Prospectus. The relative

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fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Wynn Parties on the one hand or the Underwriters on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Wynn Parties and the Underwriters agree that it would not be just and equitable if contributions pursuant to this Section 7(d) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 7(d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions or proceedings in respect thereof) referred to above in this Section 7(d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (d), (i) no Underwriter shall be required to contribute any amount in excess of the underwriting discounts and commissions applicable to the Notes purchased by such Underwriter and (ii) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this Section 7(d) to contribute are several in proportion to their respective underwriting obligations and not joint.

(e) Any losses, claims, damages, liabilities or expenses for which an indemnified party is entitled to indemnification or contribution under this Section 7 shall be paid by the indemnifying party to the indemnified party as such losses, claims, damages, liabilities or expenses are incurred. The indemnity and contribution agreements contained in this Section 7 and the representations and warranties of the Wynn Parties set forth in this Agreement shall remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of any Underwriter or any person controlling any Underwriter, the Wynn Parties, their directors or officers or any persons controlling the Wynn Parties, (ii) acceptance of any Notes and payment therefore hereunder and (iii) any termination of this Agreement. A successor to any Underwriter, or any person controlling any Underwriter, or to the Wynn Parties, their directors or officers, or any person controlling the Wynn Parties, shall be entitled to the benefits of the indemnity, contribution and reimbursement agreements contained in this Section 7.

8. *Default by Underwriters.*

If on the Closing Date any Underwriter shall fail to purchase and pay for the portion of the Notes which such Underwriter has agreed to purchase and pay for on such date (otherwise than by reason of any default on the part of the Wynn Parties), you, as Representatives of the Underwriters, shall use your reasonable efforts to procure within 36 hours thereafter one or more of the other Underwriters, or any others, to purchase from the Issuers such amounts as may be agreed upon and upon the terms set forth herein, the Notes which the defaulting Underwriter or Underwriters failed to purchase. If during such 36 hours you, as such Representatives, shall not have procured such other Underwriters, or any others, to purchase the Notes agreed to be purchased by the defaulting Underwriter or Underwriters, then (a) if the aggregate principal amount of Notes with respect to which such default shall occur does not exceed 10% of the aggregate principal amount of Notes to be purchased on the Closing Date, the other Underwriters shall be obligated, severally, in the proportions that the principal amount of Notes set forth opposite their respective names in Schedule I hereto bears to the aggregate principal amount of Notes set forth opposite the names of all such non-defaulting Underwriters, or in such other proportions as the Representatives may specify, to purchase the Notes which such defaulting Underwriter or Underwriters agreed but failed to purchase on such date, or (b) if the aggregate principal amount of Notes with respect to which such default shall occur exceeds 10% of the aggregate principal amount of Notes to be purchased on the Closing Date, the Wynn Parties or you as the Representatives of the Underwriters shall have the right, by written notice given within the next

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36-hour period to the parties to this Agreement, to terminate this Agreement without liability on the part of the non-defaulting Underwriters or of the Wynn Parties except to the extent provided in Sections 5 and 8 hereof. In the event of a default by any Underwriter or Underwriters, as set forth in this Section 8, the Closing Date may be postponed for such period, not exceeding seven days, as you, as Representatives, may determine in order that the required changes in the Registration Statement or in the Prospectus or in any other documents or arrangements may be effected. As used in this Agreement, the term "Underwriter" includes any person substituted for a defaulting Underwriter. Any action taken under this Section 8 shall not relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

9. *Notices.*

All communications hereunder shall be in writing and, except as otherwise provided herein, shall be mailed, delivered, telecopied or telegraphed and confirmed as follows: if to the Underwriters, to Deutsche Bank Securities Inc., 31 West 52nd Street New York, New York 10019; Attention: Syndicate Manager and General Counsel; if to the Wynn Parties, to the Company, care of: Wynn Resorts, Limited, 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109; Attention: General Counsel.

10. *Termination.* This Agreement may be terminated by you:

(a) by notice to the Company at any time prior to the Closing Date if any of the following has occurred: (i) since the respective dates as of which information is given in the Registration Statement and the Prospectus, in the judgment of the Representatives, any Material Adverse Change or any development that would reasonably be expected to result in a Material Adverse Change, (ii) any attack on, or any outbreak or escalation of hostilities or acts of terrorism involving, the United States or declaration of war or national emergency or other national or international calamity or crisis or change in economic or political conditions if the effect of such attack, outbreak, escalation, acts, declaration, emergency, calamity, crisis or change on the financial markets of the United States would, in the Representatives' judgment, make it impracticable or inadvisable to market the Notes in the manner and on the terms described in the Prospectus or to enforce contracts for the sale of the Notes, (iii) the suspension or material limitation of trading in securities generally or other instruments on the New York Stock Exchange, the American Stock Exchange or the Nasdaq National Market or other exchange or limitation on prices for securities or other instruments on the New York Stock Exchange, the American Stock Exchange or the Nasdaq National Market, (iv) the enactment, publication, decree or other promulgation of any statute, regulation, rule or order of any court or other governmental authority which in your opinion materially and adversely affects or may materially and adversely affect the business or operations of the Wynn Parties, (v) the declaration of a banking moratorium by United States or New York or Nevada state authorities, (vi) any downgrading, or placement on any watch list for possible downgrading, in the rating of any of the Wynn Parties' debt securities by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the Exchange Act), (vii) the suspension of trading of any securities of any of the Wynn Parties or of Wynn Resorts, Limited by any exchange, the Nasdaq National Market, the Commission, or any other governmental authority (viii) the enactment, publication, decree or other promulgation of any statute, regulation, rule or order of any court or other governmental authority which in your opinion materially and adversely affects, or will materially and adversely affect, the business, prospects, financial condition or results of operations of the Wynn Group Members, taken as a whole or (ix) the Wynn Parties shall have sustained a loss by strike, fire, flood, earthquake, accident or other calamity of such character as in the judgment of the Representatives may interfere materially with the conduct of the business and operations of the Wynn Parties regardless of whether or not such loss shall have been insured; or

(b) as provided in Sections 6 and 8 of this Agreement.

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11. *Successors.*

This Agreement has been and is made solely for the benefit of the Underwriters and the Wynn Parties and their respective successors, executors, administrators, heirs and assigns, and the officers, directors, employees and controlling persons referred to herein, and no other person will have any right or obligation hereunder. No purchaser of any of the Notes from any Underwriter shall be deemed a successor or assign merely because of such purchase.

12. *Information Provided by Underwriters.*

The Wynn Parties and the Underwriters acknowledge and agree that the only information furnished or to be furnished by any Underwriter to the Wynn Parties for inclusion in any Prospectus or the Registration Statement consists of the information set forth in the fourth, and seventh through thirteenth paragraphs under the caption "Underwriting" in the Prospectus.

13. *Partial Enforceability.*

The invalidity or unenforceability of any Section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other Section, paragraph or provision hereof. If any Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable and to effect the original intent of the parties hereto.

14. *Choice of Law; Consent to Jurisdiction.*

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. To the fullest extent permitted by applicable law, you hereby irrevocably submit to the nonexclusive jurisdiction of the courts of the State of New York located in the Borough of Manhattan and the United States District Court for the Southern District of New York in respect of any suit, action or proceeding arising out of or relating to the provisions of this Agreement and irrevocably agree that all claims in respect of any such suit, action or proceeding may be heard and determined in any such court. The parties hereto hereby waive, to the fullest extent permitted by applicable law, any objection that they may now or hereafter have to the laying of venue of any such suit, action or proceeding brought in any such court, and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

15. *Miscellaneous.*

The reimbursement, indemnification and contribution agreements contained in this Agreement and the representations, warranties and covenants in this Agreement shall remain in full force and effect regardless of (a) any termination of this Agreement, (b) any investigation made by or on behalf of any Underwriter or controlling person thereof, or by or on behalf of the Wynn Parties or their directors or officers and (c) delivery of and payment for the Notes under this Agreement.

This Agreement may be executed in two or more counterparts (including by facsimile), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

If the foregoing letter is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicates hereof, whereupon it will become a binding agreement among the Wynn Parties and the several Underwriters in accordance with its terms.

(Signature pages to follow)

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Very truly yours,

ISSUERS:

WYNN LAS VEGAS, LLC,
a Nevada limited liability company,

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited, a Nevada corporation, its sole member

/s/ RONALD KRAMER

Name: Ronald Kramer
Title: *President*

WYNN LAS VEGAS CAPITAL CORP.,
a Nevada corporation,

By: /s/ RONALD KRAMER

Name: Ronald Kramer
Title: *Vice President*

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GUARANTORS:

DESERT INN WATER COMPANY, LLC,
a Nevada limited liability company,

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited, a Nevada corporation, its sole member

/s/ RONALD KRAMER

Name: Ronald Kramer
Title: *President*

WYNN DESIGN & DEVELOPMENT, LLC,
a Nevada limited liability company,

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited, a Nevada corporation, its sole member

/s/ RONALD KRAMER

Name: Ronald Kramer
Title: *President*

WYNN RESORTS HOLDINGS, LLC,
a Nevada limited liability company,

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited, a Nevada corporation, its sole member

/s/ RONALD KRAMER

Name: Ronald Kramer
Title: *President*

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LAS VEGAS JET, LLC,
a Nevada limited liability company,

By: Wynn Las Vegas, LLC,
a Nevada limited liability company,

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited, a Nevada corporation, its sole
member

/s/ RONALD KRAMER

Name: Ronald Kramer
Title: *President*

WORLD TRAVEL, LLC,
a Nevada limited liability company,

By: Wynn Las Vegas, LLC,
a Nevada limited liability company,

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited, a Nevada corporation, its sole
member

/s/ RONALD KRAMER

Name: Ronald Kramer
Title: *President*

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PALO, LLC,
a Delaware limited liability company,

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,

a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited, a Nevada corporation, its sole
member

/s/ RONALD KRAMER

Name: Ronald Kramer
Title: *President*

VALVINO LAMORE, LLC,
a Nevada limited liability company,

By: Wynn Resorts, Limited, a Nevada
corporation, its sole member

/s/ RONALD KRAMER

Name: Ronald Kramer
Title: *President*

WYNN RESORTS, LIMITED

/s/ RONALD KRAMER

Name: Ronald Kramer
Title: *President*

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The foregoing Underwriting Agreement is hereby
confirmed and accepted as of the date first above
written.

DEUTSCHE BANK SECURITIES INC.
BANC OF AMERICA SECURITIES LLC
BEAR, STEARNS & CO. INC.
DRESDNER KLEINWORT WASSERSTEIN - GRANTCHESTER, INC.

As Representatives of the several Underwriters
listed on *Schedule I*

By: DEUTSCHE BANK SECURITIES INC.

A. Drew Goldman

Authorized Officer

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SCHEDULE I

SCHEDULE OF UNDERWRITERS

| Underwriter | Principal Amount of Notes to be Purchased |
|---|--|
| Deutsche Bank Securities Inc. | \$ 62,895,575 |
| Banc of America Securities LLC | 62,895,575 |
| Bear, Stearns & Co. Inc. | 62,895,575 |
| Dresdner Kleinwort Wasserstein - Grantchester, Inc. | 62,895,575 |
| Fleet Securities, Inc. | 36,461,190 |
| Scotia Capital (USA) Inc. | 36,461,190 |
| SG Cowen Securities Corporation | 36,461,190 |

| | | |
|-------|----|-------------|
| Total | \$ | 364,612,000 |
|-------|----|-------------|

Schedule I

SCHEDULE II

**Wynn Las Vegas, LLC / Wynn Las Vegas Capital Corp
SUMMARY OF TERMS**

| | | |
|----------------------------------|--|---------|
| Issuer: | Wynn Las Vegas, LLC / Wynn Las Vegas Capital Corp | |
| Issue: | Second Mortgage Notes | |
| Distribution: | Registered | |
| Gross Proceeds: | \$370,000,000 | |
| Net Proceeds: | \$343,334,100 | |
| Ratings: | B3/CCC+ | |
| Coupon: | 12.000% | |
| Price at Issue: | 92.793% | |
| Price to Underwriters | 89.793% | |
| Yield: | 13.500% | |
| Treasury Spread: | 978 | |
| Maturity: | 11/1/2010 | |
| Interest Payment Dates: | 5/1, 11/1 beginning 5/1/03 | |
| Trade Date: | 10/25/2002 | |
| Settlement Date: (T + 3): | 10/30/2002 | |
| Call Schedule | 11/01/06 | 112.000 |
| | 11/01/07 | 108.000 |
| | 11/01/08 | 104.000 |
| | 11/01/09 and thereafter | 100.000 |
| Equity Clawback: | 35% at 112 | |
| CUSIP: | 983130 AA 3 | |
| ISIN: | US983130AA32 | |

Schedule II

SCHEDULE III

GUARANTORS

Desert Inn Water Company, LLC, a Nevada limited liability company
 Valvino Lamore, LLC, a Nevada limited liability company
 Wynn Design & Development, LLC, a Nevada limited liability company
 Wynn Resorts Holdings, LLC, a Nevada limited liability company
 Las Vegas Jet, LLC, a Nevada limited liability company
 World Travel, LLC, a Nevada limited liability company
 Palo, LLC, a Delaware limited liability company
 Wynn Resorts, Limited, a Nevada limited liability company

Schedule III

SCHEDULE IV

EXECUTED TRANSACTION DOCUMENTS

Construction and Other Third Party Project Agreements

(a) Agreement for Guaranteed Maximum Price Construction Services, effective as of June 4, 2002, between the Company and Marnell Corrao Associates, Inc. for Le Rêve (the "Marnell Agreement");

(b) Amended and Restated Continuing Guaranty, dated October 22, 2002, by Austi, Inc. in favor of the Company;

(c) Design Build Agreement, effective as of June 6, 2002, by and between the Company and Bomel Construction Co., Inc.;

(d) Professional Design Services Agreement, effective as of October 5, 2001, between Wynn Design & Development ("Wynn Design") and Marnell Architect (fka A.A. Marnell II, Ltd.);

(e) Professional Design Services Agreement between Wynn Design and Lochsa Engineering;

(f) Professional Design Services Agreement between Wynn Design and Martin & Peltyn, Inc.;

(g) Professional Design Services Agreement between Wynn Design and Carter & Burgess (Civil Engineer);

(h) Professional Design Services Agreement, dated as of February 4, 2002, between Wynn Design and JBA Consulting Engineers (Mechanical, Plumbing and Electrical Design and Engineering Services);

(i) Professional Design Services Agreement, dated as of February 4, 2002, between Wynn Design and JBA Consulting Engineers (Low Voltage Systems Design Services);

(j) Professional Design Services Agreement, dated as of June 24, 2002, between Wynn Design and JBA Consulting Engineers (Mechanical Design Engineering Services);

(k) Agreement, dated January 25, 2001, between Wynn Resorts Holdings, LLC ("Holdings") and Calitri Services and Licensing Limited Liability Company;

(l) Trademark/Service Mark Purchase Agreement, dated June 7, 2001, between Wynn Resorts Holdings, LLC and The STAD Trust;

Affiliate Project Agreements

(m) Second Amended and Restated Art Rental and Licensing Agreement, dated September 18, 2002, by and between Mr. Stephen A. Wynn and Holdings (the "Art Rental Agreement").

(n) Lease Agreement, dated November 1, 2001, by and between Valvino Lamore, LLC ("Valvino") and Wynn Resorts Holdings, LLC ("Holdings");

(o) Driving Range Lease, dated as of October 21, 2002, by and between Valvino and the Company;

(p) Parking Facility Lease, dated as of October 21, 2002, by and between Valvino and the Company;

(q) Lease Agreement, dated as of October 21, 2002, by and between Valvino and the Company (Building Lease);

(r) Golf Course Lease Agreement, dated as of October 21, 2002, by and among Holdings, Palo, LLC ("Palo") and the Company;

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(s) Easement Agreement, dated as of October 21, 2002, by and among Holdings, Valvino and the Company (Shuttle);

(t) Employment Agreement, dated as of October 4, 2002, by and between Stephen A. Wynn and the Wynn Resorts, Limited (the "Wynn Employment Agreement");

Equity Agreements

(u) Stockholders Agreement, dated as of April 11, 2002, among Mr. Stephen A. Wynn, Baron Asset Fund ("Baron") and Aruze USA, Inc. ("Aruze USA") (the "Stockholders Agreement");

(v) Share Purchase Agreement, dated as of April 16, 2001, by and between Valvino and Baron;

(w) Contribution Agreement, dated April 1, 2001, between Mr. Stephen A. Wynn and Valvino with respect to Wynn Resorts Holdings, LLC, and Assignment, dated April 1, 2001, made by Mr. Stephen A. Wynn in favor of Valvino;

(x) Purchase Agreement, made as of May 30, 2002, between Mr. Stephen A. Wynn and Valvino;

(y) Purchase Agreement, made as of April 1, 2001, between Mr. Stephen A. Wynn and Valvino;

(z) Share Purchase Agreement, dated as of June 10, 2002, by and between Valvino and Kenneth R. Wynn Family Trust dated February 20, 1985 (the "Kenneth R. Wynn Family Trust");

(aa) Contribution Agreement, made as of June 10, 2002, by and among Mr. Stephen A. Wynn, Aruze USA, Baron (on behalf of each of the Baron Asset Fund Series and the Baron Growth Fund Series), the Kenneth R. Wynn Family Trust and Wynn Resorts, Limited;

(bb) Buy-Sell Agreement, dated as of June 13, 2002, by and among Mr. Stephen A. Wynn, Mr. Kazuo Okada, Aruze USA and Aruze Corp. (the "Buy-Sell Agreement");

(cc) Agreement, dated as of June 13, 2002, by and between Mr. Stephen A. Wynn and Wynn Resorts, Limited (the "Wynn Put Agreement");

(dd) Underwriting Agreement, dated the date of this Agreement, by and among Deutsche Bank Securities Inc., Bear, Stearns & Co. Inc., Banc of America Securities LLC and Wynn Resorts, Limited with respect to the initial public offering of common stock (the "Shares") of Wynn Resorts, Limited (the "Equity

Underwriting Agreement");

(ee) Purchase Agreement, dated the date of this Agreement, by and among Wynn Resorts, Limited and Aruze USA, and countersigned by Mr. Stephen A. Wynn, Mr. Kazuo Okada and Aruze Corp. (the "Aruze USA Equity Purchase Agreement");

(ff) Purchase Agreement, dated the date of this Agreement, by and among Wynn Resorts, Limited and Mr. Stephen A. Wynn (the "Wynn Equity Purchase Agreement");

(gg) Purchase Agreement, dated the date of this Agreement, by and among Wynn Resorts, Limited, Baron Asset Fund, on behalf of the Baron Growth Fund Series, and Baron Asset Fund, on behalf of the Baron Small Cap Fund Series (in such capacities, "Baron") (the "Baron Equity Purchase Agreement");

(hh) Purchase Agreement, dated the date of this Agreement, by and among Wynn Resorts, Limited and Zenith National Insurance Corp. (or an affiliate thereof) ("Zenith") (the "Zenith Equity Purchase Agreement" and, together with the Aruze USA Equity Purchase Agreement, the Wynn Equity Purchase Agreement and the Baron Equity Purchase Agreement, the "Affiliate Equity Purchase Agreements");

Schedule IV-2

Governing Documents

(ii) Second Amended and Restated Articles of Incorporation of Wynn Resorts, Limited, as amended through the date of this Agreement or the Closing Date, as applicable;

(jj) First Amended and Restated Articles of Organization of the Company, as amended through the date of this Agreement or the Closing Date, as applicable;

(kk) First Amended and Restated Articles of Organization of Holdings, as amended through the date of this Agreement or the Closing Date, as applicable;

(ll) First Amended and Restated Articles of Organization of Valvino Lamore, LLC, as amended through the date of this Agreement or the Closing Date, as applicable;

(mm) First Amended and Restated Articles of Organization of Wynn Design, as amended through the date of this Agreement or the Closing Date, as applicable;

(nn) First Amended and Restated Articles of Organization of World Travel, LLC, as amended through the date of this Agreement or the Closing Date, as applicable;

(oo) First Amended and Restated Articles of Organization of Las Vegas Jet, LLC, as amended through the date of this Agreement or the Closing Date, as applicable;

(pp) First Amended and Restated Articles of Incorporation of Desert Inn Improvement Co. ("DI Improvement Co."), as amended through the date of this Agreement or the Closing Date, as applicable;

(qq) First Amended and Restated Articles of Organization of Desert Inn Water Company, LLC, as amended through the date of this Agreement or the Closing Date, as applicable;

(rr) Certificate of Formation of Palo, as amended through the date of this Agreement or the Closing Date, as applicable;

(ss) Articles of Incorporation of Capital Corp., as amended through the date of this Agreement or the Closing Date, as applicable;

(tt) Articles of Organization of Wynn Completion Guarantor, LLC (the "Completion Guarantor"), as amended through the date of this Agreement or the Closing Date, as applicable;

Macau Agreements

(uu) Concession Contract for the Operation of Games of Chance or Other games in Casinos in the Macau Special Administrative Region, dated June 24, 2002, between the Macau Special Administrative Region and Wynn Resorts (Macau), S.A. (the "Concession Contract");

Other Agreements

(vv) Distribution Agreement and Assignment, effective as of October 17, 2002, between Valvino and Wynn Resorts, Limited;

(ww) Purchase Agreement by and among the Issuers and Aruze USA relating to the Notes (the "Aruze USA Note Purchase Agreement"); and

(xx) Purchase Agreement, dated the date of this Agreement, by and among the Issuers and Mr. Stephen A. Wynn relating to the Notes (the "Wynn Note Purchase Agreement" and together with the Aruze Note Purchase Agreement, the "Affiliate Note Purchase Agreements").

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SCHEDULE V

CLOSING TRANSACTION DOCUMENTS

Credit Agreement Documents

- (a) Credit Agreement among the Company, the several banks and other financial institutions or entities from time to time parties thereto, Deutsche Bank Securities Inc., as lead arranger and joint book running manager, Deutsche Bank Trust Company Americas, as administrative agent (the "Administrative Agent") and swing line lender, Banc of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York and Caymen Islands Branches, as arranger and joint documentation agent, and JP Morgan Chase Bank, as joint documentation agent (the "Credit Agreement");
- (b) Guarantee and Collateral Agreement by and between the Company and each other Loan Party (as defined in the Master Disbursement Agreement) (other than DI Improvement Co.) in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement (the "Guarantee and Collateral Agreement");
- (c) Local Bank Collateral Account Agreement by and between the Company, Capital Corp., Wynn Design, the Administrative Agent and entity named therein as custodian and securities intermediary;
- (d) Bank Company Collateral Agreement by and between the Company, Capital Corp., Wynn Design, the Administrative Agent and Deutsche Bank Trust Company Americas, as custodian and securities intermediary ("Securities Intermediary");
- (e) Bank Completion Guaranty Collateral Account Agreement by and between Wynn Completion Guarantor, LLC, the Administrative Agent and the Securities Intermediary;
- (f) Collateral Agency Agreement by and between the Administrative Agent, the Indenture Trustee and Bank of America, N.A. as Collateral Agent for the benefit of the Administrative Agent and the Indenture Trustee (the "Collateral Agency Agreement");
- (g) Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by Palo in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement;
- (h) Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by the Company in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement;
- (i) Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by Holdings in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement;
- (j) Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by Valvino in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement;
- (k) Indemnity Agreement executed by Palo in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement regarding environmental indemnity;
- (l) Indemnity Agreement executed by the Company in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement regarding environmental indemnity;
- Schedule V-1
-
- (m) Indemnity Agreement executed by Holdings in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement regarding environmental indemnity;
- (n) Indemnity Agreement executed by Valvino in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement regarding environmental indemnity;
- (o) Intellectual Property Security Agreements executed by the Loan Parties party thereto in favor of the Administrative Agent;
- (p) Parent Guarantee by Wynn Resorts, Limited in favor of the Administrative Agent;
- (q) Notes issued to the lenders under the Credit Agreement;
- (r) UCC Financing Statement of the Company in favor of the Administrative Agent;
- (s) UCC Financing Statement of Valvino Lamore, LLC, in favor of the Administrative Agent;
- (t) UCC Financing Statement of Capital Corp, in favor of the Administrative Agent;
- (u) UCC Financing Statement of Palo, LLC, in favor of the Administrative Agent;
- (v) UCC Financing Statement of Holdings, LLC, in favor of the Administrative Agent;
- (w) UCC Financing Statement of Desert Inn Water Company, LLC, in favor of the Administrative Agent;
- (x) UCC Financing Statement of Wynn Design in favor of the Administrative Agent;
- (y) UCC Financing Statement of World Travel, LLC, in favor of the Administrative Agent;
- (z) UCC Financing Statement of Las Vegas Jet, LLC, in favor of the Administrative Agent;

- (aa) UCC Financing Statement of Wynn Completion Guarantor, LLC in favor of the Administrative Agent;
- (bb) UCC-1 Fixture Filing of Valvino in favor of Administrative Agent;
- (cc) UCC-1 Fixture Filing of the Company in favor of Administrative Agent;
- (dd) UCC-1 Fixture Filing of Palo, LLC in favor of Administrative Agent;
- (ee) UCC-1 Fixture Filing of Holdings in favor of Administrative Agent;

Second Mortgage Note Documents

(ff) Indenture among the Company, Capital Corp., the Restricted Entities (as defined therein) and Wells Fargo Bank, National Association, as trustee (the "Indenture Trustee"), with respect to the Notes (the "Indenture");

(gg) Guarantees of the Notes by the Guarantors;

(hh) Second Mortgage Notes due 2010 issued pursuant to the Indenture;

(ii) Guarantee and Collateral Agreement by and between the Company and the other Grantors (as defined therein) in favor of the Indenture Trustee on behalf of the second mortgage noteholders under the Indenture;

(jj) Local Second Mortgage Notes Collateral Account Agreement by and between the Company, Capital Corp., Wynn Design, the Indenture Trustee and the entity named therein as custodian and securities intermediary;

(kk) Second Mortgage Notes Company Collateral Account Agreement by and between the Company, Capital Corp., Wynn Design, the Indenture Trustee and the Securities Intermediary;

Schedule V-2

(ll) Second Mortgage Notes Completion Guaranty Collateral Account Agreement by and between Wynn Completion Guarantor, LLC, the Indenture Trustee and the Securities Intermediary;

(mm) Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by Palo in favor of the Indenture Trustee;

(nn) Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by the Company in favor of the Indenture Trustee;

(oo) Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by Holdings in favor of the Indenture Trustee;

(pp) Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by Valvino in favor of the Indenture Trustee;

(qq) Indemnity Agreement executed by Palo in favor of the Indenture Trustee regarding environmental indemnity;

(rr) Indemnity Agreement executed by the Company in favor of the Indenture Trustee regarding environmental indemnity;

(ss) Indemnity Agreement executed by Holdings in favor of the Indenture Trustee regarding environmental indemnity;

(tt) Indemnity Agreement executed by Valvino in favor of the Indenture Trustee regarding environmental indemnity;

(uu) Intellectual Property Security Agreements executed by the Issuers and Guarantors party thereto in favor of the Indenture Trustee;

(vv) Parent Guarantee by Wynn Resorts, Limited in favor of the Indenture Trustee;

(ww) UCC Financing Statement of the Company in favor of the Indenture Trustee;

(xx) UCC Financing Statement of Valvino in favor of the Indenture Trustee;

(yy) UCC Financing Statement of Capital Corp. in favor of the Indenture Trustee;

(zz) UCC Financing Statement of Palo in favor of the Indenture Trustee;

(aaa) UCC Financing Statement of Holdings in favor of the Indenture Trustee;

(bbb) UCC Financing Statement of Desert Inn Water Company, LLC, in favor of the Indenture Trustee;

(ccc) UCC Financing Statement of Wynn Design in favor of the Indenture Trustee;

(ddd) UCC Financing Statement of World Travel, LLC, in favor of the Indenture Trustee;

(eee) UCC Financing Statement of Las Vegas Jet, LLC, in favor of the Indenture Trustee;

(fff) UCC Financing Statement of Wynn Completion Guarantor, LLC in favor of the Indenture Trustee;

(ggg) UCC-1 Fixture Filing of Valvino in favor of the Indenture Trustee;

(hhh) UCC-1 Fixture Filing of the Company in favor of the Indenture Trustee;

(iii) UCC-1 Fixture Filing of Palo, LLC in favor of the Indenture Trustee;

(jjj) UCC-1 Fixture Filing of Holdings in favor of Indenture;

Schedule V-3

FF&E Facility Documents

(kkk) FF&E Loan Agreement (the "Loan Agreement") by and among the Company, Wells Fargo Bank Nevada, National Association, as collateral agent ("Collateral Agent") and the FF&E lenders party thereto (the "FF&E Facility");

(lll) Borrower Security Agreement by and among the Company and the Collateral Agent for the lenders under the Loan Agreement;

(mmm) Notes issued to the lenders under the FF&E Facility;

(nnn) Guaranty Agreement by and among Valvino, Capital Corp., Palo, LLC, Wynn Resorts, Desert Inn Water Company, LLC, Wynn Design, World Travel, LLC, Las Vegas Jet, LLC and the other guarantors from time to time party thereto (the "Guarantee Agreement");

(ooo) Aircraft Security Agreement by and among Wells Fargo Northwest, National Association as Trustee of that certain Trust created under the Trust Agreement ("Aircraft Trustee"), the Company and World Travel, LLC;

(ppp) Assignment and Assumption Agreement by and among the Company and the Collateral Agent;

(qqq) Amended and Restated Aircraft Operating Agreement by and among the Aircraft Trustee and World Travel, LLC;

(rrr) UCC Financing Statements of the Company and the guarantors party to the Guaranty Agreement;

(sss) FF&E Collateral Account Agreement among the Company, the Collateral Agent, the entity named therein as securities intermediary and the other parties party thereto;

(ttt) Lien Release providing for the release of the liens on the Existing Aircraft granted by World Travel, LLC in favor of Bank of America, N.A.;

(uuu) Intercompany Note made by World Travel, LLC in favor of the Company;

(vvv) Parent Guaranty made by Wynn Resorts, Limited in favor of the Collateral Agent;

Multi-Creditor Documents

(www) Intercreditor Agreement by and among the Trustee under the Indenture and the Administrative Agent on behalf of the lenders under the Credit Agreement;

(xxx) Intercreditor Agreement by and among the Trustee under the Indenture, the Administrative Agent on behalf of the lenders under the Credit Agreement, and the Collateral Agent acting on behalf of the FF&E lenders pursuant to the FF&E Facility;

(yyy) Master Disbursement Agreement by and among the Company, Capital Corp., Wynn Design, the Administrative Agent, Deutsche Bank Trust Company Americas, as the Disbursement Agent, the Indenture Trustee and the Collateral Agent (the "Master Disbursement Agreement");

(zzz) Completion Guaranty by Wynn Completion Guarantor, LLC for the benefit of the Administrative Agent and the Indenture Trustee;

(aaaa) Management Fees Subordination Agreement by and among the Company, Capital Corp. and Wynn Resorts, Limited, in favor of the Trustee under the Indenture, the Administrative Agent on behalf of the lenders under the Credit Agreement and the agent on behalf of the lenders under the FF&E Facility;

Schedule V-4

Project Agreements

(bbbb) License Agreement between Desert Inn Improvement Co., Wynn Las Vegas and Wynn Resorts, Limited with respect to the use of the golf course land;

(cccc) Agreement Regarding Provision of Water and Use of Water by and among DI Improvement Co., Holdings and the Company;

(dddd) Management Agreement by and between the Company and Wynn Resorts, Limited;

(eeee) Production Services Agreement, if any, between the Company and Productions du Dragon, S.A. (or an affiliate thereof) entered into on or after the date of this Agreement and on or before the Closing Date;

(ffff) License Agreement, if any, between the Company and Calitri Services and Licensing Limited Liability Company, entered into on or after the date of this Agreement and on or before the Closing Date; and

(gggg) Agreement for Use of Real Property by and between DI Improvement Co., the Company and Holdings.

Schedule V-5

SCHEDULE 1(b)

SUBSIDIARY OWNERSHIP AND CERTAIN RIGHTS

Stockholders Agreement, dated as of April 11, 2002, among Stephen A. Wynn, Baron Asset Fund and Aruze USA, Inc.

Buy-Sell Agreement, dated as of June 13, 2002, by and among Stephen A. Wynn, Kazuo Okada, Aruze USA, Inc. and Aruze Corp.

Agreement, dated as of June 13, 2002, by and between Stephen A. Wynn and Wynn Resorts, Limited

Shareholders' Agreement, dated as of October 15, 2002, by and among Wynn Resorts (Macau), Limited, Wynn Resorts International, Ltd., Wong Chi Seng, and Wynn Resorts (Macau) S.A.

Share Subscription and Shareholders' Agreement, dated as of October 15, 2002, by and among S.H.W. & Co. Limited, SKKG Limited, L'Arc de Triomphe Limited, Classic Wave Limited, Yani Kwan Yan Chi, Li Tai Foon, Kwan Yan Ming, Wong Chi Seng, and Wynn Resorts International, Ltd. and Wynn Resorts (Macau) Holdings, Ltd.

Schedule 1(b)

SCHEDULE 1(ee)

NASD AFFILIATIONS

1. From July 1999 to October 2001, Ronald Kramer served as a managing director at Dresdner Kleinwort Wasserstein, Inc. and its predecessor ("Dresdner"). In November 2001, shortly after Mr. Kramer's departure from Dresdner, Dresdner and Mr. Kramer entered into an arrangement providing that if a certain investment banking client with whom Mr. Kramer had developed a relationship while at Dresdner (the "Unrelated Client") consummated a financing, Mr. Kramer would receive a percentage of any net fees the Unrelated Client paid to Dresdner. In exchange, Mr. Kramer agreed to provide certain financial consulting and advisory services to the Unrelated Client. Dresdner also agreed to reimburse Mr. Kramer for any out-of-pocket expenses incurred in the provision of such services. Approximately six months after leaving Dresdner, Mr. Kramer became Director and President of Wynn Resorts, Limited. Neither Wynn Resorts, Limited nor the offering of the Notes has any relation to or connection with the Unrelated Client or the arrangement between Dresdner and Mr. Kramer. On September 23, 2002, the Unrelated Client, with Dresdner acting as initial purchaser, priced a \$153 million private placement of 14.5% senior notes due 2009. The private placement closed on October 8, 2002. Mr. Kramer will receive no more than \$375,000 pursuant to the consulting arrangement, to be paid by January 8, 2003 (approximately 90 days after closing).

2. Baron Asset Fund, which owned a 4.992% interest in Wynn Resorts, Limited as of June 30, 2002, is an affiliate of Baron Capital, Inc., an NASD Member.

Schedule 1(ee)

EXHIBIT A

FORM OF LOCKUP AGREEMENT

, 2002

Wynn Resorts, Limited
3145 Las Vegas Boulevard South
Las Vegas, NV 89109

Deutsche Bank Securities Inc.
Bear, Stearns & Co. Inc.
Banc of America Securities LLC
As representatives of the several underwriters,
c/o Deutsche Bank Securities Inc.
One South Street
Baltimore, Maryland 21202

Ladies and Gentlemen:

The undersigned understands that Deutsche Bank Securities Inc., Bear, Stearns & Co. Inc. and Banc of America Securities LLC, as representatives (the "Representatives") of the several underwriters (the "Underwriters"), propose to enter into an Underwriting Agreement with Wynn Resorts, Limited (the

"Company"), providing for the public offering (the "Public Offering") by the Underwriters, including the Representatives, of common stock (the "Common Stock") of the Company.

To induce the Underwriters that may participate in the Public Offering to continue their efforts in connection with the Public Offering, the undersigned agrees that, without the prior written consent of the Representatives, the undersigned will not, directly or indirectly offer, pledge, sell, contract to sell (including making any short sale or covering any short position), sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of any shares of Common Stock (including, without limitation, shares of Common Stock of the Company that may be deemed to be beneficially owned by the undersigned on the date hereof in accordance with the rules and regulations of the Securities and Exchange Commission, shares of Common Stock that may be issued upon exercise of a stock option or warrant and any other security convertible into or exercisable or exchangeable for Common Stock) or enter into any Hedging Transaction (as defined below) relating to the Common Stock (each of the foregoing referred to as a "Disposition") for a period from the date hereof until and including the date that is 180 days after the date of the final prospectus relating to the Public Offering (the "Lock-Up Period"). The foregoing restriction is expressly intended to preclude the undersigned from engaging in any Hedging Transaction or other transaction that is designed to or reasonably expected to lead to or result in a Disposition during the Lock-Up Period even if the securities would be disposed of by someone other than the undersigned, but is not intended to impose any obligations on the undersigned with respect to any actions by [in Mr. Wynn's agreement: Aruze USA, Inc.] [in Aruze USA, Inc.'s agreement: Stephen A. Wynn], who may share beneficial ownership of the securities in question. "Hedging Transaction" means any swap or other arrangement (including, without limitation, any put or call option) that transfers to another, in whole or in part, any economic consequences of ownership of the Common Stock.

Notwithstanding the foregoing, the undersigned may transfer (a) (i) up to \$200,000 of Common Stock that the undersigned acquires in the Public Offering, the value of which shall be the price at which the undersigned sells such Common Stock; or (ii) shares of Common Stock acquired in open market transactions by the undersigned after the completion of the Public Offering and (b) any or all of the shares of Common Stock or other Company securities if the transfer is (i) by gift, will or

Exhibit A-1

intestacy; (ii) to a member or members of his or her immediate family or to a trust the beneficiaries of which are exclusively the undersigned and/or a member or members of his or her immediate family (for purposes of this paragraph, "immediate family" shall mean a spouse, lineal descendant, father, mother, brother or sister, niece, nephew, mother-in-law, father-in-law, sister-in-law or brother-in-law of the transferor, in each case whether by birth or adoption and including stepchildren); (iii) the purchase by Stephen A. Wynn of Common Stock owned by Aruze USA, Inc. or any transferee thereof, pursuant to the Buy-Sell Agreement, dated as of June 13, 2002, among Stephen A. Wynn, Kazuo Okada, Aruze USA, Inc. and Aruze Corp. and the Agreement, dated as of June 13, 2002 between Stephen A. Wynn and Wynn Resorts, Limited; or (iv) by distribution to partners, members or shareholders of the undersigned; provided, however, that in the case of a transfer pursuant to clause (b) above, it shall be a condition to the transfer that the transferee execute an agreement stating that the transferee is receiving and holding the securities subject to the provisions of this letter agreement.

The undersigned agrees that the Company may, and that the undersigned will, (i) with respect to any shares of Common Stock or other Company securities for which the undersigned is the record holder, cause the transfer agent for the Company to note stop transfer instructions on the transfer books and records of the Company against the transfer of such securities except in compliance with the foregoing restrictions and (ii) with respect to any shares of Common Stock or other Company securities for which the undersigned is the beneficial holder but not the record holder, cause the record holder of such securities to cause the transfer agent for the Company to note stop transfer instructions on the transfer books and records of the Company against the transfer of such securities except in compliance with the foregoing restrictions.

In addition, the undersigned hereby waives any and all notice requirements and rights with respect to registration of securities pursuant to any agreement, understanding or otherwise setting forth the terms of any security of the Company held by the undersigned, including any registration rights agreement to which the undersigned and the Company may be party, provided that such waiver shall apply only to the proposed offering, and any other action taken by the Company in connection with the proposed offering.

The undersigned hereby agrees that, to the extent that the terms of this letter agreement conflict with or are in any way inconsistent with any registration rights agreement to which the undersigned and the Company may be a party, this letter agreement supersedes such registration rights agreement.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this letter agreement. All authority herein conferred or agreed to be conferred shall survive the death or incapacity of the undersigned and any obligations of the undersigned shall be binding upon the heirs, personal representatives, successors and assigns of the undersigned.

Notwithstanding anything herein to the contrary, it is understood that if the Public Offering has not occurred prior to December 31, 2002, or immediately upon written notification from the Company to Deutsche Bank Securities, Inc. that the Company is terminating the Public Offering, this agreement shall automatically terminate and the restrictions contained herein shall be of no further force or effect.

Signature: _____

Print Name: _____

Exhibit A-2

QuickLinks

[WYNN LAS VEGAS, LLC WYNN LAS VEGAS CAPITAL CORP. \\$364,612,000 12.0% Second Mortgage Notes due 2010 UNDERWRITING AGREEMENT SCHEDULE I SCHEDULE OF UNDERWRITERS](#)
[SCHEDULE II Wynn Las Vegas, LLC / Wynn Las Vegas Capital Corp SUMMARY OF TERMS](#)

[SCHEDULE III GUARANTORS](#)

[SCHEDULE IV EXECUTED TRANSACTION DOCUMENTS](#)

[SCHEDULE V CLOSING TRANSACTION DOCUMENTS](#)

[SCHEDULE 1\(b\) SUBSIDIARY OWNERSHIP AND CERTAIN RIGHTS](#)

[SCHEDULE 1\(ee\) NASD AFFILIATIONS](#)

[EXHIBIT A FORM OF LOCKUP AGREEMENT, 2002](#)

WYNN LAS VEGAS, LLC
and
WYNN LAS VEGAS CAPITAL CORP.,
as joint and several obligors

AND

DESERT INN WATER COMPANY, LLC
WYNN DESIGN & DEVELOPMENT, LLC
WYNN RESORTS HOLDINGS, LLC
LAS VEGAS JET, LLC
WORLD TRAVEL, LLC
PALO, LLC,
VALVINO LAMORE, LLC,
and
WYNN RESORTS, LIMITED
as guarantors

12.0% SECOND MORTGAGE NOTES DUE 2010

INDENTURE

Dated as of October 30, 2002

WELLS FARGO BANK, NATIONAL ASSOCIATION

Trustee

CROSS-REFERENCE TABLE*

| Trust Indenture Act Section | Indenture Section |
|--------------------------------|---------------------|
| 310(a)(1) | 7.10 |
| (a)(2) | 7.10 |
| (a)(3) | N.A. |
| (a)(4) | N.A. |
| (a)(5) | 7.10 |
| (b) | 7.10 |
| (c) | N.A. |
| 311(a) | 7.11 |
| (b) | 7.11 |
| (c) | N.A. |
| 312(a) | 2.05 |
| (b) | 13.03 |
| (c) | 13.03 |
| 313(a) | 7.06 |
| (b)(1) | 10.03 |
| (b)(2) | 7.06; 7.07 |
| (c) | 7.06; 13.02 |
| (d) | 7.06 |
| 314(a) | 4.03; 13.02; 13.05 |
| (b) | 10.02 |
| (c)(1) | 13.04 |
| (c)(2) | 13.04 |
| (c)(3) | N.A. |
| (d) | 10.03, 10.04, 10.05 |

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|-----------------------|------------|
| (e) | 13.05 |
| (f) | N.A. |
| 315(a) | 7.01 |
| (b) | 7.05,13.02 |
| (c) | 7.01 |
| (d) | 7.01 |
| (e) | 6.11 |
| 316(a)(last sentence) | 2.09 |
| (a)(1)(A) | 6.05 |
| (a)(1)(B) | 6.04 |
| (a)(2) | N.A. |
| (b) | 6.07 |
| (c) | 2.12 |
| 317(a)(1) | 6.08 |
| (a)(2) | 6.09 |
| (b) | 2.04 |
| 318(a) | 13.01 |
| (b) | N.A. |
| (c) | 13.01 |

N.A. means not applicable.

* This Cross Reference Table is not part of the Indenture.

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EXHIBITS

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INDENTURE dated as of October 30, 2002 among Wynn Las Vegas, LLC, a Nevada limited liability company ("*Wynn Las Vegas*") and Wynn Las Vegas Capital Corp., a Nevada corporation ("*Wynn Capital*," and together with Wynn Las Vegas, the "*Issuers*"), as joint and several obligors, and Desert Inn Water Company, LLC, a Nevada limited liability company, Wynn Design & Development, LLC, a Nevada limited liability company, Wynn Resorts Holdings, LLC, a Nevada limited liability company, Las Vegas Jet, LLC, a Nevada limited liability company, World Travel, LLC, a Nevada limited liability company, Palo, LLC, a Delaware limited liability company, Valvino Lamore, LLC, a Nevada limited liability company, and Wynn Resorts, Limited, a Nevada corporation, as guarantors (the "*Initial Guarantors*") and Wells Fargo Bank, National Association, as trustee (the "*Trustee*").

The Issuers, the Initial Guarantors and the Trustee agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders (as defined) of the 12.0% Second Mortgage Notes due 2010 (the "*Notes*"):

ARTICLE 1.
DEFINITIONS AND INCORPORATION
BY REFERENCE

Section 1.01 *Definitions.*

"*Acquired Debt*" means, with respect to any specified Person:

(1) Indebtedness of any other Person existing at the time such other Person is merged with or into or became a Subsidiary of such specified Person, whether or not such Indebtedness is incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming a Subsidiary of, such specified Person; and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

"*Additional Notes*" means up to \$100.0 million aggregate principal amount of Additional Notes (other than the Initial Notes) issued under this Indenture in accordance with Section 2.02 hereof, as part of the same series as the Initial Notes. Any Additional Notes shall vote on all matters as one class with the Notes being issued on the date hereof, including, without limitation, waivers, amendments and redemptions.

"*Affiliate*" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control," as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise; *provided* that beneficial ownership of 10% or more of the Voting Stock of a Person shall be deemed to be control. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" shall have correlative meanings.

"*Affiliate Agreements*" means:

- (1) the Management Agreement,
- (2) the Water Show Entertainment Production Agreement,
- (3) the Project Lease and Easement Agreements,
- (4) the Water Supply Agreement,
- (5) the Art Rental and Licensing Agreement,
- (6) the Wynn Employment Agreement,

-
- (7) the Wynn Design Agreement, and
 - (8) the Tax Indemnification Agreement,

in each case as amended, modified or otherwise supplemented from time to time in accordance with Section 4.28 hereof.

"*Agent*" means any Registrar, Paying Agent or additional paying agent.

"*Aircraft Assets*" means (1) the Existing Aircraft and the Replacement Aircraft, in each case, together with the products and proceeds thereof, and (2) the Aircraft Note.

"*Aircraft Note*" means:

- (1) the promissory note dated as of the date of the Indenture issued by World Travel, LLC in favor of Wynn Las Vegas in an original principal amount of approximately \$38.0 million, or

(2) following the sale by World Travel, LLC or the Aircraft Trustee of the Existing Aircraft, a replacement promissory note in substantially the form of the promissory note described in clause (1) of this definition issued by World Travel, LLC in favor of Wynn Las Vegas in an aggregate principal amount not to exceed the sum of:

(a) the principal amount of the promissory note described in clause (1) of this definition outstanding on the date on which the Existing Aircraft is sold by World Travel, LLC or the Aircraft Trustee, and

(b) the lesser of (i) \$10.0 million and (ii) the amount of additional Indebtedness incurred on the Aircraft Refinancing Date pursuant to Section 4.09(b)(7) hereof, the proceeds of which are used solely to repay Replacement Aircraft Indebtedness.

"*Aircraft Refinancing Date*" means the date on which the net proceeds of the sale of the Existing Aircraft and up to \$10.0 million of borrowings under the FF&E Facility are applied to repay Replacement Aircraft Indebtedness.

"*Aircraft Trustee*" means Well Fargo Bank, National Association, not in its individual capacity, but solely as trustee under a trust agreement in favor of World Travel, LLC, and any successor or replacement trustee, including any trust holding ownership of the Replacement Aircraft.

"*Allocable Overhead*" means, at any time, an amount equal to (1) the amount of reasonable corporate or other organizational overhead expenses of, and actually incurred by, Wynn Resorts and its Subsidiaries (other than the Issuers) calculated in good faith on a consolidated basis, after the elimination of intercompany transactions, in accordance with GAAP, divided by (2) the number of gaming and/or hotel projects of Wynn Resorts and its Subsidiaries which are operating or for which the financing for the development, construction and opening thereof has been obtained; *provided* that amounts allocated to any Project shall be prorated based on the period within such period that such Project was in operation or financing therefor was obtained. For purposes of this definition, the Project and the Macau Project shall each count as separate projects. In addition, any such amounts that are applied in connection with the Phase II Land or the Golf Course Land shall be applied in accordance with Sections 4.22 and 4.23 hereof, respectively. Any amounts payable pursuant to the Affiliate Agreements or any agreements entered into by and among Wynn Resorts, any of its Subsidiaries and/or any of their respective Affiliates, Allocable Overhead shall not include any fee, profit or similar component and shall represent only the payment or reimbursement of actual costs and expenses. The amount of Allocable Overhead payable during any 12-month period shall not exceed, in the aggregate, the greater of:

(1) \$21.5 million, and

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(2) if the Consolidated Leverage Ratio of the Issuers and their Restricted Subsidiaries for the period of four full consecutive fiscal quarters of Wynn Las Vegas ending immediately prior to the commencement of such 12-month period is 3.5 to 1.0 or less, 1.29% of Net Revenues of Wynn Las Vegas and its Restricted Subsidiaries for such period of four full consecutive fiscal quarters.

"*Applicable Procedures*" means, with respect to any transfer or exchange of or for beneficial interests in any Global Note, the rules and procedures of the Depository that apply to such transfer or exchange.

"*Art Rental and Licensing Agreement*" means the Second Amended and Restated Art Rental and Licensing Agreement, dated September 18, 2002, by and between Stephen A. Wynn and Wynn Resorts Holdings, as amended, modified or otherwise supplemented from time to time in accordance with Section 4.28 hereof.

"*Aruze Corp.*" means Aruze Corp., a Japanese public corporation.

"*Aruze USA*" means Aruze USA, Inc., a Nevada corporation.

"*Asset Sale*" means:

(1) the sale, lease, conveyance or other disposition of any assets; and

(2) the issuance of Equity Interests by either Issuer, any Restricted Entity or any of their respective Restricted Subsidiaries or the sale of Equity Interests in either Issuer, any Restricted Entity or any of their respective Subsidiaries.

Notwithstanding the preceding, the sale, conveyance or other disposition of all or substantially all of the assets of Wynn Las Vegas, the Restricted Entities and their respective Restricted Subsidiaries, taken as a whole, or Wynn Las Vegas and its Restricted Subsidiaries, taken as a whole, shall be governed by Sections 4.15 and 5.01 hereof and not by Section 4.10 hereof.

In addition, none of the following items shall be deemed to be an Asset Sale (except for purposes of the definition of "Consolidated Cash Flow"):

(1) any single transaction or series of related transactions that involves assets having a fair market value of less than \$1.0 million;

(2) the sale, lease, conveyance or other disposition of any assets (excluding any transfer of assets from a Person that is a Guarantor to a Person, other than Wynn Las Vegas, that is not a Guarantor):

(a) to Wynn Las Vegas and/or its Restricted Subsidiaries,

(b) between Wynn Resorts Holdings and Valvino Lamore, excluding a transfer of any or all of the Golf Course Land or any related Water Rights, unless such Golf Course Land is then a Released Asset,

(c) by (i) any Restricted Entity or any Restricted Subsidiary of a Restricted Entity, that, in each case, is not a Guarantor to (ii) any Restricted Entity or any Restricted Subsidiary of a Restricted Entity that, in each case, is a Guarantor, or

(d) by any Wynn Group Entity to any Restricted Entity;

(3) the Water Rights Transfer;

- (4) an issuance of Equity Interests by Wynn Las Vegas or any Restricted Entity or any of their respective Restricted Subsidiaries to a Guarantor;
- (5) the sale, lease or exchange of equipment, inventory, accounts receivable or other assets in the ordinary course of business;

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- (6) the disposition of obsolete, damaged or worn-out property that is no longer necessary for the conduct of the business of Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries;
- (7) the sale or other disposition of cash or Cash Equivalents;
- (8) a Restricted Payment or Permitted Investment that is permitted under Section 4.07 hereof;
- (9) like-kind exchanges of personal property if the fair market value of the personal property transferred by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries in such exchanges does not exceed \$10.0 million in the aggregate in any calendar year;
- (10) a dedication of space within the Project as necessary for the development of the Project and as permitted by the Collateral Documents;
- (11) licenses of patents, trademarks and other intellectual property rights granted by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries in the ordinary course of business and not interfering in any material respect with the ordinary conduct of the business of such Person;
- (12) the transfer or sale or disposition of any Released Assets or Aircraft Assets;
- (13) a transfer of assets between or among Wynn Las Vegas, the Restricted Entities and their respective Restricted Subsidiaries pursuant to any Affiliate Agreement, as in effect on the date of this Indenture;
- (14) the granting, creation or existence of a Permitted Lien and dispositions of assets pursuant to an exercise of remedies, including by way of foreclosure, against the underlying assets subject to such Permitted Liens, under circumstances not otherwise resulting in Defaults or Events of Default, so long as the net proceeds, if any, of any such disposition received by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries shall be treated as if they were Net Proceeds of an Asset Sale and applied in accordance with Section 4.10 hereof; and
- (15) Government Transfers or Permitted Liens of the type described in clause (12) of the definition of Permitted Liens, so long as the net proceeds, if any, of any such disposition received by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries in respect thereof shall be treated as if they were Net Proceeds of an Asset Sale and applied in accordance with Section 4.10 hereof.

"*Attributable Debt*" in respect of a sale and leaseback transaction means, at the time of determination, the present value of the obligation of the lessee for net rental payments during the remaining term of the lease included in such sale and leaseback transaction including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP.

"*Bankruptcy Law*" means Title 11, U.S. Code or any similar federal or state law for the relief of debtors.

"*Beneficial Owner*" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" shall be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition. The terms "Beneficially Owns" and "Beneficially Owned" have a corresponding meaning.

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"*Budgeted Overhead Final Payment Date*" means the date on which the final payments in respect of corporate or other organizational overhead expenses of Wynn Resorts and its Subsidiaries included in the Project Budget are disbursed pursuant to the Disbursement Agreement.

"*Board of Directors*" means:

- (1) with respect to a corporation, the board of directors of the corporation;
- (2) with respect to a partnership, the board of directors of the general partner of the partnership;
- (3) with respect to a limited liability company, the board of directors of the single member or the managing member of such limited liability company, as applicable, or in the case of a manager-managed limited liability company, the board of directors of such manager; and
- (4) with respect to any other Person, the board or committee of such Person serving a similar function.

"*Business Day*" means any day other than a Legal Holiday.

"*Buy-Sell Agreement*" means the Buy-Sell Agreement, dated as of June 13, 2002, among Stephen A. Wynn, Kazuo Okada, Aruze USA and Aruze Corp.

"*Capital Lease Obligation*" means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet in accordance with GAAP.

"Capital Stock" means:

- (1) in the case of a corporation, corporate stock;
- (2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (4) any other interests or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

"Cash Equivalents" means:

- (1) United States dollars;
- (2) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (as long as the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than six months from the date of acquisition;
- (3) interest-bearing demand or time deposits (which may be represented by certificates of deposit) issued by banks having general obligations rated (on the date of acquisition thereof) at least "A" or the equivalent by S&P or Moody's or, if not so rated, secured at all times, in the manner and to the extent provided by law, by collateral security in clause (1) or (2) of this definition, of a market value of no less than the amount of monies so invested;
- (4) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (2) and (3) above entered into with any financial institution meeting the qualifications specified in clause (3) above;

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- (5) commercial paper having the highest rating obtainable from Moody's or S&P and in each case maturing within six months after the date of acquisition;
 - (6) money market funds or mutual funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (1) through (5) of this definition; and
 - (7) to the extent not permitted in clauses (1) through (6) of this definition, Permitted Securities.

"Change of Control" means the occurrence of any of the following:

- (1) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of Wynn Las Vegas, the Restricted Entities and their respective Restricted Subsidiaries, taken as a whole, or of Wynn Las Vegas and its Restricted Subsidiaries, taken as a whole, to any "person" (as that term is used in Section 13(d)(3) of the Exchange Act), other than to the Principal or a Related Party of the Principal;
- (2) the adoption of a plan relating to the liquidation or dissolution of either Issuer or any successor thereto;
- (3) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that:
 - (a) any "person" (as defined in clause (1) above), other than the Principal and any of his Related Parties becomes the Beneficial Owner, directly or indirectly, of more than 50% of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than number of equity interests,
 - (b) any "person" (as defined in clause (1) above) (other than Kazuo Okada, Aruze USA and Aruze Corp., so long as (i) the Stockholders Agreement, as in effect on the date of this Indenture, remains in full force and effect, (ii) a majority of the Board of Directors is constituted of Persons named on any slate of directors chosen by the Principal and Aruze USA pursuant to the Stockholders Agreement, as in effect on the date of this Indenture, and (iii) Kazuo Okada and his Related Parties either (A) "control" (as that term is used in Rule 405 under the Securities Act) Aruze Corp. and Aruze USA or (B) otherwise remain the direct or indirect Beneficial Owners of the Voting Stock of Wynn Resorts held by Aruze Corp.) becomes the Beneficial Owner, directly or indirectly, of a greater percentage of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than number of equity interests, than is at that time Beneficially Owned by the Principal and his Related Parties as a group,
 - (c) the Principal and his Related Parties as a group own less than 20% of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than number of equity interests (excluding, for purposes of calculating the outstanding Voting Stock of Wynn Resorts pursuant to this clause 3(c), shares of Voting Stock issued in a primary issuance by Wynn Resorts in one or more bona fide public offerings of additional Voting Stock of Wynn Resorts (other than the IPO)), or
 - (d) the Principal and his Related Parties as a group own less than 10% of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than number of Equity Interests;

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(4) the first day on which the Principal does not act as either the Chairman of the Board of Directors or the Chief Executive Officer of Wynn Resorts, other than (1) as a result of death or disability or (2) if the Board of Directors of Wynn Resorts, exercising their fiduciary duties in good faith, removes or fails to re-appoint the Principal as Chairman of the Board of Directors or Chief Executive Officer of Wynn Resorts;

(5) the first day on which a majority of the members of the respective Boards of Directors of Wynn Resorts or Wynn Las Vegas are not Continuing Directors;

(6) the first day on which Wynn Resorts ceases to own, directly or indirectly, 100% of the outstanding Equity Interests of Wynn Las Vegas; or

(7) Wynn Resorts consolidates with, or merges with or into, any Person or sells, assigns, conveys, transfers, leases or otherwise disposes of all or substantially all of its assets to any Person, or any Person consolidates with, or merges with or into, Wynn Resorts, in any such event pursuant to a transaction in which any of the outstanding Voting Stock of Wynn Resorts is converted into or exchanged for cash, securities or other property, other than any such transaction where the Voting Stock of Wynn Resorts outstanding immediately prior to such transaction is converted into or exchanged for Voting Stock (other than Disqualified Stock) of the surviving or transferee Person constituting a majority of the outstanding shares of such Voting Stock of such surviving or transferee Person (immediately after giving effect to such issuance).

Notwithstanding the above, a Change of Control shall not occur solely by reason of a Permitted C-Corp. Conversion.

"Code" means the Internal Revenue Code of 1986, as amended.

"Collateral" means all assets, now owned or hereafter acquired, of either Issuer, any Guarantor, any Restricted Entity, any Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity, or any other Person (including, if applicable, Wynn Resorts), to the extent such assets are pledged or assigned or purport to be pledged or assigned, or are required to be pledged or assigned under this Indenture or the Collateral Documents to the Trustee, including, the Exclusive Note Collateral, the Primary Note Collateral and the FF&E Collateral, together with the proceeds and products thereof (including, without limitation, the proceeds of Asset Sales).

"Collateral Documents" means:

- (1) the Completion Guarantee,
- (2) the Deeds of Trust,
- (3) the Disbursement Agreement,
- (4) the Guarantee and Collateral Agreements,
- (5) the Intellectual Property Security Agreements,
- (6) the Intercreditor Agreements,
- (7) the Parent Guarantee,
- (8) the Parent Security Agreement, if any,
- (9) the Secured Account Agreement,
- (10) the Management Fees Subordination Agreement, and

(11) instruments, documents, pledges or filings that create, evidence, perfect, set forth, consent to, acknowledge or limit the security interest of the Trustee in the Collateral,

in each case, as amended, modified or otherwise supplemented from time to time in accordance with their respective terms and with this Indenture and the Collateral Documents.

"Completion" has the meaning given such term in the Disbursement Agreement.

"Completion Date" means the date on which Completion occurs.

"Completion Guarantee" means the Completion Guarantee, dated as of the date of this Indenture, by the Completion Guarantor in favor of the Trustee.

"Completion Guarantee Release Date" means the date on which the Completion Guarantee Release Conditions are satisfied.

"Completion Guarantee Release Conditions" has the meaning given the term "Completion Guaranty Release Conditions" in the Disbursement Agreement.

"Completion Guarantee Capital Contribution" means the common equity capital contribution by Wynn Resorts to the Completion Guarantor of \$50.0 million in cash of the net proceeds of the IPO to support the Completion Guarantor's obligations under the Completion Guarantee.

"Completion Guarantee Deposit Account" means the account into which the Completion Guarantee Capital Contribution is required to be made pursuant to the Disbursement Agreement.

"Completion Guarantor" means Wynn Completion Guarantor, LLC, a Nevada limited liability company and a Wholly Owned Subsidiary of Wynn Las Vegas.

"Consolidated Cash Flow" means, with respect to any specified Person for any period, the Consolidated Net Income of such Person for such period *plus*:

- (1) an amount equal to any extraordinary loss plus any net loss realized by such Person or any of its Restricted Subsidiaries in connection with an Asset Sale, to the extent such losses were deducted in computing such Consolidated Net Income; *plus*
- (2) provision for taxes based on income or profits or the Tax Amount of such Person and its Restricted Subsidiaries for such period, to the extent that such provision for taxes or Tax Amount was included in computing such Consolidated Net Income; *plus*
- (3) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, whether paid or accrued and whether or not capitalized (including, without limitation, amortization of debt issuance costs and original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, imputed interest with respect to Attributable Debt, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers' acceptance financings, and net of the effect of all payments made or received pursuant to Hedging Obligations), to the extent that any such expense was deducted in computing such Consolidated Net Income; *plus*
- (4) depreciation, amortization (including amortization of goodwill and other intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period), and other non-cash expenses (excluding any such non-cash expense to the extent that it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense) of such Person and its Restricted Subsidiaries for such period to the extent that such depreciation, amortization and other non-cash expenses were deducted in computing such Consolidated Net Income; *plus*
- (5) any pre-opening expenses, to the extent such pre-opening expenses were deducted in calculating Consolidated Net Income on a consolidated basis; *plus*

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(6) non-cash items reducing Consolidated Net Income for such period, *minus*

(7) non-cash items increasing such Consolidated Net Income for such period, other than the accrual of revenue in the ordinary course of business,

in each case, on a consolidated basis and determined in accordance with GAAP.

Notwithstanding the preceding, the provision for taxes based on the income or profits of, and the depreciation and amortization and other non-cash expenses of, a Restricted Subsidiary of Wynn Las Vegas shall be added to Consolidated Net Income to compute Consolidated Cash Flow of Wynn Las Vegas only to the extent that a corresponding amount would be permitted at the date of determination to be distributed to Wynn Las Vegas by such Restricted Subsidiary without prior governmental approval that has not been obtained, and without direct or indirect restriction pursuant to the terms of its charter and all agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to that Subsidiary or its equity holders.

"Consolidated EBITDA" has the meaning given such term in the Credit Agreement, as in effect on the date of the Indenture.

"Consolidated Leverage Ratio" means as at the last day of any period of four consecutive fiscal quarters, the ratio of (a) Consolidated Total Debt on such day to (b) Consolidated EBITDA of Wynn Las Vegas and its Subsidiaries for such period.

"Consolidated Member" means a corporation, other than the common parent, that is a member of an affiliated group (as defined in Section 1504 of the Code) of which Wynn Resorts, any Restricted Entity or any Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity is the common parent.

"Consolidated Net Income" means, with respect to any specified Person for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP; *provided that*:

- (1) the Net Income (but not loss) of any Person that is not a Subsidiary or that is accounted for by the equity method of accounting shall be included only to the extent of the amount of dividends or distributions paid in cash to the specified Person or a Wholly Owned Restricted Subsidiary of such Person;
- (2) the Net Income of any Restricted Subsidiary shall be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that Net Income is not at the date of determination permitted without any prior governmental approval (that has not been obtained) or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its equity holders;
- (3) the Net Income of any Person acquired in a pooling of interests transaction for any period prior to the date of such acquisition shall be excluded;
- (4) the Net Income of any Unrestricted Subsidiary shall be excluded, whether or not distributed to the specified Person or one of its Subsidiaries; and
- (5) the cumulative effect of a change in accounting principles shall be excluded.

"Consolidated Net Worth" means, with respect to any specified Person as of any date, the sum of:

- (1) the consolidated equity of the common stockholders of such Person and its consolidated Restricted Subsidiaries as of such date; *plus*
- (2) the respective amounts reported on such Person's balance sheet as of such date with respect to any series of preferred equity (other than Disqualified Stock) that by its terms is not

entitled to the payment of dividends unless such dividends may be declared and paid only out of net earnings in respect of the year of such declaration and payment, but only to the extent of any cash received by such Person upon issuance of such preferred equity.

"*Consolidated Total Debt*" means at any date, the aggregate principal amount of all indebtedness of Wynn Las Vegas and its Subsidiaries at such date, determined on a consolidated basis in accordance with GAAP.

"*Construction Consultant*" means Inspection & Valuation International, Inc., or any other construction consultant designated under the Disbursement Agreement.

"*Construction Contract*" means the Agreement for Guaranteed Maximum Price Construction Services for Le Rêve, dated as of June 4, 2002, between Wynn Las Vegas and the General Contractor, as amended, modified or otherwise supplemented from time to time in accordance with Section 4.28 hereof.

"*Construction Contract Guarantee*" means the Construction Contract Guarantee, dated as of the date of this Indenture, by the Construction Contract Guarantor in favor of the Trustee, as amended, modified or otherwise supplemented from time to time in accordance with Section 4.28 hereof.

"*Construction Contract Guarantor*" means Austi, Inc., a Nevada corporation.

"*Continuing Directors*" means, as of any date of determination, with respect to any Person, any member of the Board of Directors of such Person who:

(1) was a member of such Board of Directors on the date hereof;

(2) was nominated for election or elected to such Board of Directors with the approval of a majority of the Continuing Directors who were members of such Board at the time of such nomination or election; or

(3) or, in the case of a limited liability company, was nominated by the direct or indirect Board of Directors of its managing member or sole member.

"*Corporate Trust Office of the Trustee*" means the address of the Trustee specified in Section 13.02 hereof or such other address as to which the Trustee may give notice to the Issuers.

"*Credit Agreement*" means the Credit Agreement, dated as of the date of this Indenture, by and among Wynn Las Vegas, the lenders party thereto, Deutsche Bank Securities Inc., as lead arranger and joint book running manager, Deutsche Bank Trust Company Americas, as administrative agent and swing line lender, Banc of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York and Grand Caymen Branches, as arranger and joint documentation agent, and JP Morgan Chase Bank, as joint documentation agent, including any related notes, guarantees, collateral documents, instruments and agreements executed in connection therewith, and in each case (1) as amended, supplemented, amended and restated or otherwise modified from time to time, or (2) as renewed, refunded, replaced or refinanced from time to time, whether with the same or different lenders or holders.

"*Custodian*" means the Trustee, as custodian.

"*Dealership Lease Agreement*" means the Dealership Lease Agreement, dated as of the date of this Indenture, between Wynn Las Vegas, as lessor, and Kevyn, LLC, as lessee, with respect to the lease of space at the Project for the development and operation of a Ferrari and Maserati automobile dealership, as amended, modified or otherwise supplemented from time to time in accordance with Section 4.28 hereof.

"*Deeds of Trust*" means the deeds of trust entered into by the Issuers, the Guarantors and, if applicable, Wynn Resorts, from time to time in accordance with the provisions of this Indenture and the Collateral Documents.

"*Default*" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

"*Definitive Note*" means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.06 hereof, substantially in the form of Exhibit A hereto except that such Note shall not bear the Global Note Legend and shall not have the "Schedule of Exchanges of Interest in the Global Note" attached thereto.

"*Depository*" means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.03 hereof as the Depository with respect to the Notes, and any and all successors thereto appointed as depository hereunder and having become such pursuant to the applicable provision of this Indenture.

"*Desert Inn Improvement Co.*" means Desert Inn Improvement Co., a Nevada corporation.

"*Desert Inn Water Company*" means Desert Inn Water Company, LLC, a Nevada limited liability company.

"*Designated Officer*" means, with respect to any Person, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Vice-President of such Person.

"*Design Build Contract*" means the Design Build Agreement, effective as of June 6, 2002, by and between Wynn Las Vegas and Bomel Construction Company, Inc., as amended, modified or otherwise supplemented from time to time in accordance with Section 4.28 hereof.

"*DIIC Casino Water Permit*" means the permit identified as of the date of this Indenture as Permit No. 13393 (Cert. 4731) as shown in the records of the State of Nevada, Division of Water Resources, in Carson City, Nevada (and any successor or replacement permit thereto).

"*DIIC Water Permits*" means, collectively, the permits identified as of the date of this Indenture as Permit No. 13393 (Cert. 4731), Permit No. 16938 (Cert. 4765), Permit No. 16939 (Cert. 4766), Permit No. 24558 (Cert. 7828), Permit No. 24560 (Cert. 7827), Permit No. 24561 (Cert. 7829), and Permit No. 25223 (Cert. 7830), in each case as shown in the records of the State of Nevada, Division of Water Resources, in Carson City, Nevada (and any successor or replacement thereto).

"*DIIC Water Transfer*" means a transfer by Desert Inn Improvement Co. at no cost and in accordance with all requirements of law and pursuant to all necessary consents of Governmental Authorities (including, if applicable, the Nevada Public Utilities Commission and the State of Nevada, Division of Water Resources) of (1) the fee ownership of the Water Utility Land to Wynn Resorts Holdings and (2) the DIIC Water Permits to (a) in the case of the DIIC Casino Water Permit, Wynn Las Vegas and (b) in the case of all other DIIC Water Permits, Wynn Resorts Holdings.

"*Disbursement Agent*" means Deutsche Bank Trust Company Americas, in its capacity as the disbursement agent under the Disbursement Agreement and its successors in such capacity pursuant to the Disbursement Agreement.

"*Disbursement Agreement*" means the Master Disbursement Agreement, dated as of the date of this Indenture, among Wynn Las Vegas, Wynn Capital, Wynn Design, the Trustee, a representative of the lenders under the Credit Agreement, a representative of the lenders under the FF&E Facility and the Disbursement Agent in connection with the Project, as amended, modified or otherwise supplemented from time to time in accordance with its terms.

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"*Disqualified Stock*" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the date on which the Notes mature. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale shall not constitute Disqualified Stock if the terms of such Capital Stock provide that Wynn Las Vegas, such Restricted Entity or such Restricted Subsidiary may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with Section 4.07 hereof.

"*Driving Range Lease*" means the lease, dated as of the date of this Indenture, between Valvino Lamore, as lessor, and Wynn Las Vegas, as lessee, with respect to the lease of land on which the driving range for the Golf Course shall be located, as amended, modified or otherwise supplemented from time to time in accordance with Section 4.28 hereof.

"*Entertainment Facility*" means a showroom or entertainment facility adjoining the Le Rêve hotel on the Project and connected directly to such hotel.

"*Equity Interests*" means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

"*Event of Loss*" means, with respect to any property or asset (tangible or intangible, real or personal), whether in respect of a single event or a series of related events, any of the following:

(1) any loss, destruction or damage of such property or asset;

(2) any actual condemnation, seizure or taking by exercise of the power of eminent domain or otherwise of such property or asset, or confiscation of such property or asset or the requisition of the use of such property or asset; or

(3) any settlement in lieu of clause (2) above.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended.

"*Excluded Project Assets*" means (1) any Equity Interests held by Wynn Resorts, other than Equity Interests in Valvino Lamore or any other Restricted Entity and (2) the Released Assets.

"*Exclusive Note Collateral*" means the net proceeds of the offering of the Notes, which are required, under the Disbursement Agreement, to be deposited into the Secured Account.

"*Existing Aircraft*" means the Bombardier Global Express aircraft (manufacturer's serial number 9065 and United States Registration No. N711SW (formerly N789TP)) owned by a trust of which World Travel, LLC is the beneficial interest holder.

"*Existing Stockholders*" means Stephen A. Wynn, Aruze, USA, Inc., Baron Asset Fund and the Kenneth R. Wynn Family Trust dated February 20, 1985.

"*FF&E*" means furniture, fixtures or equipment used in the ordinary course of the business of Wynn Las Vegas and its Restricted Subsidiaries.

"*FF&E Collateral*" means all assets, now owned or hereafter acquired, of either Issuer, any Guarantor or any other Person, to the extent such assets are pledged or assigned or purport to be pledged or assigned, or are required to be pledged or assigned, on a first lien priority basis, under the FF&E Facility or the related collateral documents to the lenders under the FF&E Facility, or a

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representative on their behalf, as security for the obligations under the FF&E Facility, together with the proceeds and products thereof, *excluding* the Aircraft Assets.

"*FF&E Facility*" means the Loan Agreement, dated as of the date of this Indenture, by and among Wynn Las Vegas, Wells Fargo Bank Nevada, National Association, a national banking association, as collateral agent, and the lenders party thereto, including any related notes, guarantees, collateral documents, instruments and agreements executed in connection therewith, and in each case (1) as amended, supplemented or otherwise modified from time to time, or (2) as renewed, refunded, replaced or refinanced from time to time in accordance with this Indenture.

"*FF&E Financing*" means the incurrence of Indebtedness, the proceeds of which are used solely to finance the acquisition by Wynn Las Vegas or any of its Restricted Subsidiaries of, or entry into a capital lease by Wynn Las Vegas or any of its Restricted Subsidiaries with respect to, FF&E.

"*FF&E Intercreditor Agreement*" means the Intercreditor Agreement, dated as of the date of this Indenture, among the Trustee, a representative of the lenders under the Credit Agreement and a representative of the lenders under the FF&E Facility, as amended, modified or otherwise supplemented from time to time in accordance with its terms.

"*Final Completion*" has the meaning given such term in the Disbursement Agreement.

"*Final Completion Date*" means the date on which Final Completion occurs.

"*Fixed Charge Coverage Ratio*" means with respect to any specified Person for any period, the ratio of the Consolidated Cash Flow of such Person and its Restricted Subsidiaries for such period to the Fixed Charges of such Person for such period. In the event that the specified Person or any of its Restricted Subsidiaries incurs, assumes, Guarantees, repays, repurchases or redeems any Indebtedness (other than ordinary working capital borrowings) or issues, repurchases or redeems preferred equity subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated and on or prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio is made (the "*Calculation Date*"), then the Fixed Charge Coverage Ratio shall be calculated giving pro forma effect to such incurrence, assumption, Guarantee, repayment, repurchase or redemption of Indebtedness, or such issuance, repurchase or redemption of preferred equity, and the use of the proceeds therefrom as if the same had occurred at the beginning of the applicable four-quarter reference period.

In addition, for purposes of calculating the Fixed Charge Coverage Ratio:

(1) acquisitions that have been made by the specified Person or any of its Restricted Subsidiaries, including through mergers or consolidations and including any related financing transactions, during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date shall be given pro forma effect as if they had occurred on the first day of the four-quarter reference period and Consolidated Cash Flow for such reference period shall be calculated on a pro forma basis in accordance with Regulation S-X under the Securities Act, but without giving effect to clause (3) of the proviso set forth in the definition of Consolidated Net Income;

(2) the Consolidated Cash Flow attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses disposed of prior to the Calculation Date, shall be excluded; and

(3) the Fixed Charges attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses disposed of prior to the Calculation Date, shall be excluded, but only to the extent that the obligations giving rise to such Fixed Charges shall not be obligations of the specified Person or any of its Restricted Subsidiaries following the Calculation Date.

"*Fixed Charges*" means, with respect to any specified Person for any period, the sum, without duplication, of:

(1) the consolidated interest expense of such Person and its Restricted Subsidiaries for such period (excluding amortization of debt issuance costs), whether paid or accrued, including, without limitation, original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, imputed interest with respect to Attributable Debt, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers' acceptance financings, and net of the effect of all payments made or received pursuant to Hedging Obligations; *plus*

(2) the consolidated interest of such Person and its Restricted Subsidiaries that was capitalized during such period; *plus*

(3) any interest expense on Indebtedness of another Person that is Guaranteed by such Person or one of its Restricted Subsidiaries or secured by a Lien on assets of such Person or one of its Restricted Subsidiaries, whether or not such Guarantee or Lien is called upon; *plus*

(4) the product of (a) all cash dividend payments or other cash distributions (and non-cash dividend payments in the case of a Person that is a Restricted Subsidiary) on any series of preferred equity of such Person, times (b) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined federal, state and local statutory tax rate of such Person (or, in the case of a Person that is a partnership or a limited liability company, the combined federal, state and local income tax rate that was or would have been utilized to calculate the Tax Amount of such Person), expressed as a decimal, in each case, on a consolidated basis and in accordance with GAAP.

"*GAAP*" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect from time to time.

"*Gaming Authority*" means any agency, authority, board, bureau, commission, department, office or instrumentality of any nature whatsoever of the United States federal government, any foreign government, any state, province or city or other political subdivision or otherwise, whether now or hereafter in existence, including the Nevada Gaming Commission, the Nevada State Gaming Control Board, the Clark County Liquor and Gaming Licensing Board and any other applicable gaming regulatory authority or agency, in each case, with authority to regulate any gaming operation (or proposed gaming operation) owned, managed or operated by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries.

"*Gaming Facility*" means any building or other structure used or expected to be used to enclose space in which a gaming operation is conducted and (1) is wholly or partially owned, directly or indirectly, by Wynn Las Vegas or any Restricted Subsidiary of Wynn Las Vegas or (2) any portion or aspect of which is managed or used (pursuant to the Management Agreement or otherwise), or expected to be managed or used (pursuant to the Management Agreement or otherwise), by Wynn Las Vegas or a Restricted Subsidiary of Wynn Las Vegas.

"*Gaming Law*" means the gaming laws, rules, regulations or ordinances of any jurisdiction or jurisdictions to which Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries is, or may be at any time after the date of this Indenture, subject.

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"*Gaming License*" means any license, permit, franchise or other authorization from any Gaming Authority necessary on the date of this Indenture or at any time thereafter to own, lease, operate or otherwise conduct the gaming business of Wynn Las Vegas or any of its Restricted Subsidiaries.

"*Gaming Redemption Indebtedness*" means Indebtedness of Wynn Resorts incurred solely to finance the repurchase by Wynn Resorts of Equity Interests or Indebtedness of Wynn Resorts (other than Equity Interests held by or Indebtedness owed to the Existing Stockholders) to the extent required by any Gaming Authority having jurisdiction over Wynn Las Vegas or any of its Restricted Subsidiaries for not more than the fair market value thereof in order to avoid the suspension, revocation or denial of a Gaming License by that Gaming Authority; *provided* that so long as such efforts do not jeopardize any Gaming License, Wynn Resorts and its Subsidiaries shall have diligently attempted to find a third-party purchaser for such Equity Interests or Indebtedness and no third-party purchaser acceptable to the applicable Gaming Authority was willing to purchase such Equity Interests or Indebtedness within a time period acceptable to such Gaming Authority.

"*General Contractor*" means Marnell Corrao Associates, Inc., a Nevada corporation.

"*Global Notes*" means each of the global Notes issued in accordance with Section 2.01 and substantially in the form of Exhibit A attached hereto that, except as otherwise provided in Section 2.01(b) hereof, bear the Global Note Legend and that have the "Schedule of Exchanges of Interests in the Global Note" attached thereto, and that are deposited with or on behalf of and registered in the name of the Depository.

"*Global Note Legend*" means the legend set forth in Section 2.06(e), which is required to be placed on all Global Notes issued under this Indenture.

"*Golf Course*" means the 18-hole championship golf course to be constructed on the Golf Course Land.

"*Golf Course Construction Contract*" means the agreement to be entered into following the date of this Indenture between Wynn Resorts Holdings and/or Wynn Las Vegas and a golf course contractor for the construction of the new Golf Course on the Project Site, as amended, modified or otherwise supplemented from time to time in accordance with the Disbursement Agreement.

"*Golf Course Design Services Agreement*" means that certain Golf Course Design Services Agreement, to which Wynn Las Vegas is a party, as amended, modified or otherwise supplemented from time to time in accordance with Section 4.28 hereof.

"*Golf Course Homes*" means the golf course homes located on the periphery of the Golf Course Land not acquired by Wynn Las Vegas, any Restricted Entity or any of their respective Subsidiaries as of the date of this Indenture.

"*Golf Course Land*" means that portion of the Project Site designated as the Golf Course Land in the Collateral Documents, and described in Exhibit T-4 to the Disbursement Agreement, together with all improvements thereon and all rights appurtenant thereto.

"*Golf Course Lease*" means the Golf Course Lease, dated as of the date of this Indenture, between Wynn Resorts Holdings and Palo, LLC, as lessors, and Wynn Las Vegas, as lessee, with respect to the lease of land on which the Golf Course shall be located, as amended, modified or otherwise supplemented from time to time in accordance with Section 4.28 hereof.

"*Government Securities*" means securities that are:

- (1) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged; or

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- (2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America;

which, in either case, are not callable or redeemable at the option of the issuer thereof, and will include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act of 1933, as amended), as custodian with respect to any such Government Security or a specific payment of principal of or interest on any such Government Security held by such custodian for the account of the holder of such depository receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Security or the specific payment of principal of or interest on the Government Security evidenced by such depository receipt.

"*Government Transfers*" means:

- (1) any seizures, condemnations, confiscations or takings by the power of eminent domain or other similar mandatory actions, in each case by a governmental authority against real property held by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries, or

- (2) any transfers of interests in real property held by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries to any State of Nevada, Clark County or local governmental authority consisting of easements, rights-of-way, dedications, exchanges or swaps or other similar transfers undertaken in the ordinary course of business in furtherance of the development, construction or operation of the Project, so long as: (a) in each

case, the transferring entity receives reasonably equivalent value for the real property transferred, and (b) such transfers, individually and in the aggregate, do not materially interfere with the ordinary course of business or the assets or operations of Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries, or materially detract from the value of the real property subject thereto.

"*Guarantee*" means a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness or other Obligations.

"*Guarantee and Collateral Agreements*" means:

- (1) the Guarantee and Collateral Agreement, dated as of the date of this Indenture, among the Issuers, the Restricted Entities and the Trustee,
- (2) any other guarantee and collateral agreement entered into by either Issuer, any Restricted Entity or any Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity from time to time in accordance with the provisions of this Indenture,

in each case, as amended, modified or otherwise supplemented from time to time in accordance with their respective terms and with this Indenture and the other Collateral Documents.

"*Guarantor*" means each of:

- (1) the Restricted Entities,
- (2) the Restricted Subsidiaries, if any, of Wynn Las Vegas or any Restricted Entity, and
- (3) any other Person (other than the Parent Guarantor) that executes a Note Guarantee (including pursuant to a Guarantee and Collateral Agreement) in accordance with the provisions of this Indenture,

and, except to the extent the applicable Note Guarantee is released in accordance with the applicable provisions of this Indenture, their respective successors and assigns (other than the Issuers); *provided* that a Person shall cease to be a Guarantor following the release of its Note Guarantee as described above under that caption.

"*Hedging Obligations*" means, with respect to any specified Person, the obligations of such Person under:

- (1) interest rate swap agreements, interest rate cap agreements and interest rate collar agreements; and
- (2) other agreements or arrangements designed to protect such Person against fluctuations in interest rates.

"*Holder*" means any registered holder, from time to time, of the Notes. Only registered holders shall have any rights under this Indenture.

"*Home Site Land*" means a tract of land (not to exceed 20 acres) located on the Golf Course Land where residential and non-gaming related developments may be built, after the release of the Trustee's Liens (for the benefit of the Holders) thereon in accordance with Section 10.03(c) hereof.

"*Indebtedness*" means, with respect to any specified Person, any indebtedness of such Person, whether or not contingent, but without duplication:

- (1) in respect of borrowed money;
- (2) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof);
- (3) in respect of banker's acceptances;
- (4) representing Capital Lease Obligations;
- (5) representing the balance deferred and unpaid of the purchase price of any property, except any such balance that constitutes an accrued expense or trade payable; or
- (6) representing any Hedging Obligations,

if and to the extent any of the preceding items (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet of the specified Person prepared in accordance with GAAP. In addition, the term "Indebtedness" includes all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed or guaranteed by the specified Person) and, to the extent not otherwise included, the Guarantee by the specified Person of any Indebtedness of any other Person.

The amount of any Indebtedness outstanding as of any date shall be:

- (1) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount;
- (2) the principal amount of the Indebtedness, together with any interest on the Indebtedness that is more than 30 days past due, in the case of any other Indebtedness;
- (3) in the case of a Guarantee of Indebtedness, the maximum amount of the Indebtedness guaranteed under such Guarantee; and

(4) in the case of Indebtedness of others secured by a Lien on any asset of the specified Person, the lesser of:

(a) the face amount of such Indebtedness (plus, in the case of any letter of credit or similar instrument, the amount of any reimbursement obligations in respect thereof), and

(b) the fair market value of the asset(s) subject to such Lien.

"*Indenture*" means this Indenture, as amended or supplemented from time to time.

"*Independent Director*" means, in the case of any Person, a member of the Board of Directors of such Person who:

(1) does not have (and whom the Board of Directors of such Person has affirmatively determined does not have) any material relationship (including, without limitation, any commercial, industrial, banking, consulting, legal, accounting, charitable or familial relationship) with such Person, either directly or indirectly or as a partner, equityholder or officer of an organization that has a relationship with such Person, and

(2) is not the Principal or a Related Party,

For purposes of this definition, no member of the Board of Directors of any Person who is, or who has a Related Party who:

(1) is a former employee of such Person shall be eligible for consideration as an "Independent Director" until the fifth anniversary of the date on which such employment ended,

(2) in the five years prior to the date of determination, has been affiliated with or employed by a present or former auditor of such Person or of any Affiliate of such Person shall be eligible for consideration as an "Independent Director" until the fifth anniversary of the date on which such affiliation or the auditing relationship ended, or

(3) in the five years prior to the date of determination, has been part of an interlocking directorate in which an executive officer of such Person serves on the compensation committee of another Person that employs such board member shall be eligible for consideration as an "Independent Director."

Notwithstanding the preceding, no Person shall be deemed not to be an Independent Director of Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries solely because such Person is a member of the Board of Directors of any direct or indirect parent of Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries.

"*Indirect Participant*" means a Person who holds a beneficial interest in a Global Note through a Participant.

"*Initial Notes*" means the first \$370.0 million aggregate principal amount of Notes issued under this Indenture on the date of this Indenture.

"*Intellectual Property Security Agreements*" means:

(1) the Intellectual Property Security Agreement, dated as of the date of this Indenture, among the Issuers, the Restricted Entities and the Trustee, and

(2) any other intellectual property security agreement entered into by Wynn Resorts, either Issuer, any Restricted Entity or any Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity from time to time in accordance with the provisions of this Indenture,

in each case, as amended, modified or otherwise supplemented from time to time in accordance with their respective terms and with this Indenture and the other Collateral Documents.

"*Intercreditor Agreements*" means:

(1) the Project Lenders Intercreditor Agreement, and

(2) the FF&E Intercreditor Agreement.

"*Investments*" means, with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including Guarantees or other obligations), advances or capital contributions (excluding commission, travel and similar advances to officers and employees made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. If Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries sells or otherwise disposes of any Equity Interests of any Restricted Entity or any direct or indirect Restricted Subsidiary of such selling Person such that, after giving effect to any such sale or disposition, such Person is no longer a Subsidiary of Wynn Las Vegas, such Restricted Entity or any of their respective Restricted Subsidiaries, as the case may be, then Wynn Las Vegas, such Restricted Entity or such Restricted Subsidiary shall be deemed to have made an Investment on the date of any such sale or disposition equal to the fair market value of such selling Person's Investments in such Subsidiary that were not sold or disposed of in an amount determined as provided in Section 4.07 hereof. The acquisition by Wynn Las Vegas, a Restricted Entity or any of their respective Restricted Subsidiaries of a Person that holds an Investment in a third Person shall be deemed to be an Investment by Wynn Las Vegas, that Restricted Entity or that Restricted Subsidiary, as the case may be, in such third Person in an amount equal to the fair market value of the Investments held by the acquired Person in such third Person in an amount determined as provided in Section 4.07 hereof.

"*IPO*" means a bona fide underwritten initial public offering of Wynn Resorts' common stock (other than Disqualified Stock) concurrently with the closing of this offering pursuant to a registration statement that has been declared effective by the SEC.

"*Issuers*" means Wynn Las Vegas and Wynn Capital.

"*Key Project Documents*" means:

- (1) the Affiliate Agreements,
- (2) the Construction Contract,
- (3) the Construction Contract Guarantee,
- (4) the Design/Build Contract,
- (5) upon execution and delivery thereof, the Golf Course Construction Contract,
- (6) each Payment and Performance Bond, and
- (7) all other material agreements, instruments or documents entered into by Wynn Resorts, any Restricted Entity or any Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity that are necessary for the construction, ownership and operation of the Project,

in each case as amended, modified or otherwise supplemented from time to time in accordance with the Disbursement Agreement (or, if Section 4.28 hereof is applicable thereto, as amended, modified or otherwise supplemented in accordance with Section 4.28 hereof).

"*Legal Holiday*" means a Saturday, a Sunday or a day on which banking institutions in the City of New York or at a place of payment are authorized by law, regulation or executive order to remain closed. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place

on the next succeeding day that is not a Legal Holiday, and no interest shall accrue on such payment for the intervening period.

"*Lien*" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction.

"*Liquidity Reserve Account*" means the account into which the Liquidity Reserve Capital Contribution is required to be made pursuant to the Disbursement Agreement.

"*Macau Project*" means the gaming and/or hotel project in Macau contemplated by the Concession Contract for the Operation of Games of Chance or Other Games in Casinos in the Macau Special Administrative Region, dated June 24, 2002, between the Macau Special Administrative Region and Wynn Resorts (Macau), S.A.

"*Management Agreement*" means the Management Agreement dated as of the date of this Indenture, between Wynn Resorts, as manager, and the Issuers, the Restricted Entities and their respective Restricted Subsidiaries, as in effect on the date of this Indenture or as amended, modified or supplemented from time to time in accordance with Section 4.28 hereof.

"*Management Fees*" means any fees payable pursuant to the Management Agreement, in an aggregate amount not to exceed, during any 12-month period, 1.5% of Net Revenues of Wynn Las Vegas and its Restricted Subsidiaries for the period of four full consecutive fiscal quarters of Wynn Las Vegas most recently ended prior to the commencement of such 12-month period.

"*Management Fees Subordination Agreement*" means the Management Fees Subordination Agreement, dated as of the date of this Indenture, by and among Wynn Resorts, Wynn Las Vegas, Deutsche Bank Trust Company Americas, as administrative agent under the Credit Agreement, Wells Fargo Bank Nevada, National Association, as collateral agent under the FF&E Facility, and the Trustee.

"*Material Entity*" means any of the following:

- (1) either Issuer,
- (2) any Significant Restricted Entity,
- (3) any group of Restricted Entities that, taken together, would constitute a Significant Restricted Entity,
- (4) any Significant Restricted Subsidiary of Wynn Las Vegas, or
- (5) any group of Restricted Subsidiaries of Wynn Las Vegas that, taken together, would constitute a Significant Restricted Subsidiary of Wynn Las Vegas.

"*Material Project Assets*" means:

- (1) assets that are necessary to the development, construction or operation of the Project in accordance with the Plans and Specifications, or

(2) assets, the absence of which would result in the Completion Date occurring after the Outside Completion Deadline. In no event shall Released Assets be considered Material Project Assets.

"Minimum Facilities" means, with respect to the Project:

- (1) a casino which has in operation at least 1,900 slot machines and 120 table games,

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(2) a resort which has approximately 70,000 gross square feet of retail space, approximately 190,000 gross square feet of convention, meeting, pre-function and reception facilities, a spa and salon complex occupying approximately 30,000 gross square feet, at least 15 food and beverage outlets, seating for approximately 1,900 persons at a show room for an entertainment production, and 1,600 parking spaces for guests and other visitors which, together with existing parking facilities, will provide approximately 3,500 parking spaces in total for employees, guests and other visitors,

- (3) a hotel with at least 2,565 guest rooms and suites, and

- (4) an 18 hole championship golf course on the Golf Course Land occupying approximately 130 acres of the Project property.

"Moody's" means Moody's Investors Service, Inc., or any successor to its statistical rating business, except that any reference to a particular rating by Moody's shall be deemed to be a reference to the corresponding rating by any such successor.

"Net Income" means, with respect to any specified Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred equity dividends, giving effect to, without duplication, any amounts paid or distributed by Wynn Las Vegas or any of its Restricted Subsidiaries as Allocable Overhead if and to the same extent that such amounts would have been included in the calculation of net income if incurred by Wynn Las Vegas directly, and excluding however:

- (1) any gain (but not loss), together with any related provision for taxes on such gain (but not loss), realized in connection with: (a) any Asset Sale; or (b) the disposition of any securities by such Person or any of its Restricted Subsidiaries or the extinguishment of any Indebtedness of such Person or any of its Restricted Subsidiaries; and

- (2) any extraordinary gain (but not loss), together with any related provision for taxes on such extraordinary gain (but not loss).

"Net Loss Proceeds" means the aggregate cash proceeds received by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries in respect of any Event of Loss, including, without limitation, insurance proceeds from condemnation awards or damages awarded by any judgment, net of:

- (1) the direct costs in recovery of such Net Loss Proceeds (including, without limitation, legal, accounting, appraisal and insurance adjuster fees and any relocation expenses incurred as a result thereof),

- (2) amounts required to be and actually applied to the repayment of Indebtedness (other than Indebtedness that is subordinated in right of payment to the Notes or the Note Guarantees) permitted under this Indenture that is secured by a Permitted Lien on the asset or assets that were the subject of such Event of Loss that ranks prior to the security interest of the Trustee in those assets, after giving effect to any provisions in the Collateral Documents and the Intercreditor Agreements as to the relative ranking of security interests, and

- (3) any taxes or Tax Distributions paid or payable as a result of the receipt of such cash proceeds.

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"Net New Equity Proceeds" means the aggregate net cash proceeds received by Wynn Las Vegas from any Person other than Wynn Capital, any Restricted Entity or any Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity, directly or indirectly, as a contribution to its common equity capital excluding:

- (1) any capital contribution made on the Closing Date to Wynn Las Vegas in respect of the Completion Guarantee Capital Contribution or the Liquidity Reserve Capital Contribution;

- (2) the Steve Wynn Capital Contribution; and

- (3) any capital contribution from a Qualified Equity Offering to the extent those proceeds are used to redeem the Notes in compliance with the provisions described under Section 3.07 hereof.

"Net Proceeds" means the aggregate cash proceeds received by Wynn Las Vegas, any Restricted Entity, or any of their respective Restricted Subsidiaries in respect of any Asset Sale (including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration received in any Asset Sale), net of:

- (1) the direct costs relating to such Asset Sale, including, without limitation, legal, accounting and investment banking fees, and sales commissions, and any relocation expenses incurred as a result of the Asset Sale and taxes or Tax Distributions paid or payable as a result of the Asset Sale, in each case, after taking into account any available tax credits or deductions and any tax sharing arrangements,

- (2) amounts, if any, required to be, and in fact, applied to the prepayment of Indebtedness permitted under this Indenture (other than Indebtedness that is subordinated in right of payment to the Notes or the Note Guarantees) secured by a Permitted Lien on the asset or assets that were the subject of such Asset Sale that ranks prior to the security interest of the Trustee in those assets, after giving effect to any provisions in the Collateral Documents and the Intercreditor Agreements as to the relative ranking of security interests, and

- (3) any reserve for adjustment in respect of the sale price of such asset or assets established in accordance with GAAP.

"Net Revenues" means, for any period, the net revenues of Wynn Las Vegas and its Restricted Subsidiaries, as set forth on Wynn Las Vegas' income statement for the relevant period under the line item "net revenues," calculated in accordance with GAAP and with Regulation S-X under the Securities Act and in a manner consistent with that customarily utilized in the gaming industry.

"Nevada PUC" means the Public Utilities Commission of Nevada.

"Non-Project Assets" means the Released Assets and:

- (1) assets that, individually and in the aggregate, are not necessary to the development, construction and operation of the Project in accordance with the Plans and Specifications, and
- (2) assets, the absence of which, individually or in the aggregate, would not result in the Completion Date occurring after the Outside Completion Deadline.

"Non-Recourse Debt" means Indebtedness:

- (1) as to which neither Issuer, no Restricted Entity or any Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness), (b) is directly or indirectly liable as a guarantor or otherwise, or (c) constitutes the lender;

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(2) no default with respect to which (including any rights that the holders thereof may have to take enforcement action against an Unrestricted Subsidiary of Wynn Las Vegas) would permit upon notice, lapse of time or both any holder of any other Indebtedness of either Issuer, any Restricted Entity or any Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity to declare a default on such other Indebtedness or cause the payment thereof to be accelerated or payable prior to its stated maturity; and

(3) as to which the lenders have been notified in writing that they shall not have any recourse to the stock or assets of either Issuer, any Restricted Entity or any Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity.

"Note Guarantee" means the Guarantee by each Guarantor and the Parent Guarantor of the Issuers' Obligations under this Indenture, the Notes and the Collateral Documents to which the Issuers are party and such other obligations as shall from time to time be guaranteed by the Guarantors and the Parent Guarantor under the Guarantees (and the Parent Guarantee) contained herein or executed pursuant to the provisions of this Indenture.

"Notes" has the meaning assigned to it in the preamble to this Indenture. The Initial Notes and the Additional Notes shall be treated as a single class for all purposes under this Indenture, and unless the context otherwise requires, all references to the Notes shall include the Initial Notes and any Additional Notes.

"Obligations" means any principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness (including, without limitation, interest accruing at the then applicable rate provided in such documentation after the maturity of such Indebtedness and interest accruing at the then applicable rate provided in such documentation after the filing of a petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any debtor under such documentation, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding).

"Office Building Lease" means the Lease, dated as of the date of this Indenture, between Valvino Lamore, as lessor, and Wynn Las Vegas, as lessee, with respect to the lease of space in the building existing, on the date of this Indenture, on the Phase II Land, as amended, modified or otherwise supplemented from time to time in accordance with Section 4.28 hereof.

"Officer" means:

- (1) with respect to a corporation, a Designated Officer of such corporation;
- (2) with respect to a partnership, a Designated Officer of the general partner of such partnership; and
- (3) with respect to a limited liability company, a Designated Officer of such limited liability company, or a Designated Officer of the manager or managing member of such limited liability company, as the case may be (or, if such manager or managing member is an individual, such individual).

"Officers' Certificate" means, with respect to any Person, a certificate signed on behalf of such Person by:

- (1) with respect to a corporation, two Designated Officers of such corporation;
- (2) with respect to a partnership, two Designated Officers of the general partner of such partnership; and

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(3) with respect to a limited liability company, two Designated Officers of the manager or managing member of such limited liability company, as the case may be (or, if such manager or managing member is an individual, such individual).

"Opinion of Counsel" means an opinion from legal counsel who is reasonably acceptable to the Trustee, that meets the requirements of Section 13.05 hereof. The counsel may be an employee of or counsel to Wynn Las Vegas, any Restricted Entity, any of their respective Restricted Subsidiaries as the case may be, or the Trustee.

"Opening Date" means the date on which all or any portion of the Project is open for business, and the opening conditions set forth in the Disbursement Agreement have been satisfied.

"Outside Completion Deadline" means September 30, 2005, as that date may be extended from time to time pursuant to the Disbursement Agreement.

"Parent Guarantee" means the Parent Guaranty, dated as of the date of this Indenture, by Wynn Resorts in favor of the Trustee, as amended, modified or otherwise supplemented from time in accordance with its terms and with this Indenture and the other Collateral Documents; *provided* that the Parent Guarantee shall not be considered a "Guarantee" hereunder unless the context otherwise requires.

"Parent Guarantor" means Wynn Resorts in its capacity as a guarantor of the Notes pursuant to the Parent Guarantee; *provided* that the Parent Guarantor shall not be considered a "Guarantor" hereunder unless the context otherwise requires.

"Parent Security Agreement" means a security agreement entered into by Wynn Resorts, in the event that it is required to provide a security interest under the terms of the Parent Guarantee.

"Parking Facility Lease" means the Parking Facility Lease, dated as of the date of this Indenture, between Valvino Lamore, as lessor, and Wynn Las Vegas, as lessee, with respect to the lease of land on which the parking lot structure for use by Wynn Las Vegas' employees shall be located, as amended, modified or otherwise supplemented from time to time in accordance with Section 4.28 hereof.

"Participant" means, with respect to the Depository, a Person who has an account with the Depository.

"Pass Through Entity" means any of (1) a grantor trust for federal or state income tax purposes or (2) an entity treated as a partnership or a disregarded entity for federal or state income tax purposes.

"Permitted Business" means:

- (1) the gaming business;
- (2) all businesses whether or not licensed by a Gaming Authority which are necessary for, incident to, useful to, arising out of, supportive of or connected to the development, ownership or operation of a Gaming Facility;
- (3) any development, construction, ownership or operation of lodging, retail and restaurant facilities, sports or entertainment facilities, food and beverage distribution operations, transportation services (including operation of the Aircraft Assets), sales, leasing and repair of automobiles, parking services, or other activities related to the foregoing;
- (4) any business (including any related and legally permissible internet business) that is a reasonable extension, development or expansion of any of the foregoing; and
- (5) the ownership by a Person of Capital Stock in its direct Wholly Owned Subsidiaries.

"Permitted C-Corp. Conversion" means a transaction resulting in Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries becoming a subchapter "C" corporation under the Code, so long as, in connection with such transaction:

- (1) the subchapter "C" corporation resulting from such transaction is a corporation organized and existing under the laws of any state of the United States or the District of Columbia and the Beneficial Owners of the Equity Interests of the subchapter "C" corporation shall be the same, and shall be in the same percentages, as the Beneficial Owners of Equity Interests of the applicable entity immediately prior to such transaction;
- (2) the subchapter "C" corporation resulting from such transaction assumes in writing all of the obligations, if any, of the applicable entity under (a) this Indenture, the Notes, the Note Guarantees by the Guarantors and the Collateral Documents and (b) all other documents and instruments to which such Person is a party (other than, in the case of clause (a) only, any documents and instruments that, individually or in the aggregate, are not material to the subchapter "C" corporation);
- (3) the subchapter "C" corporation resulting from such transaction complies with Section 4.31 hereof;
- (4) the Trustee is given not less than 45 days' advance written notice of such transaction and evidence satisfactory to the Trustee (including, without limitation, title insurance and a satisfactory Opinion of Counsel) regarding the maintenance of the perfection and priority of liens granted, or intended to be granted, in favor of the Trustee in the Collateral following such transaction;
- (5) such transaction would not cause or result in a Default or an Event of Default;
- (6) such transaction does not result in the loss or suspension or material impairment of any Gaming License unless a comparable Gaming License is effective prior to or simultaneously with such loss, suspension or material impairment;
- (7) such transaction does not require any Holder or Beneficial Owner of the Notes to obtain a Gaming License or be qualified or found suitable under the laws of any applicable gaming jurisdiction;
- (8) Wynn Las Vegas shall have delivered to the Trustee an Opinion of Counsel of national reputation in the United States reasonably acceptable to the Trustee confirming that neither Issuer, nor any Restricted Entity nor any Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity, nor any Guarantor nor any of the Holders shall recognize income, gain or loss for U.S. federal or state income tax purposes as a result of such Permitted C-Corp. Conversion; and

(9) Wynn Las Vegas shall have delivered to the Trustee a certificate of the Chief Financial Officer of Wynn Las Vegas confirming that the conditions in clauses (1) through (8) have been satisfied.

"Permitted Investments" means:

(1) any Investment (excluding any Investment by a Person that is a Guarantor in a Person, other than Wynn Las Vegas, that is not a Guarantor):

(a) by any entity in Wynn Las Vegas or in a Wholly Owned Subsidiary of Wynn Las Vegas,

(b) between Wynn Resorts Holdings and Valvino Lamore, excluding an Investment that includes any or all of the Golf Course Land, unless such Golf Course Land is then a Released Asset,

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(c) by (i) any Restricted Entity or any Restricted Subsidiary of a Restricted Entity, that, in each case, is not a Guarantor in (ii) any Restricted Entity or any Restricted Subsidiary of a Restricted Entity that, in each case, is a Guarantor, or

(d) by any Wynn Group Entity in any Restricted Entity, so long as (i) the entity in which any such Investment is made is engaged in a Permitted Business, and (ii) such Investment is evidenced by Capital Stock or intercompany notes that are pledged to the Trustee as Primary Note Collateral;

(2) any Investment in Cash Equivalents;

(3) any Investment by Wynn Las Vegas or any Restricted Subsidiary of Wynn Las Vegas in a Person that is engaged in a Permitted Business and that is evidenced by Capital Stock or intercompany notes that are pledged to the Trustee as Primary Note Collateral, if as a result of such Investment:

(a) such Person becomes a Wholly Owned Restricted Subsidiary of Wynn Las Vegas, or

(b) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys all or substantially all of its assets to, or is liquidated into, Wynn Las Vegas or a Wholly Owned Restricted Subsidiary of Wynn Las Vegas, and such Investment complies with the provisions of Section 5.01 hereof;

(4) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale or an Event of Loss of the type contemplated by clause (3) of the definition of "Event of Loss" that was made pursuant to and in compliance with Sections 4.10 or 4.16 hereof;

(5) any acquisition of assets acquired solely with Net New Equity Proceeds;

(6) any extensions of trade credit in the ordinary course of business and Investments received in compromise or settlement of obligations of trade creditors or customers that were incurred in the ordinary course of business, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer;

(7) Hedging Obligations;

(8) to the extent constituting an Investment, licenses of patents, trademarks and other intellectual property rights granted by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries in the ordinary course of business and not interfering in any material respect with the ordinary conduct of the business of such Person;

(9) the Water Company Rights Transfer; and

(10) to the extent constituting Investments, the incurrence of Indebtedness of Wynn Las Vegas, any Restricted Entity or Restricted Subsidiary, outstanding on the date of this Indenture, and any Permitted Refinancing Indebtedness thereof.

"Permitted Liens" means:

(1) Liens on property of a Person existing at the time such Person is merged into or consolidated with Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries, so long as such Liens were in existence prior to the contemplation of such merger or consolidation and do not extend to any assets other than those of the Person merged into or consolidated with Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries;

(2) Liens in favor of Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries (other than Liens granted by Wynn Las Vegas, any Restricted Entity or any

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of their respective Restricted Subsidiaries), so long as if any such Liens are on any or all of the Collateral, such Liens are either:

(a) collaterally assigned to the Trustee, or

(b) contractually subordinated to the security interests in favor of the Trustee securing the obligations under the Notes and the Note Guarantees to at least the same extent as those security interests in favor of the Trustee are subordinated to the liens in favor of the representative

of the lenders under the Credit Agreement pursuant to the Project Lenders Intercreditor Agreement;

(3) Liens on property existing at the time of acquisition thereof by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries (other than materials, supplies or FF&E acquired in connection with developing, constructing, expanding or equipping of the Project), so long as such Liens were in existence prior to the contemplation of such acquisition;

(4) Liens existing on the date of this Indenture and disclosed in the title commitment for the Deeds of Trust relating to the Project or in the applicable schedule(s) to the Credit Agreement, as in effect on the date of this Indenture;

(5) Liens to secure performance of statutory obligations of landlords and carriers, warehousemen, mechanics, suppliers, materialmen, repairmen or other like obligations arising in the ordinary course of business and with respect to amounts not yet delinquent for a period of more than 30 days or which are being contested in good faith by an appropriate process of law, so long as a reserve or other appropriate provision as shall be required by GAAP shall have been made therefor;

(6) prior to Final Completion, any Liens permitted under the Disbursement Agreement;

(7) Liens for taxes, assessments or governmental charges or claims that are not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded, so long as any reserve or other appropriate provision as shall be required in conformity with GAAP shall have been made therefor;

(8) Liens on the Collateral created by this Indenture and the Collateral Documents securing the Indebtedness and other Obligations under this Indenture and the Collateral Documents;

(9) Liens on the Collateral (other than the Exclusive Note Collateral) securing Indebtedness and other Obligations under the Credit Agreement that were permitted by the terms of this Indenture to be incurred;

(10) Liens on FF&E or other property or assets to secure Indebtedness permitted by clause (7) of Section 4.09(b) hereof, so long as such Liens do not at any time encumber any assets or property other than the assets or property financed by such Indebtedness, and the proceeds (including insurance proceeds), products, rents, profits, accessions and replacements thereof or thereto;

(11) Liens, pledges or deposits to secure the performance of bids, trade contracts (other than borrowed money), leases, statutory obligations, appeal bonds and other obligations of like nature, in each case, in the ordinary course of business, and lease obligations or nondelinquent obligations under workers' compensation, unemployment insurance or similar legislation;

(12) without duplication, (i) Government Transfers, and (ii) easements, rights-of-way, restrictions, zoning, minor defects or irregularities in title and other similar charges or encumbrances not interfering in any material respect with the business or assets of Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries incurred in the ordinary course of business;

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(13) Liens on Equity Interests in, and assets of, Unrestricted Subsidiaries of Wynn Las Vegas that secure Non-Recourse Debt of Unrestricted Subsidiaries;

(14) Liens on assets or property of Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries arising by reason of any attachment or judgment not constituting an Event of Default under this Indenture, so long as:

(a) such Liens are being contested in good faith by appropriate proceedings, and

(b) such Liens are adequately bonded or adequate reserves have been established on the books of the applicable Person in accordance with GAAP;

(15) to the extent constituting Liens, ground leases and subleases in respect of the real property owned or leased by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries, to the extent that such ground leases and subleases are permitted under this Indenture and the Collateral Documents and any leasehold mortgage on the lessee's leasehold interest in the underlying real property in favor of any party financing the lessee under any such lease or sublease, so long as:

(a) neither Issuer nor any Restricted Entity nor any of their respective Restricted Subsidiaries is liable for the payment of any principal of, or interest, premiums or fees on, such financing, and

(b) the affected lease and leasehold mortgage are expressly made subject and subordinate to the Lien of the applicable mortgage securing the Notes, or a Note Guarantee, as the case may be;

(16) Uniform Commercial Code financing statements filed for precautionary purposes in connection with any true lease of property leased by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries, so long as any such financing statement does not cover any property other than the property subject to such lease and the proceeds (including insurance proceeds), products, rents, profits, accessions and replacements thereof or thereto;

(17) Liens securing Permitted Refinancing Indebtedness incurred in accordance with Section 4.09 hereof, so long as:

(a) the Indebtedness being refinanced by such Permitted Refinancing Indebtedness was secured, and

(b) such Liens do not at any time encumber any assets or property other than the assets or property secured by the Indebtedness being refinanced by such Permitted Refinancing Indebtedness, and the proceeds (including insurance proceeds), products, rents, profits, accessions and

replacements thereof or thereto;

(18) Liens securing Indebtedness incurred in accordance with clauses (10), (11) and (12) of Section 4.09(b) hereof;

(19) Liens created or expressly contemplated by the Affiliate Agreements, in each case as in effect on the date of this Indenture, so long as such Liens do not secure Indebtedness;

(20) Liens securing Hedging Obligations permitted to be incurred in accordance with clause (5) of Section 4.09(b) hereof;

(21) licenses of patents, trademarks and other intellectual property rights granted by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries in the ordinary course of business and not interfering in any material respect with the ordinary conduct of the business of such Person;

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(22) Liens on cash disbursed pursuant to the Disbursement Agreement and deposited with, or held for the account of, Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries securing reimbursement obligations under performance bonds, guaranties, trade letters of credit, bankers' acceptances or similar instruments permitted under clause (14) of Section 4.09(b) hereof, granted by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries in favor of the issuers of such performance bonds, guaranties, trade letters of credit or bankers' acceptances, so long as:

(a) any cash disbursed to secure such reimbursement obligations is invested in Permitted Securities only, and

(b) the amount of cash and/or Permitted Securities secured by such Liens does not exceed 110% of the amount of the Indebtedness secured thereby (ignoring, for purposes of this clause (b), any interest earned or paid on such cash and any dividends or distributions declared or paid in respect of such Permitted Investments);

(23) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods; and

(24) Liens not specified in clauses (1) through (23) above and not otherwise permitted by Section 4.12 hereof, so long as the aggregate outstanding principal amount of the obligations secured by all such Liens in the aggregate does not exceed \$1.0 million at any one time (collectively for all assets and property subject to such Liens).

provided that, with respect to any Collateral, notwithstanding the definition of "Permitted Liens," a Lien shall not be a Permitted Lien on such Collateral except to the extent that any applicable Collateral Document expressly permits the applicable Person to create, incur, assume or suffer to exist such Lien on such Collateral.

"Permitted Refinancing Indebtedness" means any Indebtedness of Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, amend and restate, restate, defease or refund other Indebtedness of any Person (other than intercompany Indebtedness), so long as:

(1) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness extended, refinanced, renewed, replaced, defeased or refunded (plus all accrued interest on the Indebtedness and the amount of all expenses and premiums incurred in connection therewith), so long as if such Indebtedness is secured by a Lien described in clause (10) of the definition of "Permitted Liens," the principal amount, or accreted value shall not exceed the then current fair market value of the asset so encumbered;

(2) such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded;

(3) if the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of payment to the Notes or the Note Guarantees, such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and is subordinated in right of payment to, the Notes on terms at least as favorable to the Holders of Notes as those contained in the documentation governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded; and

(4) such Indebtedness is incurred by the Person that is the obligor on the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded.

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"Permitted Securities" means:

(1) marketable direct obligations issued by, or unconditionally guaranteed by, the United States government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within 18 months from the date of acquisition; or

(2) shares of money market, mutual or similar funds which invest exclusively in assets satisfying the requirements of clause (1) of this definition.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or other entity.

"Phase II Land" means the approximately 20 acre portion of the Project Site designated as the Phase II Land in the Collateral Documents, together with all improvements thereon and all rights appurtenant thereto.

"Plans and Specifications" has the meaning given that term in the Disbursement Agreement.

"Point of Diversion" means, with respect to any Water Permit, the location designated under such Water Permit where a well can be located for the draw of water under such Water Permit.

"Presumed Tax Liability" means, for any Person that is not a Pass Through Entity for any period, an amount equal to the product of (a) the Taxable Income allocated or attributable to such Person (directly or through one or more tiers of Pass Through Entities) (net of taxable losses allocated to such Person with respect to Wynn Las Vegas, the Completion Guarantor, any Restricted Entity or any of their respective Restricted Subsidiaries that (i) are, or were previously, deductible by such Person and (ii) have not previously reduced Taxable Income), and (b) the Presumed Tax Rate.

"Presumed Tax Rate" with respect to any Person for any period means the highest effective combined Federal, state and local income tax rate applicable during such period to a corporation organized under the laws of the State of Nevada, taxable at the highest marginal Federal income tax rate and the highest marginal Nevada and Las Vegas income tax rates (after giving effect to the Federal income tax deduction for such state and local income taxes, taking into account the effects of the alternative minimum tax, such effects being calculated on the assumption that such Person's only taxable income is the income allocated or attributable to such Person for such period (directly or through one or more tiers of Pass Through Entities) with respect to its equity interest in Wynn Las Vegas, the Completion Guarantor, any Restricted Entity or any of their respective Restricted Subsidiaries that is a Pass Through Entity). In determining the Presumed Tax Rate, the character of the items of income and gain comprising Taxable Income (*e.g.* ordinary income or long term capital gain) shall be taken into account.

"Primary Note Collateral" means all Collateral, other than the FF&E Collateral, together with the proceeds and products thereof (including, without limitation, the proceeds of Asset Sales).

"Principal" means Stephen A. Wynn.

"Project" means the Le Rêve Casino Resort, a large scale luxury hotel and destination casino resort, with related parking structure and Golf Course facilities to be developed on the Project Site, all as more particularly described in Exhibit T-1 to the Disbursement Agreement.

"Project Assets" means, with respect to the Project at any time, all of the assets then in use related to the Project including any real estate assets, any buildings or improvements thereon, and all equipment, furnishings and fixtures, but excluding any obsolete personal property determined by Wynn Las Vegas' Board of Directors to be no longer useful or necessary to the operations or support of the Project.

"Project Budget" means the Project Budget attached as Exhibit H-1 to the Disbursement Agreement.

"Project Lease and Easement Agreements" means:

- (1) the Golf Course Lease,
- (2) the Parking Facility Lease,
- (3) the Driving Range Lease,
- (4) the Office Building Lease, and
- (5) the Shuttle Easement Agreement,

in each case, as amended, modified or otherwise supplemented from time to time in accordance with Section 4.28 hereof.

"Project Lenders Intercreditor Agreement" means the Intercreditor Agreement, dated as of the date of this Indenture, between the Trustee and a representative of the lenders under the Credit Agreement, as amended, modified or otherwise supplemented from time to time in accordance with its terms.

"Project Related Indebtedness" means Indebtedness for borrowed money incurred by Wynn Resorts, the proceeds of which are contributed, directly or indirectly, as common equity capital to Wynn Las Vegas and its Restricted Subsidiaries, so long as neither Issuer, no Restricted Entity nor any Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity:

- (1) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) as to such Indebtedness,
- (2) is directly or indirectly liable as a guarantor or otherwise as to such Indebtedness, or
- (3) constitutes the lender of such Indebtedness.

"Project Site" means the approximately 212 acre site upon which the Project shall be located, together with all easements, licenses and other rights running for the benefit of Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries and/or appurtenant thereto, and all as more particularly described in Exhibit D hereto.

"Qualified Equity Offering" means a bona fide offering of common stock (other than Disqualified Stock) of Wynn Resorts which results in gross proceeds to Wynn Resorts of at least \$50.0 million, to the extent that such gross receipts are contributed as a cash common equity contribution to Wynn Las Vegas.

"*Qualified Intercompany Agreement*" means any agreement entered into by or among one or more of the Restricted Entities, on the one hand, and one or more of Wynn Resorts or any of its Subsidiaries, on the other hand, for the provision of goods, rights and/or services to be used in Permitted Businesses related to or in connection with and, in any event, for the benefit of, the Project, so long as the Affiliate Transactions effected under such Qualified Intercompany Agreement satisfy the requirements of Section 4.11 hereof.

"*Related Party*" means:

- (1) any 80% (or more) owned Subsidiary, heir, estate, lineal descendent or immediate family member of the Principal; or
- (2) any trust, corporation, partnership or other entity, the beneficiaries, equity holders, partners, owners or Persons beneficially holding an 80% or more controlling interest of which consist of the Principal and/or such other Persons referred to in the immediately preceding clause (1).

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"*Released Assets*" means any item of Collateral for which conditions to its release are expressly set forth in this Indenture or the Collateral Documents (it being understood that conditions incorporated by reference to the Credit Agreement or other documents shall be considered expressly set forth for this purpose), and as to which such conditions have been met, including, subject to meeting the applicable conditions, the Golf Course Land, the Phase II Land, the funds securing the Completion Guarantee (initially, \$50.0 million) and the funds deposited in the Liquidity Reserve Account (initially, \$30.0 million). Any such item of Collateral shall cease to be a Released Asset in the event, and to the extent, that Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries is required to grant a security interest therein in favor of the Trustee to secure the Notes or a Note Guarantee pursuant to Section 10.03 hereof.

"*Replacement Aircraft*" means the corporate aircraft to be acquired with Replacement Aircraft Indebtedness.

"*Replacement Aircraft Indebtedness*" means Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations incurred by Wynn Resorts or a direct Wholly Owned Subsidiary (which may be a trust) of Wynn Resorts (other than Wynn Capital, Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries) for the purpose of financing all or part of the purchase price of a Replacement Aircraft, so long as:

- (1) the principal amount of such Indebtedness does not exceed the cost (including sales and excise taxes, installation and delivery charges and other direct costs of, and other direct expenses paid or charged in connection with, such purchase) of the Replacement Aircraft purchased with the proceeds thereof,
- (2) the aggregate principal amount of such Indebtedness does not exceed \$55.0 million at any time outstanding, and
- (3) neither Issuer, no Restricted Entity nor any of their respective Restricted Subsidiaries:
 - (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) as to such Indebtedness,
 - (b) is directly or indirectly liable as a guarantor or otherwise as to such Indebtedness, or
 - (c) constitutes the lender of such Indebtedness.

"*Responsible Officer*," when used with respect to the Trustee, means any officer within the corporate trust department of the Trustee located at the Corporate Trust Office of the Trustee (or any successor group of the Trustee) or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

"*Restricted Entity*" means any of Desert Inn Water Company, Valvino Lamore, Wynn Design, Wynn Resorts Holdings, Las Vegas Jet, LLC, World Travel, LLC and Palo, LLC.

"*Restricted Investment*" means an Investment other than a Permitted Investment.

"*Restricted Subsidiary*" means (1) as to Wynn Las Vegas, any Subsidiary of Wynn Las Vegas that is not an Unrestricted Subsidiary, or (2) as to any Restricted Entity, any Subsidiary of a Restricted Entity, other than (a) any other Restricted Entity, (b) the Issuers or (c) any Subsidiary of either Issuer.

"*SEC*" means the Securities and Exchange Commission.

"*Secured Account*" means the secured account subject to the Secured Account Agreement, into which the net proceeds of the Notes are required to be deposited.

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"*Secured Account Agreement*" means the Secured Account Agreement, dated as of the date of this Indenture, among the Issuers, the securities intermediary named therein, and the Trustee, as amended, modified or otherwise supplemented from time to time in accordance with its terms, this Indenture and the other Collateral Documents.

"*Securities Act*" means the Securities Act of 1933, as amended.

"S&P" means Standard & Poor's Rating Services, a division of the McGraw Hill Companies, Inc., or any successor to its statistical rating business, except that any reference to a particular rating by S&P shall be deemed to be a reference to the corresponding rating by any such successor.

"*Shuttle Easement Agreement*" means the Easement Agreement, dated as of the date of this Indenture, among Wynn Resorts Holdings, Valvino Lamore and Wynn Las Vegas, as amended, modified or otherwise supplemented from time to time in accordance with Section 4.28 hereof.

"*Significant Restricted Entity*" means:

- (1) Valvino Lamore,
- (2) Wynn Resorts Holdings,
- (3) Desert Inn Water Company, or
- (4) any Restricted Entity if it (a) contributes at least 10% of the Restricted Entities' total consolidated income from continuing operations before income taxes, extraordinary items, or (b) owns at least 10% of the Restricted Entities' total assets on a consolidated basis.

"*Significant Restricted Subsidiary*" means:

- (1) with respect to any Restricted Subsidiary of Wynn Las Vegas, such Subsidiary if it (a) contributes at least 10% of Wynn Las Vegas' and its Restricted Subsidiaries' total consolidated income from continuing operations before income taxes, extraordinary items, or (b) owns at least 10% of Wynn Las Vegas' and its Restricted Subsidiaries' total assets on a consolidated basis, and
- (2) with respect to any Restricted Subsidiary of a Restricted Entity, such Subsidiary if it (a) contributes at least 10% of the Restricted Entities' and their Restricted Subsidiaries' total consolidated income from continuing operations before income taxes, extraordinary items, or (b) owns at least 10% of the Restricted Entities' and their Restricted Subsidiaries' total assets on a consolidated basis.

"*Solvent*" means, when used with respect to any Person, as of any date of determination:

- (1) the amount of the "present fair saleable value" of the assets of such Person shall, as of such date, exceeds the amount of all "liabilities of such Person, contingent or otherwise," as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors,
- (2) such Person does not reasonably expect that such person may be unable to pay the liability of such Person on its debts as such debts become absolute and matured,
- (3) such Person shall not have, as of such date, an unreasonably small amount of capital with which to conduct its business,
- (4) such Person shall be able to pay its undisputed debts generally as they mature, and
- (5) such Person is not insolvent within the meaning of any applicable requirements of law.

In addition, for purposes of this definition, (a) "debt" means liability on a "claim," and (b) "claim" means any (i) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable,

secured or unsecured or (ii) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

"*Stated Maturity*" means, with respect to any installment of interest or principal on any series of Indebtedness, the date on which the payment of interest or principal was scheduled to be paid in the original documentation governing such Indebtedness, and shall not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

"*Steve Wynn Capital Contribution*" means the common equity capital contribution by Wynn Resorts Holdings to Wynn Las Vegas in immediately available funds of the purchase price of the Golf Course Land released pursuant to Section 10.03(d) hereof.

"*Stockholders Agreement*" means that certain Stockholders Agreement, dated as of April 11, 2002, by and among Stephen A. Wynn, Baron Asset Fund and Aruze USA, as in effect on the date of this Indenture.

"*Subsidiary*" means, with respect to any specified Person:

- (1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and
- (2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

"*Tax Amount*" means, with respect to any period, (1) in the case of any direct or indirect member of any of Wynn Las Vegas, the Completion Guarantor, any Restricted Entity or any of their respective Restricted Subsidiaries that is a Pass Through Entity, the Presumed Tax Liability of such direct or indirect member, and (2) with respect to any of Wynn Las Vegas, the Completion Guarantor, the Restricted Entities or any of their respective Restricted Subsidiaries that are Consolidated Members, the aggregate federal income tax liability such Persons would owe for such period if each was a corporation filing federal income tax returns on a stand alone basis at all times during its existence and, if any of the Consolidated Members files a consolidated or combined state income tax return

such that it is not paying its own state income taxes, then Tax Amount shall also include the aggregate state income tax liability such Consolidated Members would have paid for such period if each was a corporation filing state income tax returns on a stand alone basis at all times during its existence.

"*Tax Distribution*" means a distribution in respect of taxes pursuant to clause (5) of Section 4.07(b) hereof.

"*Tax Indemnification Agreement*" means the Tax Indemnification Agreement, dated as of the date of this Indenture, among Wynn Resorts, Valvino Lamore, Stephen A. Wynn, Aruze USA, Baron Asset Fund, a Massachusetts business trust, on behalf of the Baron Asset Fund Series, Baron Asset Fund, a Massachusetts business trust, on behalf of the Baron Growth Fund Series, and Kenneth R. Wynn Family Trust dated February 20, 1985, as amended, modified or otherwise supplemented from time to time in accordance with Section 4.28 hereof.

"*Taxable Income*" means, with respect to any Person for any period, the taxable income or loss of such Person for such period for federal income tax purposes as a result of such Persons equity ownership of Wynn Las Vegas, the Completion Guarantor, any Restricted Entity or any of their

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respective Restrictive Subsidiaries that are Pass Through Entities for such period; *provided, however*, that all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss.

"*TIA*" means the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbb) as in effect on the date on which this Indenture is qualified under the TIA.

"*Trustee*" means the party named as such in the preamble to this Indenture until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

"*Unrestricted Subsidiary*" means (1) Desert Inn Improvement Co., (2) the Completion Guarantor and (3) any Subsidiary of Wynn Las Vegas, other than Wynn Capital, that is designated by the Board of Directors of Wynn Las Vegas as an Unrestricted Subsidiary pursuant to a resolution of the Board of Directors (and any Subsidiary of each such Unrestricted Subsidiary), but only to the extent that such Subsidiary of Wynn Las Vegas:

(1) has no Indebtedness other than Non-Recourse Debt;

(2) is not party to any agreement, contract, arrangement or understanding with either Issuer, any Restricted Entity, any Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity or any Guarantor unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to such Person than those that (a) might be obtained at the time from Persons who are not Affiliates of such Person, (b) are Permitted Investments or transactions permitted as Restricted Payments under Section 4.07 hereof, or (c) are Affiliate Transactions permitted under Section 4.11 hereof;

(3) is a Person with respect to which neither Issuer, nor any Restricted Entity, nor any Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity, nor any Guarantor has any direct or indirect obligation (a) to subscribe for additional Equity Interests or (b) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results;

(4) has not guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of either Issuer, any Restricted Entity, any Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity, or any Guarantor; and

(5) has at least one director on its Board of Directors that is not a director or executive officer of either Issuer, any Restricted Entity, any Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity, or any Guarantor and has at least one executive officer that is not a director or executive officer of either Issuer, any Restricted Entity, any Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity, or any Guarantor.

Any designation of a Subsidiary of Wynn Las Vegas as an Unrestricted Subsidiary shall be evidenced to the Trustee by filing with the Trustee a certified copy of the resolution of Wynn Las Vegas' Board of Directors giving effect to such designation and an Officers' Certificate certifying that such designation complied with the preceding conditions and was permitted by Section 4.07 hereof. If, at any time, any Unrestricted Subsidiary of Wynn Las Vegas would fail to meet the preceding requirements as an Unrestricted Subsidiary, it shall thereafter cease to be an Unrestricted Subsidiary of Wynn Las Vegas for purposes of this Indenture and any Indebtedness of such Subsidiary shall be deemed to be incurred by a Restricted Subsidiary of Wynn Las Vegas as of such date and, if such Indebtedness is not permitted to be incurred as of such date under Section 4.09 hereof, Wynn Las Vegas shall be in default of such covenant. The Board of Directors of Wynn Las Vegas may at any time designate Desert Inn Improvement Co. or any Unrestricted Subsidiary of Wynn Las Vegas to be a Restricted Entity or a Restricted Subsidiary, as the case may be. Such designation shall be deemed to be an incurrence of Indebtedness by a Restricted Entity or a Restricted Subsidiary of Wynn Las Vegas, as the case may be, of any outstanding Indebtedness of such Unrestricted Subsidiary and such designation shall only be permitted if (1) such Indebtedness is permitted under Section 4.09 hereof calculated on a pro forma basis as if such designation had occurred at the beginning of the four-quarter reference period and (2) no Default or Event of Default would be in existence following such designation.

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"*Valvino Lamore*" means Valvino Lamore, LLC, a Nevada limited liability company.

"*Valvino Water Permit Transfer*" means the transfer of the Valvino Water Permits by Valvino Lamore to Wynn Las Vegas at no cost, in accordance with all requirements of law and pursuant to all necessary consents of Governmental Authorities (including, if applicable, the Nevada PUC and the State of Nevada, Division of Water Resources), so long as:

(1) the designated place of use for water available for draw under the Valvino Water Permits shall include the real property upon which the water features of the Le Reve casino are located;

(2) either (i) no Points of Diversion with respect to the Water Permits and the wells associated with the Water Permits are located on the Phase II Land or (ii) Valvino Lamore shall have transferred at no cost:

(a) in the case of Points of Diversion with respect to the Valvino Water Permits and DIIC Casino Water Permit and the wells associated therewith located on the Phase II Land, such easements to Wynn Las Vegas as are necessary for Wynn Las Vegas to access such Points of Diversion, own and operate such wells and transport the water drawn therefrom to the water features of the Le Reve casino, and

(b) in the case of Points of Diversion with respect to all other DIIC Water Permits and the wells associated therewith located on the Phase II Land, such easements to Wynn Las Vegas and Wynn Resorts Holdings as are necessary for Wynn Las Vegas and Wynn Resorts Holdings to access such Points of Diversion, own and operate such wells and transport the water drawn at such Points of Diversion and from such wells to the Golf Course Land; and

(3) Wynn Las Vegas and Wynn Resorts Holdings, as the case may be, shall have taken all actions required pursuant to Section 4.32 hereof with respect to any assets or property acquired pursuant to clause (2)(ii) of this definition.

"*Valvino Water Permits*" means, collectively, the permits identified as of the date of the Indenture Permit No. 60164 (Cert. 15447) and Permit No. 60165 (Cert. 15448), in each case as shown in the records of the State of Nevada, Division of Water Resources, in Carson City, Nevada (and any successor or replacement permits thereto).

"*Voting Stock*" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"*Water Companies*" means:

- (1) Desert Inn Water Company; and
- (2) Desert Inn Improvement Co.

"*Water Permits*" means, collectively, the DIIC Water Permits and the Valvino Water Permits.

"*Water Rights*" means: (1) with respect to any Person, all of such Person's right, title and interest in and to any water stock, permits or entitlements and any other water rights related to or appurtenant to property owned or leased by such Person, and (2) with respect to any property, any water stock, permits or entitlements and any other water rights related to or appurtenant to such property.

"*Water Rights Transfer*" means, collectively, (1) the Valvino Water Permit Transfer and (2) the DIIC Water Transfer.

"*Water Show Entertainment Production Agreement*" means the Agreement, dated January 25, 2001, between Wynn Resorts Holdings and Calitri Services and Licensing Limited Liability Company, as amended, modified or otherwise supplemented from time to time in accordance with Section 4.28 hereof.

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"*Water Supply Agreement*" means the Agreement Regarding Provision of Water and Use of Water, dated as of the date of this Indenture, among Desert Inn Improvement Co., Wynn Resorts Holdings and Wynn Las Vegas, as amended, modified or otherwise supplemented from time to time in accordance with Section 4.28 hereof.

"*Water Utility Land*" means the approximately 0.17 acre tract of land located on the Golf Course Land owned by Desert Inn Improvement Co., as more particularly described in Exhibit T-4 to the Disbursement Agreement.

"*Weighted Average Life to Maturity*" means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

- (1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that shall elapse between such date and the making of such payment; by
- (2) the then outstanding principal amount of such Indebtedness.

"*Wholly Owned Restricted Subsidiary*" of any specified Person means a Restricted Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying shares) shall at the time be owned by such Person or by one or more Wholly Owned Restricted Subsidiaries of such Person.

"*Wholly Owned Subsidiary*" of any specified Person means a Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying shares) shall at the time be owned by such Person or by one or more Wholly Owned Subsidiaries of such Person.

"*Wynn Capital*" means Wynn Las Vegas Capital Corp., a Nevada corporation.

"*Wynn Design*" means Wynn Design & Development, LLC, a Nevada limited liability company.

"*Wynn Design Agreement*" means the Wynn Design Agreement, dated as of October 4, 2002, between Wynn Las Vegas and Wynn Design, as amended, modified or otherwise supplemented from time to time in accordance with Section 4.28 hereof.

"*Wynn Employment Agreement*" means the Employment Agreement, dated as of October 4, 2002, between Wynn Resorts and Stephen A. Wynn, as amended, modified or otherwise supplemented from time to time in accordance with Section 4.28 hereof.

"*Wynn Group Entities*" means (1) Palo, LLC, (2) Wynn Design and (3) each of their respective Subsidiaries.

"Wynn Home Site Land" means an approximately two acre tract of land located on the Golf Course Land where a personal residence for Stephen A. Wynn may be built, after the release of the Trustee's Liens (for the benefit of the Holders) thereon in accordance with Section 10.03(d).

"Wynn Las Vegas" means Wynn Las Vegas, LLC, a Nevada limited liability company.

"Wynn Put Agreement" means the Agreement, dated as of June 13, 2002, among Stephen A. Wynn and Wynn Resorts, relating to the Buy-Sell Agreement, as amended, modified or otherwise supplemented from time to time in accordance with the Parent Guarantee.

"Wynn Resorts" means Wynn Resorts, Limited, a Nevada corporation.

"Wynn Resorts Holdings" means Wynn Resorts Holdings, LLC, a Nevada limited liability company (formerly known as Wynn Resorts, LLC).

Section 1.02 *Other Definitions.*

| Term | Defined in Section |
|-----------------------------------|---------------------------|
| "Affiliate Transaction" | 4.11 |
| "Asset Sale Offer" | 4.10 |
| "Authentication Order" | 2.02 |
| "Change of Control Offer" | 4.15 |
| "Change of Control Payment" | 4.15 |
| "Change of Control Payment Date" | 4.15 |
| "Covenant Defeasance" | 8.03 |
| "DTC" | 2.03, 2.06 |
| "Event of Default" | 6.01 |
| "Event of Loss Offer" | 4.16 |
| "Excess Proceeds" | 4.10 |
| "Excess Proceeds Offer" | 4.10 |
| "incur" | 4.09 |
| "Legal Defeasance" | 8.02 |
| "Offer Amount" | 3.10 |
| "Offer Period" | 3.10 |
| "Paying Agent" | 2.03 |
| "Payment Default" | 6.01 |
| "Permitted Debt" | 4.09 |
| "Purchase Date" | 3.09 |
| "Reference Period" | 4.09 |
| "refinancing" | 10.03 |
| "Registrar" | 2.03 |
| "Restricted Payments" | 4.07 |
| "Steve Wynn Capital Contribution" | 10.03 |

Section 1.03 *Incorporation by Reference of Trust Indenture Act.*

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture.

The following TIA terms used in this Indenture have the following meanings:

"Commission" means the SEC;

"indenture securities" means the Notes;

"indenture security Holder" means a Holder of a Note;

"indenture to be qualified" means this Indenture;

"indenture trustee" or "institutional trustee" means the Trustee; and

"obligor" on the Notes and the Note Guarantees means the Issuers, the Guarantors and the Parent Guarantor, respectively, and any successor obligor upon the Notes and the Note Guarantees, respectively.

All other terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule under the TIA have the meanings so assigned to them.

Section 1.04 *Rules of Construction.*

Unless the context otherwise requires:

- (1) a term has the meaning assigned to it;
- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (3) "or" is not exclusive;
- (4) words in the singular include the plural, and in the plural include the singular;
- (5) "will" shall be interpreted to express a command;
- (6) provisions apply to successive events and transactions;
- (7) references to sections of or rules under the Securities Act shall be deemed to include substitute, replacement of successor sections or rules adopted by the SEC from time to time;
- (8) references to any statute, law, rule or regulation shall be deemed to refer to the same as from time to time amended and in effect and to any successor statute, law, rule or regulation; and
- (9) references to any contract, agreement or instrument shall mean the same as amended, modified, supplemented or amended and restated from time to time, in each case, in accordance with any applicable restrictions contained therein, in this Indenture or in any Collateral Document, as the case may be.

ARTICLE 2. THE NOTES

Section 2.01 Form and Dating.

(a) *General.* The Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage. Each Note shall be dated the date of its authentication. The Notes shall be in denominations of \$1,000 and integral multiples thereof.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture and the Issuers, the Guarantors, the Parent Guarantor and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

(b) *Global Notes.* Notes issued in global form shall be substantially in the form of Exhibit A attached hereto (including the Global Note Legend thereon and the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Notes issued in definitive form shall also be substantially in the form of Exhibit A attached hereto (but without the Global Note Legend thereon and without the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Each Global Note shall represent such of the outstanding Notes as shall be specified therein and each shall provide that it represents the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

Section 2.02 Execution and Authentication.

Two Officers on behalf of each of Wynn Las Vegas and Wynn Capital must sign the Notes for the Issuers by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note shall nevertheless be valid.

A Note shall not be valid until authenticated by the manual signature of the Trustee. The signature shall be conclusive evidence that the Note has been authenticated under this Indenture.

The Trustee shall, upon receipt of a written order of the Issuers signed by two Officers of each of Wynn Las Vegas and Wynn Capital (an "*Authentication Order*"), authenticate Notes for original issue up to the aggregate principal amount of the Notes (including Notes to be issued in substitution for outstanding Notes to reflect any name change of either Issuer, by succession permitted hereunder or otherwise).

The Issuers may issue Notes in a maximum aggregate principal amount of (a) \$470.0 million, less (b) the aggregate principal amount of all Indebtedness incurred pursuant to clauses (11) and (12) of Section 4.09(b) hereof, other than through the issuance of Additional Notes under this Indenture. The aggregate principal amount of Notes outstanding at any time may not exceed such maximum amount except as provided in Section 2.07 hereof.

The Trustee may appoint an authenticating agent acceptable to the Issuers to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders or an Affiliate of the Issuers.

Section 2.03 Registrar and Paying Agent.

The Issuers shall maintain an office or agency where Notes may be presented for registration of transfer or for exchange ("*Registrar*") and an office or agency where Notes may be presented for payment ("*Paying Agent*"). The Registrar shall keep a register of the Notes and of their transfer and exchange. The

Issuers may appoint one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrar and the term "Paying Agent" includes any additional paying agent. The Issuers may change any Paying Agent or Registrar without notice to any Holder. The Issuers shall notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Issuers fail to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. Either or both of the Issuers or any of their Subsidiaries may act as Paying Agent or Registrar.

The Issuers initially appoint The Depository Trust Company ("DTC") to act as Depository with respect to the Global Notes.

The Issuers initially appoint the Trustee to act as the Registrar and Paying Agent and to act as Custodian with respect to the Global Notes.

Section 2.04 *Paying Agent to Hold Money in Trust.*

The Issuers shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, if any, or interest on the Notes, and shall notify the Trustee of any default by the Issuers in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Issuers at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Issuers or a Subsidiary thereof) shall have no further liability for the money. If either Issuer or a Subsidiary acts as Paying Agent, it shall segregate and hold

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in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Issuers, the Trustee shall serve as Paying Agent for the Notes.

Section 2.05 *Holder Lists.*

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders and shall otherwise comply with TIA § 312(a). If the Trustee is not the Registrar, the Issuers shall furnish to the Trustee at least seven Business Days before each interest payment date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders of Notes and the Issuers shall otherwise comply with TIA § 312(a).

Section 2.06 *Transfer and Exchange.*

(a) *Transfer and Exchange of Global Notes.* A Global Note may not be transferred as a whole except by the Depository to a nominee of the Depository, by a nominee of the Depository to the Depository or to another nominee of the Depository, or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository. All Global Notes shall be exchanged by the Issuers for Definitive Notes if:

(1) Wynn Las Vegas delivers to the Trustee written notice from the Depository that it is unwilling or unable to continue to act as Depository or that it is no longer a clearing agency registered under the Exchange Act and, in either case, a successor Depository is not appointed by Wynn Las Vegas within 90 days after the date of such notice from the Depository; or

(2) following the occurrence and during the continuation of a Default or Event of Default, any Person having a beneficial interest in a Global Note requests that the Global Notes should be exchanged for Definitive Notes and delivers a written notice to such effect to the Trustee.

Upon the occurrence of either of the preceding events in (1) or (2) above, Definitive Notes shall be issued in such names as the Depository shall instruct the Trustee. Global Notes also may be exchanged or replaced, in whole or in part, as provided in Sections 2.07 and 2.10 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.06 or Section 2.07 or 2.10 hereof, shall be authenticated and delivered in the form of, and shall be, a Global Note. A Global Note may not be exchanged for another Note other than as provided in this Section 2.06(a). However, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.06(b) or (c) hereof.

Neither Issuer nor the Trustee will be liable for any delay by a Holder of a Global Note or the Depository in identifying the beneficial owners of Notes, except as a result of such Issuer's or Trustee's own negligent action, negligent failure to act or own willful misconduct, as the case may be. In the absence of bad faith on their part, the Issuers and the Trustee may conclusively rely on, and will be protected in relying on written instructions from the Holder of a Global Note or the Depository for all purposes under this Indenture.

(b) *Transfer and Exchange of Beneficial Interests in the Global Notes.* The transfer and exchange of beneficial interests in the Global Notes shall be effected through the Depository, in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests in the Global Notes shall be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers of beneficial interests in the Global Notes also shall require compliance with either subparagraph (1) or (2) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(1) *Transfer and Exchange of Beneficial Interests in the Same Global Note.* Beneficial interests in any Global Note may be transferred to Persons who take delivery thereof in the form

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of a beneficial interest in a Global Note. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.06(b)(1).

(2) *Transfer and Exchange of Beneficial Interests in Global Notes for Definitive Notes.* If any holder of a beneficial interest in a Global Note proposes to exchange such beneficial interest for a Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Definitive Note, then the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(f) hereof, and the Issuers shall execute and the Trustee shall authenticate and deliver to the Person designated in the instructions a Definitive Note in the appropriate principal amount. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(b)(2) shall be

registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest requests through instructions to the Registrar from or through the Depository and the Participant or Indirect Participant.

(c) *Transfer and Exchange of Definitive Notes for Beneficial Interests in Global Notes.* A Holder of a Definitive Note may exchange such Note for a beneficial interest in a Global Note or transfer such Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in a Global Note at any time. Upon receipt of a request for such an exchange or transfer, the Trustee shall cancel the applicable Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Global Notes.

(d) *Transfer and Exchange of Definitive Notes for Definitive Notes.* Upon request by a Holder of Definitive Notes and such Holder's compliance with the provisions of this Section 2.06(d), the Registrar shall register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder must present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder must provide any additional certifications, documents and information, as applicable, required pursuant to the Applicable Procedures or reasonably requested by the Issuers to demonstrate compliance by such Holder with applicable law.

(e) *Legends.* The following legends shall appear on the face of all Global Notes and Definitive Notes issued under this Indenture unless specifically stated otherwise in the applicable provisions of this Indenture.

(1) *Global Note Legend.* Each Global Note shall bear a legend in substantially the following form:

"THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (1) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.06 OF THE INDENTURE, (2) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (3) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (4) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF WYNN LAS VEGAS, LLC AND WYNN LAS VEGAS CAPITAL CORP.

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UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) ("DTC"), TO THE ISSUERS OR THEIR AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN."

(f) *Cancellation and/or Adjustment of Global Notes.* At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note shall be returned to or retained and canceled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who shall take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depository at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who shall take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note shall be increased accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depository at the direction of the Trustee to reflect such increase.

(g) *General Provisions Relating to Transfers and Exchanges.*

(1) To permit registrations of transfers and exchanges, the Issuers shall execute and the Trustee shall authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.02 or at the Registrar's request.

(2) No service charge shall be made to a Holder of a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Issuers may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.10, 3.06, 3.10, 4.10, 4.15, 4.16 and 9.05 hereof).

(3) The Registrar shall not be required to register the transfer of or exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

(4) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes shall be the valid obligations of the Issuers, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Notes or Definitive Notes surrendered upon such registration of transfer or exchange.

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(5) The Issuers shall not be required:

(A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business 15 days before the day of any selection of Notes for redemption under Section 3.02 hereof and ending at the close of business on the day of selection;

(B) to register the transfer of or to exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part; or

(C) to register the transfer of or to exchange a Note between a record date and the next succeeding interest payment date.

(6) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Issuers may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Issuers shall be affected by notice to the contrary.

(7) The Trustee shall authenticate Global Notes and Definitive Notes in accordance with the provisions of Section 2.02 hereof.

(8) All certifications and certificates required to be submitted to the Registrar pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile.

Section 2.07 *Replacement Notes.*

If any mutilated Note is surrendered to the Trustee or the Issuers and the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Note, the Issuers shall issue and the Trustee, upon receipt of an Authentication Order, shall authenticate a replacement Note if the Trustee's requirements are met. If required by the Trustee or the Issuers, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee and the Issuers to protect the Issuers, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Issuers may charge for their expenses in replacing a Note.

Every replacement Note is an additional obligation of the Issuers and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

Section 2.08 *Outstanding Notes.*

The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof, and those described in this Section 2.08 as not outstanding. Except as set forth in Section 2.09 hereof, a Note does not cease to be outstanding because the Issuers or an Affiliate of either Issuer holds the Note.

If a Note is replaced pursuant to Section 2.07 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a protected purchaser.

If the principal amount of any Note is considered paid under Section 4.01 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than an Issuer, a Subsidiary of an Issuer or an Affiliate of any thereof) holds, on a redemption date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes shall be deemed to be no longer outstanding and shall cease to accrue interest.

Section 2.09 *Treasury Notes.*

In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Issuers, or any of their Affiliates, shall be considered as though not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes that the Trustee knows are so owned shall be so disregarded.

Section 2.10 *Temporary Notes.*

Until certificates representing Notes are ready for delivery, the Issuers may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of certificated Notes but may have variations that the Issuers consider appropriate for temporary Notes and as may be reasonably acceptable to the Trustee. Without unreasonable delay, the Issuers shall prepare and the Trustee shall authenticate Definitive Notes in exchange for temporary Notes.

Holders of temporary Notes shall be entitled to all of the benefits of this Indenture.

Section 2.11 *Cancellation.*

The Issuers at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall destroy canceled Notes in its customary manner (subject to the record retention requirement of the Exchange Act). Certification of the destruction of all canceled Notes shall be delivered to the Issuers. The Issuers may not issue new Notes to replace Notes that they have paid or that have been delivered to the Trustee for cancellation.

Section 2.12 *Defaulted Interest.*

If the Issuers default in a payment of interest on the Notes, they shall pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest, to the Persons who are Holders on a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.01 hereof. The Issuers shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Note and the date of the proposed payment. The Issuers shall fix or cause to be fixed each such special record date and payment date, *provided* that no such special record date may be less

than 10 days prior to the related payment date for such defaulted interest. At least 15 days before the special record date, the Issuers (or, upon the written request of the Issuers, the Trustee in the name and at the expense of the Issuers) shall mail or cause to be mailed to Holders a notice that states the special record date, the related payment date and the amount of such interest to be paid.

ARTICLE 3. REDEMPTION AND PREPAYMENT

Section 3.01 *Notices to Trustee.*

If the Issuers elect to redeem Notes pursuant to the optional redemption provisions of Section 3.07 hereof, they must furnish to the Trustee, at least 30 days but not more than 60 days before a redemption date, an Officers' Certificate setting forth:

- (a) the clause of this Indenture pursuant to which the redemption shall occur;
- (b) the redemption date;
- (c) the principal amount of Notes to be redeemed; and

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- (d) the redemption price.

Section 3.02 *Selection of Notes to Be Redeemed or Purchased.*

If less than all of the Notes are to be redeemed or purchased in an offer to purchase at any time, the Trustee shall select Notes for redemption or purchase as follows:

- (a) if the Notes are listed on any national securities exchange, in compliance with the requirements of the principal national securities exchange on which the Notes are listed; or
- (b) if the Notes are not listed on any national securities exchange, on a *pro rata* basis, by lot or by such method as the Trustee shall deem fair and appropriate.

In the event of partial redemption or purchase by lot, the particular Notes to be redeemed or purchased shall be selected, unless otherwise provided herein, not less than 30 nor more than 60 days prior to the redemption or purchase date by the Trustee from the outstanding Notes not previously called for redemption or purchase.

The Trustee shall promptly notify the Issuers in writing of the Notes selected for redemption or purchase and, in the case of any Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Notes and portions of Notes selected shall be in amounts of \$1,000 or whole multiples of \$1,000; *provided, however*, that if all of the Notes of a Holder are to be redeemed or purchased, the entire outstanding amount of Notes held by such Holder, even if not a multiple of \$1,000, shall be redeemed or purchased. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase.

Section 3.03 *Notice of Redemption.*

Subject to the provisions of Section 3.10 hereof, at least 30 days but not more than 60 days before a redemption date, the Issuers shall mail or cause to be mailed, by first class mail, a notice of redemption to each Holder whose Notes are to be redeemed at its registered address, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture pursuant to Articles 8 or 12 of this Indenture.

The notice shall identify the Notes to be redeemed and shall state:

- (a) the redemption date;
- (b) the redemption price;
- (c) if any Note is being redeemed in part, the portion of the principal amount of such Note to be redeemed and that, after the redemption date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion shall be issued upon cancellation of the original Note;
- (d) the name and address of the Paying Agent;
- (e) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;
- (f) that, unless the Issuers default in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date;
- (g) the paragraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed; and

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- (h) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Notes.

At the Issuers' request, the Trustee shall give the notice of redemption in the Issuers' name and at their expense; *provided, however*, that the Issuers have delivered to the Trustee, at least 45 days prior to the redemption date, an Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

Section 3.04 Effect of Notice of Redemption.

Once notice of redemption is mailed in accordance with Section 3.03 hereof, Notes called for redemption become irrevocably due and payable on the redemption date at the redemption price. A notice of redemption may not be conditional.

Section 3.05 Deposit of Redemption or Purchase Price.

On or before 11:00 a.m. (New York City time) on the redemption or purchase price date, the Issuers shall deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of and accrued interest and premium, if any, on all Notes to be redeemed or purchased on that date. The Trustee or the Paying Agent shall promptly return to the Issuers any money deposited with the Trustee or the Paying Agent by the Issuers in excess of the amounts necessary to pay the redemption or purchase price of, and accrued interest and premium, if any, on, all Notes to be redeemed or purchased.

If the Issuers comply with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest shall cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased on or after an interest record date but on or prior to the related interest payment date, then any accrued and unpaid interest shall be paid to the Person in whose name such Note was registered at the close of business on such record date. If any Note called for redemption or purchase is not so paid upon surrender for redemption or purchase because of the failure of the Issuers to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase date until such principal is paid, and to the extent lawful on any interest not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01 hereof.

Section 3.06 Notes Redeemed or Purchased in Part.

Upon surrender of a Note that is redeemed or purchased in part, the Issuers shall issue and, upon receipt of an Authentication Order, the Trustee shall authenticate for the Holder at the expense of the Issuers a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered.

Section 3.07 Optional Redemption.

(a) At any time prior to November 1, 2005, the Issuers may on any one or more occasions redeem up to 35% of the aggregate principal amount of Notes issued under this Indenture at a redemption price of 112.0% of the principal amount redeemed, plus accrued and unpaid interest thereon to the redemption date, with the net cash proceeds of one or more Qualified Equity Offerings (other than the IPO), so long as:

- (1) at least 65% of the aggregate principal amount of Notes issued under this Indenture remains outstanding immediately after the occurrence of such redemption (excluding Notes held by Wynn Resorts, any of its Affiliates, any of their respective employees or the Existing Stockholders); and
- (2) the redemption must occur within 60 days of the date of the closing of such Qualified Equity Offering.

(b) Except pursuant to Section 3.07(a) and Section 3.09, the Notes are not redeemable at the Issuers' option prior to November 1, 2006.

(c) After November 1, 2006, the Issuers may redeem all or a part of the Notes upon not less than 30 nor more than 60 days' notice, at the redemption prices (expressed as percentages of principal amount) set forth below plus accrued and unpaid interest on the Notes redeemed, to the applicable redemption date, if redeemed during the twelve-month period beginning on November 1 of the years indicated below:

| <u>Year</u> | <u>Percentage</u> |
|---------------------|-------------------|
| 2006 | 112.00% |
| 2007 | 108.00% |
| 2008 | 104.00% |
| 2009 and thereafter | 100.00% |

(d) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Section 3.01 through 3.06 hereof.

Section 3.08 Mandatory Redemption.

Other than as set forth in Section 3.09 below, the Issuers are not required to make mandatory redemption or sinking fund payments with respect to the Notes.

Section 3.09 Mandatory Disposition or Redemption Pursuant to Gaming Laws.

Notwithstanding any other provision hereof, if any Gaming Authority requires a Holder or Beneficial Owner of Notes to be licensed, qualified or found suitable under any applicable Gaming Law and the Holder or Beneficial Owner (1) fails to apply for a license, qualification or finding of suitability within 30 days after being requested to do so (or such lesser period as required by the Gaming Authority), or (2) is notified by a Gaming Authority that it shall not be licensed, qualified or found suitable, the Issuers shall have the right, at their option, to:

(a) require the Holder or Beneficial Owner to dispose of its Notes within 30 days (or such lesser period as required by the Gaming Authority) following the earlier of:

- (1) the termination of the period described above for the Holder or Beneficial Owner to apply for a license, qualification or finding of suitability; or

(2) the receipt of the notice from the Gaming Authority that the Holder or Beneficial Owner shall not be licensed, qualified or found suitable by the Gaming Authority; or

(b) redeem the Notes of the Holder or Beneficial Owner at a redemption price equal to:

(1) the price determined by the Gaming Authority; or

(2) if the Gaming Authority does not determine a price, the lesser of:

(A) the principal amount of the Notes; and

(B) the price that the Holder or Beneficial Owner paid for the Notes,

in each case, together with accrued and unpaid interest on the Notes to the earlier of (1) the date of redemption or such earlier date as is required by the Gaming Authority or (2) the date of the finding of unsuitability by the Gaming Authority, which may be less than 30 days following the notice of redemption. The Issuers shall notify the Trustee in writing of any redemption pursuant to this Section 3.09 as soon as reasonably practicable.

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Immediately upon a determination by a Gaming Authority that a Holder or Beneficial Owner of Notes shall not be licensed, qualified or found suitable, the Holder or Beneficial Owner shall not have any further rights with respect to the Notes to:

(a) exercise, directly or indirectly, through any Person, any right conferred by the Notes; or

(b) receive any interest or any other distribution or payment with respect to the Notes, or any remuneration in any form from the Issuers for services rendered or otherwise, except the redemption price of the Notes.

The Issuers are not required to pay or reimburse any Holder or Beneficial Owner of Notes who is required to apply for such license, qualification or finding of suitability for the costs relating thereto. Those expenses shall be the obligation of the Holder or Beneficial Owner.

Section 3.10 *Offer to Purchase by Application of Excess Proceeds.*

In the event that, pursuant to Section 4.10 or 4.16 hereof, Wynn Las Vegas is required to commence an Asset Sale Offer or an Event of Loss Offer (each Asset Sale Offer or Event of Loss Offer is referred to in this Section 3.10 as an "*Excess Proceeds Offer*"), it shall follow the procedures specified below.

The Excess Proceeds Offer shall be made to all Holders. The Excess Proceeds Offer shall remain open for a period of at least 20 Business Days following its commencement and not more than 30 Business Days, except to the extent that a longer period is required by applicable law (the "*Offer Period*"). No later than three Business Days after the termination of the Offer Period (the "*Purchase Date*"), Wynn Las Vegas shall apply all Excess Proceeds (the "*Offer Amount*") to the purchase of Notes (if the Notes are listed on any national securities exchange, in compliance with the requirements of the principal securities exchange on which the Notes are listed, or, if the Notes are not listed on any national securities exchange, on a *pro rata* basis, by lot or by any other method the Trustee deems fair and appropriate, if applicable) or, if less than the Offer Amount has been tendered, all Notes tendered in response to the Excess Proceeds Offer. Payment for any Notes so purchased shall be made in the same manner as interest payments are made.

If the Purchase Date is on or after an interest record date and on or before the related interest payment date, any accrued and unpaid interest shall be paid to the Person in whose name a Note is registered at the close of business on such record date, and no additional interest shall be payable to Holders who tender Notes pursuant to the Excess Proceeds Offer.

Wynn Las Vegas shall provide the Trustee with notice of the Excess Proceeds Offer at least 10 days (or such lesser time as the Trustee shall permit) prior to its commencement. Upon the commencement of an Excess Proceeds Offer, Wynn Las Vegas shall send, by first class mail, a notice to each of the Holders, with a copy to the Trustee. The notice shall contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Excess Proceeds Offer. The notice, which shall govern the terms of the Excess Proceeds Offer, shall state:

(a) that the Excess Proceeds Offer is being made pursuant to this Section 3.10 and Section 4.10 or Section 4.16 hereof, as appropriate, and the length of time the Excess Proceeds Offer shall remain open;

(b) the Offer Amount, the purchase price and the Purchase Date;

(c) that any Note not tendered or accepted for payment shall continue to accrue interest;

(d) that, unless Wynn Las Vegas defaults in making such payment, any Note accepted for payment pursuant to the Excess Proceeds Offer shall cease to accrue interest after the Purchase Date;

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(e) that Holders electing to have a Note purchased pursuant to an Excess Proceeds Offer may elect to have Notes purchased in integral multiples of \$1,000 only;

(f) that Holders electing to have a Note purchased pursuant to any Excess Proceeds Offer shall be required to surrender the Note, with the form entitled "Option of Holder to Elect Purchase" on the reverse of the Note completed, or transfer by book-entry transfer, to Wynn Las Vegas, the Depository, if appointed by Wynn Las Vegas, or a Paying Agent at the address specified in the notice at least three days before the Purchase Date;

(g) that Holders shall be entitled to withdraw their election if Wynn Las Vegas, the Depository or the Paying Agent, as the case may be, receives, not later than the expiration of the Offer Period, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Note purchased; *provided* that, with respect to Notes that have been tendered using the procedure for book-entry transfer, any such notice of withdrawal shall specify the name number of the account at The Depository Trust Company to be credited with the withdrawn Notes and shall otherwise comply with the procedures of the book-entry transfer facility;

(h) that, if the aggregate principal amount of Notes surrendered by Holders exceeds the Offer Amount, Wynn Las Vegas shall select the Notes to be purchased, if the Notes are listed on any national securities exchange, in compliance with the requirements of the principal securities exchange on which the Notes are listed, or if the Notes are not listed on any national securities exchange, on a *pro rata* basis, by lot or by any other method the Trustee deems fair and appropriate (with such adjustments as may be deemed appropriate by Wynn Las Vegas so that only Notes in denominations of \$1,000, or integral multiples thereof, shall be purchased); and

(i) that Holders whose Notes were purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by book-entry transfer).

On or before the Purchase Date, Wynn Las Vegas shall, to the extent lawful, accept for payment, if the Notes are listed on any national securities exchange, in compliance with the requirements of the principal securities exchange on which the Notes are listed, or if the Notes are not listed on any national securities exchange, on a *pro rata* basis, by lot or by any other method the Trustee deems fair and appropriate, to the extent necessary, the Offer Amount of Notes or portions thereof tendered pursuant to the Excess Proceeds Offer, or if less than the Offer Amount has been tendered, all Notes tendered, and shall deliver to the Trustee an Officers' Certificate stating that such Notes or portions thereof were accepted for payment by Wynn Las Vegas in accordance with the terms of this Section 3.10. Wynn Las Vegas, the Depository or the Paying Agent, as the case may be, shall promptly (but in any case not later than five days after the Purchase Date) mail or deliver to each tendering Holder an amount equal to the purchase price of the Notes tendered by such Holder and accepted by Wynn Las Vegas for purchase, and Wynn Las Vegas shall promptly issue a new Note, and the Trustee, upon written request from Wynn Las Vegas shall authenticate and mail or deliver such new Note to such Holder, in a principal amount equal to any unpurchased portion of the Note surrendered. Any Note not so accepted shall be promptly mailed or delivered by Wynn Las Vegas to the Holder thereof. Wynn Las Vegas shall publicly announce the results of the Excess Proceeds Offer on the Purchase Date.

Other than as specifically provided in this Section 3.10, any purchase pursuant to this Section 3.10 shall be made pursuant to the provisions of Sections 3.01 through 3.06 hereof.

ARTICLE 4. COVENANTS

Section 4.01 *Payment of Notes.*

The Issuers shall pay or cause to be paid the principal of, premium, if any, and interest on the Notes on the dates and in the manner provided in the Notes. Principal, premium, if any, and interest shall be considered paid on the date due if the Paying Agent, if other than the Issuers or a Subsidiary thereof, holds as of 10:00 a.m. Eastern Time on the due date money deposited by the Issuers in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due.

The Issuers shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at the rate equal to 1% per annum in excess of the then applicable interest rate on the Notes to the extent lawful; they shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period) at the same rate to the extent lawful.

Section 4.02 *Maintenance of Office or Agency.*

The Issuers shall maintain in the Borough of Manhattan, the City of New York, an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-registrar) where Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Issuers in respect of the Notes and this Indenture may be served. The Issuers shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Issuers fail to maintain any such required office or agency or fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Issuers may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the Issuers of their obligation to maintain an office or agency in the Borough of Manhattan, the City of New York for such purposes. The Issuers shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Issuers hereby designate the Corporate Trust Office of the Trustee as one such office or agency of the Issuers in accordance with Section 2.03 hereof.

Section 4.03 *Reports.*

(a) Whether or not required by the SEC, so long as any Notes are outstanding, the Issuers shall furnish to the Holders, within the time periods specified in the SEC's rules and regulations:

(1) all quarterly and annual financial information that would be required to be contained in a filing with the SEC on Forms 10-Q and 10-K if each of (a) Wynn Las Vegas and (b) the Restricted Entities were required to file such forms, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" and, with respect to the annual information only, a report thereon by the Wynn Las Vegas' and the Restricted Entities' certified independent accountants; and

(2) all current reports that would be required to be filed with the SEC on Form 8-K if each of (a) Wynn Las Vegas and (b) the Restricted Entities were required to file such reports.

(b) If Wynn Las Vegas has designated any of its Subsidiaries as Unrestricted Subsidiaries, then the quarterly and annual financial information required by Section 4.03(a) shall include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, and in

Management's Discussion and Analysis of Financial Condition and Results of Operations, of the financial condition and results of operations of Wynn Las Vegas and its Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of Wynn Las Vegas.

Section 4.04 *Compliance Certificate.*

(a) The Issuers, each Guarantor and the Parent Guarantor (to the extent that such Guarantor and/or Parent Guarantor is so required under the TIA) shall deliver to the Trustee, within 90 days after the end of each fiscal year, an Officers' Certificate stating that a review of the activities of the Issuers, the Restricted Entities and their respective Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Issuers have kept, observed, performed and fulfilled its obligations under this Indenture and the Collateral Documents, and further stating, as to each such Officer signing such certificate, that to the best of his or her knowledge the Issuers have kept, observed, performed and fulfilled each and every covenant contained in this Indenture and the Collateral Documents and are not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture or the Collateral Documents (or, if a Default or Event of Default has occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Issuers are taking or proposes to take with respect thereto) and that to the best of his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of or interest, if any, on the Notes is prohibited or if such event has occurred, a description of the event and what action the Issuers are taking or propose to take with respect thereto.

(b) So long as not contrary to the then current recommendations of the American Institute of Certified Public Accountants, the year-end financial statements delivered pursuant to Section 4.03(a) above shall be accompanied by a written statement of the Issuers' independent public accountants (who shall be a firm of established national reputation) that in making the examination necessary for certification of such financial statements, nothing has come to their attention that would lead them to believe that the Issuers have violated any provisions of Article 4 or Article 5 hereof or, if any such violation has occurred, specifying the nature and period of existence thereof, it being understood that such accountants shall not be liable directly or indirectly to any Person for any failure to obtain knowledge of any such violation.

(c) So long as any of the Notes are outstanding, the Issuers shall deliver to the Trustee, forthwith upon any Officer becoming aware of any Default or Event of Default, an Officers' Certificate specifying such Default or Event of Default and what action the Issuers are taking or proposes to take with respect thereto.

Section 4.05 *Taxes.*

The Issuers and the Restricted Entities shall pay, and shall cause each of their respective Subsidiaries to pay, prior to delinquency, all material taxes, assessments, and governmental levies except such as are contested in good faith and by appropriate proceedings or where the failure to effect such payment is not adverse in any material respect to the Holders of the Notes.

Section 4.06 *Stay, Extension and Usury Laws.*

The Issuers, each of the Guarantors and the Parent Guarantor covenant (to the extent that they may lawfully do so) that they shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and each Issuer, each of the Guarantors and the Parent Guarantor (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the

Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.07 *Restricted Payments.*

(a) Wynn Las Vegas and the Restricted Entities shall not, and shall not permit any of their respective Restricted Subsidiaries to, directly or indirectly:

(1) declare or pay any dividend or make any other payment or distribution on account of any Equity Interests of Wynn Las Vegas, any Restricted Entity or any Restricted Entity's Restricted Subsidiaries (including, without limitation, any payment in connection with any merger or consolidation) or to the direct or indirect holders of any Equity Interests of Wynn Las Vegas, any Restricted Entity or any Restricted Entity's Restricted Subsidiaries in any capacity, other than dividends or distributions payable in Equity Interests (other than Disqualified Stock) of Wynn Las Vegas, any Restricted Entity or any Restricted Entity's Restricted Subsidiaries;

(2) purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation) any Equity Interests of Wynn Las Vegas, any direct or indirect parent of Wynn Las Vegas (including, without limitation, Wynn Resorts), any Restricted Entity or any Restricted Entity's Restricted Subsidiaries, other than Permitted Investments;

(3) make any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness that is subordinated to the Notes or the Note Guarantees under the Guarantee and Collateral Agreements, except a payment of interest or principal at the Stated Maturity thereof; or

(4) make any Restricted Investment (all such payments and other actions set forth in clauses (1) through (4) above being collectively referred to as "Restricted Payments"),

unless, at the time of and after giving effect to such Restricted Payment:

(1) the Completion Date has occurred; and

(2) no Default or Event of Default has occurred and is continuing or would occur as a consequence of such Restricted Payment; and

(3) Wynn Las Vegas would, at the time of such Restricted Payment and after giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the applicable four-quarter period, have been permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.09(a) hereof; and

(4) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries after the date of this Indenture (excluding Restricted Payments permitted by clauses (2), (3), (5), (7), (8), (9), (10), (11), (12), (13) and (14) below (with respect to clause (5) to the extent such Restricted Payments were already deducted from Consolidated Net Income) of Section 4.07(b) hereof), is less than the sum, without duplication, of:

(A) 50% of the Consolidated Net Income of Wynn Las Vegas and its Restricted Subsidiaries for the period (taken as one accounting period) from the beginning of the first fiscal quarter commencing after the Completion Date to the end of Wynn Las Vegas' most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment (or, if such Consolidated Net Income for such period is a deficit, less 100% of such deficit), *plus*

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(B) 100% of the aggregate Net New Equity Proceeds since the date of this Indenture, *excluding* any Net New Equity Proceeds:

(i) to the extent those proceeds are utilized as a basis for incurring Indebtedness pursuant to clause (11) or (12) of Section 4.09(b) hereof,

(ii) to the extent consisting of capital contributions made to Wynn Las Vegas for the purpose of satisfying the "in-balance" requirements of the Disbursement Agreement,

(iii) to the extent such Net New Equity Proceeds are derived from the incurrence of any Project Related Indebtedness, unless at the time of any proposed Restricted Payment to be made based upon amounts available for Restricted Payments under subclause (iii) of this clause (B), and pro forma for such Restricted Payment, Wynn Las Vegas would have been able to incur \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.09(a) hereof, except that, solely for purposes of calculating the Fixed Charge Coverage Ratio under this subclause (iii), the Fixed Charges of Wynn Resorts shall be included as a Fixed Charge in the calculation of "Fixed Charges,"

(iv) to the extent those proceeds are used to redeem, repurchase, retire, defease or acquire subordinated Indebtedness or Equity Interests pursuant to clause (2) or (3) of Section 4.07(b) hereof, and

(v) to the extent those proceeds are used to make Permitted Investments of the type permitted by clause (5) of the definition of Permitted Investments, *plus*

(C) (i) to the extent that any Restricted Investment that was made after the date of this Indenture is sold for cash or otherwise liquidated or repaid for cash for an amount in excess of the initial amount of such Restricted Investment, the sum of (x) 50% of the cash proceeds with respect to such Restricted Investment in excess of the aggregate amount invested in such Restricted Investment (less the cost of disposition, if any) and (y) the aggregate amount invested in such Restricted Investment, and (ii) to the extent that any such Restricted Investment is sold for cash or otherwise liquidated or repaid in cash for an amount equal to or less than the initial amount of such Restricted Investment, the cash return of capital with respect to such Restricted Investment (less the cost of disposition, if any), *plus*

(D) 100% of any cash dividends or cash distributions received by Wynn Las Vegas or any of its Restricted Subsidiaries after the date of this Indenture from an Unrestricted Subsidiary of Wynn Las Vegas, *plus*

(E) to the extent that any Unrestricted Subsidiary of Wynn Las Vegas is redesignated as a Restricted Subsidiary after the date of this Indenture, the lesser of (i) the fair market value of Wynn Las Vegas's Investment in such Subsidiary as of the date of such redesignation or (ii) such fair market value as of the date on which such Subsidiary was originally designated as an Unrestricted Subsidiary.

(b) With respect to (1) any payments made pursuant to clauses (1), (2), (3), (6), (7), (8), (9), (11), (12), (13), (14), (15) and (16) below, so long as no Default or Event of Default has occurred and is continuing or would be caused by the payments, and (2) any payments made pursuant to clauses (4), (5) and (10) below, regardless of whether any Default or Event of Default has occurred and is continuing or would be caused by the payment, the preceding provisions of this Section 4.07 shall not prohibit:

(1) the payment of any dividend or distribution (other than any distribution made under clause (5) of this Section 4.07(b)) within 60 days after the date of declaration of the dividend or

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distribution, if at the date of declaration the dividend payment or distribution payment would have complied with the provisions of this Indenture;

(2) the redemption, repurchase, retirement, defeasance or other acquisition of any subordinated Indebtedness of (i) Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries in exchange for, or out of Net New Equity Proceeds, or (ii) Wynn Las Vegas, any Restricted Entity or any of their Restricted Subsidiaries with the net cash proceeds from an incurrence of Permitted Refinancing Indebtedness;

(3) the redemption, repurchase, retirement, defeasance or other acquisition of any Equity Interests of Wynn Las Vegas or Wynn Resorts in exchange for or out of Net New Equity Proceeds;

(4) the distribution to Wynn Resorts, directly or through any intermediate Wholly Owned Subsidiaries of Wynn Resorts, of amounts necessary to repurchase Equity Interests or Indebtedness of Wynn Resorts (other than Equity Interests held by or Indebtedness owed to the Existing Stockholders) to the extent required by any Gaming Authority having jurisdiction over Wynn Las Vegas or any of its Restricted Subsidiaries for not more than the fair market value thereof in order to avoid the suspension, revocation or denial of a Gaming License by that Gaming Authority; *provided* that so long as, if such efforts do not jeopardize any Gaming License, Wynn Resorts and its Subsidiaries shall have diligently attempted to find a third-party purchaser for such Equity Interests or Indebtedness and no third-party purchaser acceptable to the applicable Gaming Authority was willing to purchase such Equity Interests or Indebtedness within a time period acceptable to such Gaming Authority;

(5) distributions to the direct or indirect owners of Wynn Las Vegas, the Completion Guarantor, any Restricted Entity or any of their respective Restricted Subsidiaries with respect to any period during which such entity is a Pass Through Entity or a Consolidated Member, such distributions in an aggregate amount not to exceed such owners' Tax Amounts for such period;

(6) (i) the repurchase, redemption or other acquisition or retirement for value of any Equity Interests of Wynn Resorts, or (ii) the distribution to Wynn Resorts, directly or through any intermediate Wholly Owned Subsidiaries of Wynn Resorts, of amounts necessary to repurchase, redeem or otherwise acquire or retire for value Equity Securities of Wynn Resorts, in each case held by any member of management of Wynn Resorts or any Restricted Entity (or the estate or trust for the benefit of any such member of management) pursuant to the provisions of the operating agreement, or comparable governing documents, or employee benefit plans or employment agreements of any such Person; *provided* that the aggregate consideration for all such repurchased, redeemed, acquired or retired Equity Interests, together with the aggregate amount of all such distributions made to Wynn Resorts, shall not exceed \$2.0 million in any calendar year;

(7) the payment of Management Fees under the Management Agreement to the extent such payments are made in compliance with Section 4.24 hereof;

(8) the distribution to Wynn Resorts of amounts remaining in the Completion Guarantee Deposit Account, following the release of such amounts in accordance with the Disbursement Agreement;

(9) following the Completion Date, the payments of amounts then due and payable under the Affiliate Agreements and Qualified Intercompany Agreements in respect of the period following the Completion Date (other than payments described in clauses (7), (10) and (11) of this Section 4.07(b)), so long as such amounts do not include, in any case, any fee, profit or similar component, and represent only the payment or reimbursement of actual costs and expenses incurred or, as the case may be, the fair value of services provided thereunder;

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(10) the payment of amounts then due and payable under the Tax Indemnification Agreement, as in effect on the date of this Indenture;

(11) the payment, on or after the Budgeted Overhead Final Payment Date, of Allocable Overhead to Wynn Resorts or any of its Subsidiaries to the extent then due and payable by Wynn Resorts or the applicable Subsidiary, as the case may be; *provided* that Wynn Las Vegas shall deliver an Officers' Certificate to the Trustee, within 30 days following a written request therefor from the Trustee or any Holder, confirming and setting forth such date;

(12) the payment of Budgeted Amounts pursuant to the Disbursement Agreement;

(13) Restricted Payments consisting of transfers and other dispositions of Released Assets;

(14) *pro rata* dividends, distributions or payments to direct or indirect Equity Interest holders by a Person (excluding any dividend, distribution or payment by a Person that is a Guarantor to a Person, other than an Issuer, that is not a Guarantor) payable:

(a) to Wynn Las Vegas or any of its Restricted Subsidiaries,

(b) between Wynn Resorts Holdings and Valvino Lamore, excluding a dividend or distribution of any or all of the Golf Course Land, unless such Golf Course Land is then a Released Asset,

(c) by (x) any Restricted Entity or any Restricted Subsidiary of a Restricted Entity, that, in each case, is not a Guarantor to (y) any parent Restricted Entity or any parent Restricted Subsidiary of a Restricted Entity that, in each case, is a Guarantor, or

(d) by any Wynn Group Entity to any Restricted Entity,

(15) until the earlier of (i) 12 months following the acquisition of the Replacement Aircraft, and (ii) the sale by World Travel, LLC or the Aircraft Trustee of the Existing Aircraft, the payment to Wynn Resorts of amounts necessary to pay interest then due and payable on the Replacement Aircraft Indebtedness in an aggregate amount not to exceed \$1.0 million; and

(16) Restricted Payments not otherwise permitted by the foregoing clauses (1) through (15) in an aggregate amount of not more than \$10.0 million.

(c) The amount of all Restricted Payments (other than cash) shall be the fair market value on the date of the Restricted Payment of the assets or securities proposed to be transferred or issued to or by the applicable entity pursuant to the Restricted Payment. The fair market value of any assets or securities that are required to be valued by this Section 4.07 shall be determined in good faith by the applicable entity's Board of Directors whose resolution with respect thereto shall be delivered to the Trustee. At the same time as the delivery of the financial information required to be delivered under Section 4.03(a) hereof, Wynn Las Vegas shall deliver to the Trustee an Officers' Certificate describing in reasonable detail all of the Restricted Payments made during the period to which such financial information relates, stating that such Restricted Payments were permitted when made and setting forth the basis upon which the calculations required by this Section 4.07 were computed.

(a) Wynn Las Vegas and the Restricted Entities shall not, and shall not permit any of their respective Restricted Subsidiaries to, directly or indirectly, create or permit to exist or become effective

any consensual encumbrance or restriction on the ability of any of Wynn Las Vegas' Restricted Subsidiaries to:

- (1) pay dividends or make any other distributions on its Capital Stock to Wynn Las Vegas, or with respect to any other interest or participation in, or measured by, its profits, or pay any indebtedness owed to Wynn Las Vegas;
- (2) make loans or advances to Wynn Las Vegas or any of its Restricted Subsidiaries; or
- (3) transfer any of its properties or assets to Wynn Las Vegas or any of its Restricted Subsidiaries.

(b) The restrictions in Section 4.08(a) hereof shall not apply to encumbrances or restrictions existing under or by reason of:

- (1) the Notes, this Indenture or the Collateral Documents;
- (2) applicable law, including rules, regulations and orders issued by any Gaming Authority;
- (3) customary non-assignment provisions in contracts, licenses or leases entered into in the ordinary course of business and consistent with practices that are customary in the gaming, lodging or entertainment industry;
- (4) the Credit Agreement and the FF&E Facility as in effect on the date of this Indenture and any other Indebtedness permitted to be incurred by this Indenture and any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of those agreements, so long as the applicable provisions of amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements, refinancings or agreements governing other Indebtedness are no more restrictive, taken as a whole, with respect to such dividend and other payment restrictions than those contained in the Credit Agreement and the FF&E Facility, in each case as in effect on the date of this Indenture;
- (5) the acquisition of the Capital Stock of any Person, or property or assets of any Person by Wynn Las Vegas or any of its Restricted Subsidiaries, if the encumbrances or restrictions (i) existed at the time of the acquisition and were not incurred in contemplation thereof and (ii) are not applicable to and are not spread to cover any Person or the property or assets of any Person other than the Person acquired or the property or assets of the Person acquired;
- (6) purchase money obligations or Capital Lease Obligations for FF&E acquired under the FF&E Facility and other Indebtedness permitted under clause (7) of Section 4.09(b) hereof that impose restrictions of the type described in clause (3) of Section 4.08(a) hereof on the FF&E so acquired;
- (7) any agreement for the sale or other disposition of a Restricted Subsidiary permitted hereby that restricts distributions by that Restricted Subsidiary pending its sale or other disposition;
- (8) Liens permitted to be incurred under the provisions of Section 4.12 hereof, securing Indebtedness otherwise permitted to be incurred under Section 4.09(b) hereof, that limit the right of the debtor to dispose of the assets subject to such Liens; or
- (9) customary provisions with respect to the disposition or distribution of assets or property in partnership or joint venture agreements, asset sale agreements, stock sale agreements and other similar agreements entered into in the ordinary course of business.

Section 4.09 *Incurrence of Indebtedness and Issuance of Preferred Equity.*

(a) Wynn Las Vegas and the Restricted Entities shall not, and shall not permit any of their respective Restricted Subsidiaries to, directly or indirectly, (i) create, incur, issue, assume, guarantee or

otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "incur") any Indebtedness (including Acquired Debt), or (ii) issue any Disqualified Stock or shares of preferred stock; *provided, however*, Wynn Las Vegas and its Restricted Subsidiaries may incur Indebtedness (including Acquired Debt), if (i) the Opening Date has occurred and (ii) the Fixed Charge Coverage Ratio of Wynn Las Vegas for Wynn Las Vegas' most recently ended four full fiscal quarters following the Opening Date for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred (the "*Reference Period*") would have been at least 2.0 to 1.0, determined on a pro forma basis, including a pro forma application of the net proceeds from the Indebtedness, as if the additional Indebtedness had been incurred at the beginning of such four-quarter period.

(b) The provisions of Section 4.09(a) shall not prohibit the incurrence of any of the following items of Indebtedness so long as no Default or Event of Default has occurred and is continuing or would result therefrom (collectively, "*Permitted Debt*");

- (1) the incurrence by Wynn Las Vegas and any of its Restricted Subsidiaries of Indebtedness under the Credit Agreement in an aggregate principal amount (with letters of credit being deemed to have a principal amount equal to the sum of the face amount thereof and related unpaid reimbursement obligations) not to exceed an amount equal to (a) \$1.0 billion *less* (b) the aggregate amount of all prepayments of principal Indebtedness that result in permanent reductions of the commitments under the Credit Agreement;
- (2) the incurrence by the Issuers, the Restricted Entities and their respective Restricted Subsidiaries of their respective obligations arising under the Notes, the Credit Agreement, the FF&E Facility and, to the extent those obligations would represent Indebtedness, the Collateral Documents;

(3) the incurrence by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries of Permitted Refinancing Indebtedness in exchange for, or the net proceeds of which are used to refund, refinance or replace Indebtedness (other than intercompany Indebtedness) that was permitted by this Indenture to be incurred under this Section 4.09(a), under clauses (2) or (7) of this Section 4.09(b), or under this clause (3);

(4) the incurrence of intercompany Indebtedness (i) between or among Wynn Las Vegas and/or its Restricted Subsidiaries, (ii) between or among Valvino Lamore and Wynn Resorts Holdings, (iii) between or among the Wynn Group Entities and (iv) the incurrence by the Restricted Entities or any of their respective Restricted Subsidiaries of intercompany Indebtedness (to the extent that Wynn Las Vegas, any of its Restricted Subsidiaries, or, as the case may be, the applicable Restricted Entity, would be permitted to make loans giving rise to, or otherwise hold, such Indebtedness as a Restricted Payment under Section 4.07 hereof) owing to Wynn Las Vegas or any of its Restricted Subsidiaries, so long as:

(a) if Wynn Las Vegas or any Guarantor is the obligor on the Indebtedness, the Indebtedness is expressly subordinated in right of payment to the prior payment in full in cash of all Obligations with respect to the Notes, in the case of the Wynn Las Vegas, or its guarantee under the Guarantee and Collateral Agreement to which it is a party, in the case of a Guarantor; *provided, however*, that no Indebtedness of Wynn Las Vegas or any Guarantor shall be deemed to be contractually subordinated in right of payment to any other Indebtedness of Wynn Las Vegas or any such Guarantor solely by virtue of being unsecured;

(b) (i) any subsequent issuance or transfer of Equity Interests that results in any such Indebtedness being held by a Person other than a Guarantor or Wynn Las Vegas or a Restricted Subsidiary thereof, and (ii) any sale or other transfer of any such Indebtedness to a Person that is neither Wynn Las Vegas nor a Restricted Subsidiary thereof nor any Guarantor

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shall be deemed, in each case, to constitute an incurrence of such Indebtedness by Wynn Las Vegas, such Restricted Entity or such Restricted Subsidiary, as the case may be, that was not permitted by this clause (4); and

(c) in the case of any Indebtedness incurred pursuant to clause (iv) above, such Indebtedness is permitted to be incurred as a Restricted Payment under Section 4.07 hereof, and, for purposes of Section 4.07 hereof, the obligee or payee on such Indebtedness shall be deemed to have a Restricted Payment on the date on which such Indebtedness is incurred in an amount equal to the principal amount of the Indebtedness incurred on such date (or, if less, the principal amount of such Indebtedness from time to time outstanding);

(5) the incurrence by Wynn Las Vegas, the Restricted Entities or any of their respective Restricted Subsidiaries of Hedging Obligations that are incurred for the purpose of fixing or hedging interest rate risk with respect to any floating rate Indebtedness that is permitted by the terms of this Indenture to be outstanding;

(6) the incurrence by Wynn Las Vegas, the Restricted Entities or any of their respective Restricted Subsidiaries of Indebtedness solely in respect of performance, surety, appeal or similar bonds or standby letters of credit, so long as the aggregate amount of all such bonds and standby letters of credit is not greater than \$20.0 million at any time outstanding;

(7) the incurrence by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries of FF&E Financing or Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations, including the FF&E Facility in each case, incurred for the purpose of financing all or part of the purchase price or cost of construction or improvement of property, plant or equipment used in the Project by Wynn Las Vegas or any of its Restricted Subsidiaries, so long as:

(a) the principal amount of such Indebtedness does not exceed the cost (including sales and excise taxes, installation and delivery charges and other direct costs of, and other direct expenses paid or charged in connection with, such purchase) of the FF&E or other assets purchased or leased with the proceeds thereof,

(b) unless such Indebtedness is unsecured or is incurred under the FF&E Facility, as in effect of the date of this Indenture, not less than 70% of the aggregate fair market value of the purchase or lease costs of such FF&E or other assets is paid with the proceeds of Indebtedness incurred under this clause (7), and

(c) the aggregate principal amount of such Indebtedness, including all Permitted Refinancing Indebtedness incurred to refund, refinance or replace any Indebtedness incurred pursuant to this clause (7), does not exceed an amount outstanding at any time equal to the greater of:

(1) \$188.5 million (or \$198.5 million from and after the Aircraft Refinancing Date, so long as such additional \$10.0 million of Indebtedness is used solely to repay Replacement Aircraft Indebtedness) *less* (i) the aggregate amount of all prepayments of principal made under the FF&E Facility, *less* (ii) permanent commitment reductions under the FF&E Facility resulting from the application of Asset Sale or Event of Loss proceeds, and

(2) \$100.0 million,

(8) (i) the Guarantee by Wynn Las Vegas, any Restricted Entity or any of their Restricted Subsidiaries of Indebtedness of any other of Wynn Las Vegas and any of its Restricted Subsidiaries, (ii) the Guarantee by Valvino Lamore or Wynn Resorts Holdings of Indebtedness of Wynn Resorts Holdings or Valvino Lamore or Wynn Las Vegas or any of its Restricted

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Subsidiaries, as the case may be, or (iii) the Guarantee by any Wynn Group Entity of Indebtedness of Wynn Las Vegas, any Restricted Entity, and any of their respective Restricted Subsidiaries, in each case, to the extent the Indebtedness to be Guaranteed is permitted to be incurred by such other entity by another provision of this Section 4.09;

(9) the incurrence by Wynn Las Vegas or any of its Restricted Subsidiaries of Indebtedness in connection with the repurchase, redemption or other acquisition or retirement for value of Equity Interests of Wynn Resorts or any Restricted Entity permitted pursuant to clause (6) of Section 4.07(b) hereof;

(10) the incurrence or issuance by Wynn Las Vegas' Unrestricted Subsidiaries of Nonrecourse Debt; *provided, however*, that if any such Indebtedness ceases to be Non-Recourse Debt of an Unrestricted Subsidiary (but continues to be Indebtedness of a Subsidiary of Wynn Las Vegas), such event shall be deemed to constitute an incurrence of Indebtedness by a Restricted Subsidiary of Wynn Las Vegas that was not permitted by this clause (10);

(11) the incurrence by Wynn Las Vegas or any of its Restricted Subsidiaries of additional Indebtedness (so long as such Indebtedness is incurred under the Credit Agreement or through the issuance of Additional Notes under this Indenture, or is unsecured Indebtedness) to be used to develop and construct an Entertainment Facility on land included in the Project (other than the Golf Course Land) in an aggregate principal amount (or original accreted value, as applicable) at any time not to exceed the lesser of (a) \$50.0 million and (b) 200% of the Net New Equity Proceeds received by Wynn Las Vegas or any of its Restricted Subsidiaries since the date of this Indenture and used to develop and construct such Entertainment Facility, *excluding* any Net New Equity Proceeds to the extent those proceeds are:

- (a) utilized as a basis for incurring Indebtedness pursuant to clause (12) below,
- (b) used to make Restricted Payments under clause (4)(B) of Section 4.07(a) hereof, or clause (2) or (3) of Section 4.07(b) hereof, or
- (c) used to make Permitted Investments of the type permitted by clause (5) of the definition of Permitted Investments;

(12) the incurrence by Wynn Las Vegas or any of its Restricted Subsidiaries of additional Indebtedness (so long as such Indebtedness is incurred under the Credit Agreement or the FF&E Facility or through the issuance of Additional Notes under this Indenture, or is unsecured Indebtedness) in an aggregate principal amount (or initial accreted value, as applicable) at any time outstanding incurred pursuant to this clause (12), not to exceed \$50.0 million, so long as Indebtedness incurred pursuant to this clause (12) prior to the Completion Date is matched dollar for dollar, by additional Net New Equity Proceeds received by Wynn Las Vegas or any of its Restricted Subsidiaries since the date of this Indenture, *excluding* any Net New Equity Proceeds to the extent those proceeds are:

- (a) utilized as a basis for incurring Indebtedness pursuant to clause (11) above,
- (b) used to make Restricted Payments under clause 4(B) of the Section 4.07(a) hereof, or clause (2) or (3) of Section 4.07(b) hereof, or
- (c) used to make Permitted Investments of the type permitted by clause (5) of the definition of Permitted Investments;

(13) the accretion or amortization of original issue discount and the write-up of Indebtedness in accordance with GAAP purchase accounting; and

(14) the incurrence by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries on or prior to the Final Completion Date of Indebtedness represented by

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performance bonds, guaranties, trade letters of credit, bankers' acceptances or similar instruments issued by Person other than Wynn Resorts, any Restricted Entity or any of their respective Restricted Subsidiaries for the benefit of a trade creditor of any such Person, in an aggregate amount not to exceed \$10.0 million at any time outstanding so long as:

- (a) such Indebtedness is incurred in the ordinary course of business; and
- (b) the obligations of Wynn Las Vegas, any Restricted Entity or the applicable Restricted Subsidiary, as the case may be, supported by such performance bonds, guaranties, trade letters of credit, bankers' acceptances or similar instruments (1) consist solely of payment obligations with respect to costs incurred in accordance with the Project Budget which would otherwise be permitted to be paid by the applicable entity pursuant to the Disbursement Agreement, (2) are secured, and (3) are secured solely by Liens permitted by clause (22) of the definition of "Permitted Liens."

(c) Neither Wynn Las Vegas nor any Guarantor shall incur any Indebtedness (including Permitted Debt) that is contractually subordinated in right of payment to any other Indebtedness of Wynn Las Vegas or such Guarantor unless such Indebtedness is also contractually subordinated (except for the priority of Permitted Liens and except as otherwise contemplated by the Intercreditor Agreements) in right of payment to the Notes, in the case of Wynn Las Vegas, or the Note Guarantee contained in its Guarantee and Collateral Agreement, in the case of a Guarantor on substantially identical terms. No Indebtedness of Wynn Las Vegas or any Guarantor shall be deemed to be contractually subordinated in right of payment to any other Indebtedness of Wynn Las Vegas or any such Guarantor solely by virtue of being unsecured.

(d) For purposes of determining compliance with this Section 4.09, in the event that an item of proposed Indebtedness meets the criteria of more than one of the categories of Permitted Debt described in (1) through (14) of Section 4.09(b) hereof, or is entitled to be incurred pursuant to Section 4.09(a), the Issuers shall be permitted to classify such item of Indebtedness on the date of its incurrence, or later reclassify all or a portion of such item of Indebtedness, in any manner that complies with this Section 4.09.

Section 4.10 Asset Sales.

Wynn Las Vegas and the Restricted Entities shall not, and shall not permit any of their respective Restricted Subsidiaries to, consummate an Asset Sale unless:

- (a) no Default or Event of Default exists or is continuing immediately prior to or after giving effect to such Asset Sale;
- (b) except with respect to Non-Project Assets, the Opening Date has occurred;

(c) the applicable entity receives consideration at the time of the Asset Sale at least equal to the fair market value of the assets or Equity Interests issued or sold or otherwise disposed of (it being understood that a percentage of the purchase price may be subject to escrow arrangements customary for asset sales);

(d) if the aggregate consideration to be received by the applicable entity is in excess of \$10.0 million, the fair market value is evidenced by a certificate of the Chief Financial Officer of the applicable entity delivered to the Trustee; and

(e) at least 75% (or 95%, in the case of any Asset Sale that occurs on or before the Completion Date) of the consideration received in the Asset Sale by the applicable entity is in the form of cash or Cash Equivalents.

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For purposes of this Section 4.10, each of the following shall be deemed to be cash:

(1) any liabilities, as shown on such entity's most recent consolidated balance sheet, of such entity (other than contingent liabilities and liabilities that are by their terms subordinated to the Notes or any Note Guarantee) that are assumed by the transferee of any such assets pursuant to a customary novation agreement that releases such entity from further liability; and

(2) any securities, notes or other obligations received by such entity from such transferee that are converted within 30 Business Days following such receipt by such entity into cash to the extent of the cash received in that conversion.

After the receipt of any Net Proceeds from an Asset Sale by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries, the applicable entity:

(1) within 270 days (or within 90 days, in the case of any Asset Sale that occurs on or before the Completion Date) after receipt of such Net Proceeds, may apply the Net Proceeds to repay secured unsubordinated Indebtedness of Wynn Las Vegas or any of its Restricted Subsidiaries and, if the Indebtedness repaid is revolving credit Indebtedness, to correspondingly permanently reduce the commitments with respect to such Indebtedness, or

(2) within 270 days (or within 90 days, in the case of any Asset Sale that occurs on or before the Completion Date) after receipt of such Net Proceeds, may apply any Net Proceeds to make a capital expenditure, improve real property or acquire long-term assets that are used or useful in a line of business permitted by Section 4.13 hereof.

In any such case, the Restricted Entities shall take all necessary action to ensure that the security interest of the Trustee, on behalf of the Holders, continues as a perfected security interest (subject only to the security interest securing the Credit Agreement and other Permitted Liens and the terms of the Intercreditor Agreements) on any property or assets acquired or constructed with the Net Proceeds of any Asset Sale on the terms set forth in this Indenture, the Intercreditor Agreements and the other Collateral Documents. Pending the final application of any Net Proceeds, the applicable entity may (1) apply the Net Proceeds to temporarily reduce amounts outstanding under any secured unsubordinated Indebtedness of Wynn Las Vegas or any of its Restricted Subsidiaries, or (2) invest the Net Proceeds in Cash Equivalents which shall be subject to a perfected security interest (subject only to the security interest securing the Credit Agreement and other Permitted Liens and the terms of the Intercreditor Agreements) in favor of the Trustee as security for the Notes.

Any Net Proceeds from Asset Sales that are not applied to repay Indebtedness or invested, in each case as provided in the immediately preceding paragraph, shall constitute "Excess Proceeds." Within 10 days following the date on which the aggregate amount of Excess Proceeds exceeds \$10.0 million, Wynn Las Vegas shall make an offer (an "Asset Sale Offer") to all Holders to purchase the maximum principal amount of Notes that may be purchased out of the Excess Proceeds. The offer price in any Asset Sale Offer shall be equal to 100% of the principal amount of the Notes to be purchased plus accrued and unpaid interest to the date of purchase, and shall be payable in cash. If any Excess Proceeds remain after consummation of an Asset Sale Offer, the applicable entity may use those Excess Proceeds for any general corporate purpose not prohibited by this Indenture and the Collateral Documents. If the aggregate principal amount of Notes tendered into such Asset Sale Offer exceeds the amount of Excess Proceeds, the Trustee shall select the Notes to be purchased as described in Section 3.02 hereof. Upon completion of each Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero.

The Issuers shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with each repurchase of Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of Sections 3.10 or 4.10 of

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this Indenture, the Issuers shall comply with the applicable securities laws and regulations and shall not be deemed to have breached their obligations under those provisions of this Indenture by virtue of such conflict.

Section 4.11 *Transactions with Affiliates.*

(a) Wynn Las Vegas and the Restricted Entities shall not, and shall not permit any of their respective Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate (each, an "Affiliate Transaction"), unless:

(1) the Affiliate Transaction is on terms that are no less favorable to the relevant entity than those that would have been obtained in a comparable transaction by such entity with an unrelated Person; and

(2) Wynn Las Vegas or the applicable Restricted Entity or Restricted Subsidiary, as the case may be delivers to the Trustee:

(A) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$5.0 million, a resolution of the Board of Directors of the applicable entity set forth in an Officers' Certificate certifying that such Affiliate

Transaction complies with this Section 4.11 and that such Affiliate Transaction has been approved by a majority of the Independent Directors of the applicable entity;

(B) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$10.0 million (or \$25.0 million, with respect to Qualified Intercompany Agreements), an opinion as to the fairness to the applicable entity of such Affiliate Transaction from a financial point of view issued by an accounting, appraisal or investment banking firm of national standing prior to the consummation of such Affiliate Transaction; and

(C) in the case of any Affiliate Transaction involving the use of the Existing Aircraft or the Replacement Aircraft (in each case, if such aircraft is owned by Wynn Las Vegas, any Restricted Entity or any Restricted Subsidiary) for any purpose not reasonably related to the Project or the Permitted Businesses of Wynn Las Vegas or the applicable Restricted Entity or Restricted Subsidiary relating to or in connection with the Project, Wynn Las Vegas or the applicable Restricted Entity or Restricted Subsidiary, as the case may be, is reimbursed promptly for actual costs and expenses incurred by such Person in connection with such use.

(b) The following items shall not be deemed to be Affiliate Transactions and, therefore, shall not be subject to the provisions of Section 4.11(a):

(1) the Wynn Employment Agreement or any other employment agreement entered into by Wynn Las Vegas, any Restricted Entity or any of their Restricted Subsidiaries with any Person (other than the Principal) in the ordinary course of business on terms customary in the applicable Permitted Business in which it operates;

(2) the payment of reasonable directors' fees to directors of Wynn Resorts, Wynn Capital or any Guarantor, and customary indemnification and insurance arrangements in favor of such directors, in each case in the ordinary course of business;

(3) transactions:

(A) between or among Wynn Las Vegas and/or its Restricted Subsidiaries,

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(B) between Valvino Lamore and Wynn Resorts Holdings, other than any transaction involving a transfer of any or all of the Golf Course Land to Valvino Lamore, unless such Golf Course Land is then a Released Asset, or

(C) between or among any of the Wynn Group Entities, or by any Wynn Group Entity as a contribution to Wynn Las Vegas, any Restricted Entity or any of their Restricted Subsidiaries;

(4) the Water Rights Transfer;

(5) Restricted Payments that are permitted by Section 4.07 hereof;

(6) subleases by Wynn Las Vegas to one or more of its Affiliates of space at the building located on the Phase II Land at below market rent, to the extent permitted under the Collateral Documents;

(7) leases by Wynn Las Vegas to one or more of its Affiliates of space at the Project, at below market rent, for the development and operation of a Ferrari and Maserati automobile dealership pursuant to the Dealership Lease Agreement, to the extent permitted under the Collateral Documents; and

(8) the Affiliate Agreements, in each case as in effect on the date of this Indenture or as amended, modified or supplemented as permitted under Section 4.28 hereof.

Section 4.12 *Liens.*

Wynn Las Vegas and the Restricted Entities shall not, and shall not permit any of their respective Subsidiaries to, directly or indirectly, create, incur, assume or suffer to exist any Lien of any kind on any asset now owned or hereafter acquired, or any proceeds, income or profits therefrom or assign or convey any right to receive income therefrom, except Permitted Liens.

Section 4.13 *Line of Business.*

Wynn Las Vegas and the Restricted Entities shall not, and shall not permit any of their respective Restricted Subsidiaries to, engage in any business or investment activities other than the Permitted Business. Wynn Las Vegas and the Restricted Entities shall not, and shall not permit any of their respective Subsidiaries to, conduct a Permitted Business in any gaming jurisdiction in which such entity is not licensed on the date of this Indenture if the Holders of the Notes would be required to be licensed as a result thereof; *provided* that this sentence shall not prohibit any entity from conducting a Permitted Business in any jurisdiction that does not require the licensing or qualification of all the Holders of Notes, but reserves the discretionary right to require the licensing or qualification of any Holders of Notes.

Section 4.14 *Corporate and Organizational Existence.*

Subject to Article 5 hereof, each of the Issuers and the Restricted Entities shall, and shall cause each of their respective Restricted Subsidiaries to, do or cause to be done all things necessary to preserve and keep in full force and effect:

(a) its corporate or limited liability company existence, and the corporate, partnership or other existence of each of its Subsidiaries, in accordance with their respective organizational documents (as the same may be amended from time to time); and

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(b) the rights (charter and statutory), licenses and franchises of the Issuers, the Restricted Entities and their respective Subsidiaries; *provided, however*, that the Issuers and the Restricted Entities shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of their respective Subsidiaries (other than the Issuers), if the Board of Directors of Wynn Las Vegas or the applicable Restricted Entity shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Restricted Entities and their respective Restricted Subsidiaries, taken as a whole, and Wynn Las Vegas and its Restricted Subsidiaries, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holders of the Notes.

Section 4.15 *Offer to Purchase Upon Change of Control.*

(a) Upon the occurrence of a Change of Control, the Issuers shall make an offer (a "*Change of Control Offer*") to each Holder to repurchase all or any part (equal to \$1,000 or an integral multiple of \$1,000) of each Holder's Notes at a purchase price equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest on the Notes purchased, if any, to the date of repurchase (the "*Change of Control Payment*"). Within ten days following any Change of Control, the Issuers shall mail a notice to each Holder describing the transaction or transactions that constitute the Change of Control and stating:

- (1) that the Change of Control Offer is being made pursuant to this Section 4.15 and that all Notes tendered shall be accepted for payment;
- (2) the purchase price and the purchase date, which shall be no earlier than 30 days and no later than 60 days from the date such notice is mailed (the "*Change of Control Payment Date*");
- (3) that any Note not tendered shall continue to accrue interest;
- (4) that, unless the Issuers default in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer shall cease to accrue interest after the Change of Control Payment Date;
- (5) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer shall be required to surrender the Notes, with the form entitled "Option of Holder to Elect Purchase" on the reverse of the Notes completed, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;
- (6) that Holders shall be entitled to withdraw their election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of Notes delivered for purchase, and a statement that such Holder is withdrawing his election to have the Notes purchased; and
- (7) that Holders whose Notes are being purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered, which unpurchased portion must be equal to \$1,000 in principal amount or an integral multiple thereof.

The Issuers shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the purchase of the Notes as a result of a Change in Control. To the extent that the provisions of any securities laws or regulations conflict with the provisions of Sections 3.10 or 4.15 of this Indenture, the Issuers shall comply with the applicable securities laws and regulations and shall not be deemed to have breached their obligations under Section 3.10 or this Section 4.15 by virtue of such conflict.

(b) On the Change of Control Payment Date, the Issuers shall, to the extent lawful:

- (1) accept for payment all Notes or portions thereof properly tendered pursuant to the Change of Control Offer;
- (2) prior to 11:00 a.m. (New York City time) on such date, deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes properly tendered; and
- (3) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officers' Certificate stating the aggregate principal amount of Notes or portions of Notes being purchased by the Issuers.

The Paying Agent shall promptly mail to each Holder of Notes properly tendered the Change of Control Payment for such Notes, and the Trustee shall promptly authenticate and mail (or cause to be transferred by book entry) to each Holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided* that each new Note shall be in a principal amount of \$1,000 or an integral multiple thereof. The Issuers shall publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

(c) Notwithstanding anything to the contrary in this Section 4.15, the Issuers shall not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 4.15 and Section 3.10 hereof and purchases all Notes validly tendered and not withdrawn under the Change of Control Offer.

Section 4.16 *Events of Loss*

After any Event of Loss of Collateral comprising the Project occurring after the Final Completion Date in an amount of up to \$500.0 million (measured as the greater of the fair market value or the replacement cost of the Collateral subject to such Event of Loss), Wynn Las Vegas, the applicable Restricted Entity or the applicable Restricted Subsidiary, as the case may be, may apply the Net Loss Proceeds from the Event of Loss to the rebuilding, repair, replacement or construction of improvements to the Project, with no obligation to make any purchase of any Notes; *provided* that, in the case of any such Collateral with a fair market value (or replacement cost, if higher) in excess of \$15.0 million but less than or equal to \$500.0 million:

(a) Wynn Las Vegas delivers to the Trustee within 60 days of the Event of Loss a written opinion from a reputable contractor that the Minimum Facilities can be rebuilt, repaired, replaced or constructed and operating within 365 days following the Event of Loss;

(b) Wynn Las Vegas delivers to the Trustee within 60 days of the Event of Loss an Officers' Certificate certifying that the applicable entity has available from Net Loss Proceeds, cash on hand or available borrowings under Indebtedness permitted to be incurred under Section 4.09 hereof to complete the rebuilding, repair, replacement or construction described in clause (a) above and, together with any anticipated revenues projected to be generated during the repair or restoration period, to pay debt service on its Indebtedness during the repair or restoration period; and

(c) the damaged Collateral is rebuilt, repaired, replaced or constructed and operating in substantially the manner that it was operating immediately prior to the Event of Loss within 365 days following the Event of Loss.

Notwithstanding the foregoing provisions of this Section 4.16, if the damaged Collateral is not necessary for and is not used in the operation of the Permitted Business of the Project, the applicable entity may apply the Net Loss Proceeds to make a capital expenditure, improve real property or acquire long-term assets that are used or useful in a line of business permitted by Section 4.13 hereof.

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The ability of Wynn Las Vegas, any Restricted Entities or any of their Restricted Subsidiaries to repair or restore any of the Collateral following an Event of Loss that occurs on or prior to the Final Completion Date shall be governed by the Disbursement Agreement.

Any Net Loss Proceeds that are not (1) permitted to be used to repair or restore the Collateral pursuant to the Disbursement Agreement, (2) reinvested as provided in the first sentence of this Section 4.16 or (3) permitted to be reinvested because those Net Loss Proceeds exceed \$500.0 million, in each case, shall be deemed "Excess Loss Proceeds." Within 10 days following the date on which the aggregate amount of Excess Loss Proceeds exceeds \$10.0 million, Wynn Las Vegas shall make an offer (an "Event of Loss Offer") to all Holders to purchase the maximum principal amount of Notes that may be purchased out of the Excess Loss Proceeds. The offer price in any Event of Loss Offer shall be 100% of the principal amount of the Notes to be purchased, plus accrued and unpaid interest to the date of purchase and shall be payable in cash. If any Excess Loss Proceeds remain after consummation of an Event of Loss Offer, the applicable entity may use such Excess Loss Proceeds for any general corporate purpose not prohibited by this Indenture and the Collateral Documents. If the aggregate principal amount of Notes tendered in such Event of Loss Offer exceeds the Excess Loss Proceeds, the Trustee shall select the Notes to be purchased as described in Section 3.02 hereof. Upon completion of each Event of Loss Offer, the amount of Excess Loss Proceeds shall be reset at zero.

Pending their application, all Excess Loss Proceeds shall either be (1) applied to temporarily reduce amounts outstanding under the Credit Agreement, or (2) invested in Cash Equivalents held in an account in which the Trustee has a perfected security interest for the benefit of the Holders, subject only to Permitted Liens and the terms of the Intercreditor Agreements; provided that such funds and securities shall be released to Wynn Las Vegas or the applicable Restricted Entity or Restricted Subsidiary, as the case may be, to pay for or reimburse such Person for either (1) the actual cost of a permitted use of Excess Loss Proceeds as provided in this Section 4.16, or (2) the Event of Loss Offer, pursuant to the terms of the Collateral Documents. Wynn Las Vegas or the applicable Restricted Entity or Restricted Subsidiary, as the case may be, shall grant to the Trustee, for the benefit of the Holders, a security interest, subject only to Permitted Liens and the terms of the Intercreditor Agreements, on any property or assets rebuilt, repaired, replaced or constructed with such Excess Loss Proceeds on the terms set forth in this Indenture and the Collateral Documents.

In the event of an Event of Loss pursuant to clause (3) of the definition of "Event of Loss" with respect to property or assets that have a fair market value (or replacement cost, if greater) in excess of \$10.0 million, Wynn Las Vegas or the applicable Restricted Entity or Restricted Subsidiary, as the case may be, shall be required to receive consideration:

(a) at least equal to the fair market value (evidenced by a resolution of the applicable entity's Board of Directors set forth in an Officers' Certificate delivered to the Trustee) of the property or assets subject to the Event of Loss; and

(b) at least 90% of which is in the form of cash or Cash Equivalents.

The Issuers shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with each repurchase of Notes pursuant to an Event of Loss Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of Sections 3.10 or 4.16 of this Indenture, the Issuers shall comply with the applicable securities laws and regulations and shall not be deemed to have breached their obligations under those provisions of this Indenture by virtue of such conflict.

Section 4.17 *Designation of Restricted and Unrestricted Subsidiaries*

The Board of Directors of Wynn Las Vegas may designate any Restricted Subsidiary, other than Wynn Capital, to be an Unrestricted Subsidiary of Wynn Las Vegas if that designation would not cause

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a Default or an Event of Default. If a Restricted Subsidiary of Wynn Las Vegas is designated as an Unrestricted Subsidiary, the aggregate fair market value of all outstanding Investments owned by Wynn Las Vegas and its Restricted Subsidiaries in the Subsidiary properly designated shall be deemed to be an Investment made in an Unrestricted Subsidiary as of the time of the designation and shall reduce the amount available for Restricted Payments under Section 4.07 hereof or Permitted Investments, as determined by Wynn Las Vegas. That designation shall only be permitted if the Investment would be permitted at that time and if the Restricted Subsidiary of Wynn Las Vegas otherwise meets the definition of an Unrestricted Subsidiary. The Board of Directors of Wynn Las Vegas may redesignate any Unrestricted Subsidiary of Wynn Las Vegas to be a Restricted Subsidiary of Wynn Las Vegas if the redesignation would not cause a Default or an Event of Default. None of the Restricted Entities and their Subsidiaries (other than Wynn Las Vegas and its Subsidiaries and Desert Inn Water Company) may have Unrestricted Subsidiaries.

Section 4.18 *Construction.*

Wynn Las Vegas and the Restricted Entities shall, and shall cause each of their respective Restricted Subsidiaries to, construct the Project, including the furnishing, fixturing and equipping of the Project, with diligence and continuity in a good and workmanlike manner substantially in accordance with the Plans and Specifications.

Section 4.19 *Limitations on Use of Proceeds.*

Wynn Las Vegas shall deposit all of the net proceeds of the offering of the Notes (other than any Additional Notes) into the Secured Account. The funds in the Secured Account shall be invested solely in Permitted Securities. All funds in the Secured Account shall be disbursed only in accordance with the Secured Account Agreement and the Disbursement Agreement.

Section 4.20 *Limitation on Status as Investment Company.*

The Issuers and Guarantors shall not be or become required to register as an "investment company" (as that term is defined in the Investment Company Act of 1940, as amended), or otherwise become subject to regulation under the Investment Company Act of 1940.

Section 4.21 *Limitation on Sale and Leaseback Transactions.*

Wynn Las Vegas and the Restricted Entities shall not, and shall not permit any of their respective Restricted Subsidiaries to, enter into any sale and leaseback transaction (except with respect to the FF&E Collateral or the Aircraft Assets so long as, and to the extent that, such FF&E Collateral or Aircraft Assets, as the case may be, are not Collateral), unless:

(a) Wynn Las Vegas could have (a) incurred Indebtedness in an amount equal to the Attributable Debt relating to such sale and leaseback transaction under the Fixed Charge Coverage Ratio test in Section 4.09(a) hereof and (b) incurred a Lien to secure Indebtedness in an amount equal to the Attributable Debt pursuant to Section 4.12 hereof;

(b) the gross cash proceeds of such sale and leaseback transaction are at least equal to the fair market value, as determined in good faith by the Board of Directors of Wynn Las Vegas, that Restricted Entity or that Restricted Subsidiary, as the case may be, and set forth in an Officers' Certificate delivered to the Trustee, of the property that is the subject of such sale and leaseback transaction; and

(c) the transfer of assets in such sale and leaseback transaction is permitted by, and Wynn Las Vegas, such Restricted Entity or such Restricted Subsidiary applies the proceeds of such transaction in compliance with Section 4.10 hereof.

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Section 4.22 *Limitation on Development of Phase II Land.*

(a) Wynn Las Vegas and the Restricted Entities shall not, and shall not permit any of their respective Subsidiaries to, at any time prior to the date on which the security interests in the Phase II Land are released in accordance with Section 10.03(e) hereof.

(1) develop or improve in any material respect or at any material cost the Phase II Land or construct any improvements or any building on the Phase II Land, including any excavation or site work on the Phase II Land,

(2) enter into any contract or agreement for such construction, development or improvement, or for any materials, supplies or labor necessary in connection with such construction, development or improvement (other than a contract or agreement that is conditional upon the release of the Holders' security interests in the Phase II Land), or

(3) incur any Indebtedness, the proceeds of which are expected to be used, or are used, for the construction, development or improvement of the Phase II Land or any building on the Phase II Land.

(b) Notwithstanding anything herein or in Section 4.22(a) hereof, Wynn Las Vegas, the Restricted Entities and their respective Subsidiaries may:

(1) excavate, refurbish, improve or otherwise develop the Phase II Land as contemplated in the Plans and Specifications and the Project Budget,

(2) maintain and repair the Phase II Land and the improvements thereon,

(3) remodel or reconfigure the improvements on the Phase II Land to provide for an employment center, office space and associated amenities, gallery space or design support for the Project,

(4) use or operate the Phase II Land, including the improvements thereon, for the temporary operation of a full-service Ferrari and Maserati automobile dealership,

(5) design, develop, construct, own and operate the Entertainment Facility and associated amenities on the Phase II Land,

(6) in the event of loss or damage to the Phase II Land or the improvements thereon, rebuild or repair the Phase II Land and the improvements thereon to the extent permitted by Section 4.16 hereof, or

(7) undertake Government Transfers and have Permitted Liens of the type described in clause (12) of the definition of Permitted Liens.

Section 4.23 *Limitation on Development of Golf Course Land*

(a) Wynn Las Vegas and the Restricted Entities shall not, and shall not permit any of their respective Subsidiaries to, at any time prior to the date on which the security interests in all of the Golf Course Land are released in accordance with Section 10.03(b) hereof:

(1) develop or improve in any material respect or at any material cost the Golf Course Land or construct any improvements or any building on the Golf Course Land, including any excavation or site work on the Golf Course Land,

(2) enter into any contract or agreement for such construction, development or improvement or for any materials, supplies or labor necessary in connection with such construction, development or improvement (other than a contract or agreement that is conditional upon the release of the Holders' security interests in the Golf Course Land), or

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(3) incur any Indebtedness, the proceeds of which are expected to be used, or are used, for the construction, development or improvement of the Golf Course Land.

(b) Notwithstanding anything herein or in Section 4.23(a), Wynn Las Vegas, the Restricted Entities and their respective Restricted Subsidiaries may:

(1) develop and construct the Golf Course as contemplated by the Golf Course Lease and the Plans and Specifications prior to the Final Completion Date,

(2) maintain or repair the Golf Course on the Golf Course Land,

(3) make improvements to the Golf Course that enhance its use as a golf course for the benefit of the Project,

(4) reconfigure certain portions of the Golf Course in connection with the release of the Home Site Land in accordance with the provisions of Sections 10.03(b), 10.03(c), 10.03(d) and 10.03(e) hereof,

(5) in the event of loss or damage to the Phase II Land or the improvements thereon, rebuild or repair the Phase II Land and the improvements thereon to the extent permitted by the provisions of Section 4.16 hereof,

(6) construct, develop or improve the Golf Course Land for the purpose of constructing the Project as contemplated by the Plans and Specifications or the Disbursement Agreement,

(7) undertake Government Transfers, and

(8) have Permitted Liens of the type described in clause (12) of the definition of Permitted Liens.

Section 4.24 *Restrictions on Payments of Management Fees.*

Wynn Las Vegas and the Restricted Entities shall not, and shall not permit any of their respective Restricted Subsidiaries to, directly or indirectly (subject to the provisions of the Management Fees Subordination Agreement):

(a) pay Management Fees:

(1) to the extent such payment would cause the Consolidated Leverage Ratio of the Issuers and their Restricted Subsidiaries for the most recently ended four full fiscal quarters of Wynn Las Vegas for which internal financial statements are available immediately preceding the date on which such Management Fee is proposed to be paid to be greater than 3.5 to 1.0 (calculated on a pro forma basis, giving effect to the payment of the Management Fees proposed to be paid and any indebtedness proposed to be incurred to finance the payment of such Management Fees); or

(2) if at the time of payment of such Management Fees, a Default or an Event of Default has occurred and is continuing or shall occur as a result thereof; or

(b) prepay any Management Fees.

Any Management Fees not permitted to be paid during a particular 12-month period pursuant to this Section 4.24 shall be deferred and shall accrue. Such accrued and unpaid Management Fees may be paid in any subsequent 12-month period to the extent such payment would be permitted under this Section 4.24 and the Management Fees Subordination Agreement.

Section 4.25 *Advances to Guarantors.*

All advances to Guarantors made by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries after the date of this Indenture shall be unsecured, shall be evidenced by intercompany notes substantially in the form of Exhibit F hereto and shall be pledged pursuant to

the Collateral Documents. Each intercompany note shall be payable upon demand and shall bear interest at then current fair market interests rates.

Section 4.26 *Limitation on Issuances and Sales of Equity Interests in Wholly Owned Subsidiaries.*

The Restricted Entities shall cause each of their respective Restricted Subsidiaries to be Wholly Owned Subsidiaries of the Restricted Entities. The Issuers shall cause each of their respective Restricted Subsidiaries to be Wholly Owned Subsidiaries of the Issuers.

Wynn Las Vegas and the Restricted Entities shall not, and shall not permit any of their respective Restricted Subsidiaries to, transfer, convey, sell, lease or otherwise dispose of any Equity Interests in any of their respective Wholly Owned Restricted Subsidiaries or any Restricted Entity to any Person (other than Wynn Las Vegas, a Restricted Entity, or any of Wynn Las Vegas' or any Restricted Entity's Wholly Owned Subsidiaries that is a Guarantor), unless:

(a) such transfer, conveyance, sale, lease or other disposition is of all the Equity Interests in such entity; and

(b) the cash Net Proceeds from such transfer, conveyance, sale, lease or other disposition are applied in accordance with Section 4.10 hereof.

In addition, Wynn Las Vegas and the Restricted Entities (other than Valvino Lamore) shall not, and shall not permit any of their respective Restricted Subsidiaries to, issue any of their respective Equity Interests (other than, if necessary, shares of their respective Capital Stock constituting directors' qualifying shares) to any Person other than to Wynn Las Vegas, a Restricted Entity or any of their respective Wholly Owned Restricted Subsidiaries that is a Guarantor.

Section 4.27 *Limitation on Issuances of Guarantees of, or Security Interests to Secure, Indebtedness.*

Wynn Las Vegas and the Restricted Entities shall not, and shall not permit any of their respective Restricted Subsidiaries to, directly or indirectly, Guarantee or pledge any assets to secure the payment and/or performance of any Indebtedness of Wynn Resorts unless (1) such Guarantee or pledge is otherwise permitted under Sections 4.09 and 4.12 hereof and (2) each applicable entity simultaneously executes and delivers:

(a) to the extent not previously provided, a Note Guarantee (in substantially the form of the guarantee provisions contained in the Guarantee and Collateral Agreements) of the payment of the Notes by such entity, which Note Guarantee shall be senior to or *pari passu* with such entity's Guarantee of such other Indebtedness; and

(b) such Collateral Documents, if any, as shall be necessary to grant a security interest securing the Notes in favor of the Trustee in the assets in which such entity has granted a security interest to secure the payment and/or performance of such other Indebtedness, which security interest shall be senior to or *pari passu* with the security interest granted by such entity to secure such other Indebtedness.

Notwithstanding the foregoing provisions of this Section 4.27, any such Note Guarantee shall provide by its terms that it shall be automatically and unconditionally released and discharged in accordance with Section 11.05 hereof.

Section 4.28 *Amendments to Certain Agreements.*

(a) On or prior to the Final Completion Date, except as contemplated by the Disbursement Agreement, Wynn Las Vegas and the Restricted Entities shall not, and shall not permit any of their respective Restricted Subsidiaries to, amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, or otherwise fail to enforce, or terminate or abandon, any of the provisions of any Affiliate Agreement, the Construction Contract, the Construction

Contract Guarantee, the Design/Build Contract, the Golf Course Construction Contract, the Golf Course Design Services Agreement or any Payment and Performance Bond, in each case if such amendment, modification, waiver or other change, failure to enforce, termination or abandonment (individually or collectively with all such amendments, modifications, waivers and other changes, failures to enforce, terminations or abandonments taken as a whole) would (1) have a material adverse affect on the ability of Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries to develop, construct or operate the Project or (2) cause the Completion Date to occur or result in that date occurring after the Outside Completion Deadline.

(b) Following the Final Completion Date, Wynn Las Vegas and the Restricted Entities shall not, and shall not permit any of their respective Restricted Subsidiaries to, amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, or otherwise fail to enforce, or terminate or abandon, any of the provisions of any Affiliate Agreement if such amendment, modification, waiver or other change, failure to enforce, termination or abandonment (individually or collectively with all such amendments, modifications, waivers and other changes, failures to enforce, terminations or abandonments taken as a whole) would:

(1) increase the amounts payable to Persons other than Wynn Las Vegas and its Restricted Subsidiaries thereunder by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries,

(2) change the dates on which such amounts are to be paid to dates earlier than those set forth in such agreement, as in effect on the date of this Indenture,

(3) reduce the services provided thereunder to Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries unless accompanied by a corresponding decrease in the amounts payable by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries thereunder,

(4) materially impair the rights or remedies of the Holders of the Notes thereunder or under this Indenture or the Collateral Documents, or

(5) materially impair the development, use or operation of the Project.

Section 4.29 *Amendments to Limited Liability Company Agreements and Charter Documents.*

Wynn Las Vegas and the Restricted Entities shall not, and shall not permit any of their respective Restricted Subsidiaries to:

(a) dissolve,

(b) with respect to any entity that is a limited liability company, amend, modify or otherwise change, its limited liability company agreement or other charter documents, or otherwise permit any such agreement or document, to provide that the death, retirement, resignation, expulsion, bankruptcy, dissolution or dissociation of a member of that limited liability company or any other event affecting a member of that limited liability company either terminates the status of that Person as a member of the limited liability company or causes the limited liability company to be dissolved or its affairs wound up, or

(c) amend, modify or otherwise change the provisions of Article VII of its limited liability company agreement relating to conduct, or any comparable provisions contained in its other charter documents, or fail to include provisions corresponding to those contained in Article VII of the limited liability company agreement of Valvino Lamore, as in effect on the date of this Indenture, in the limited liability company agreement or other applicable charter documents of any future Restricted Subsidiary.

Wynn Las Vegas and the Restricted Entities shall, and shall cause their respective Restricted Subsidiaries to, maintain insurance with reputable and financially sound carriers against such risks and in such amounts as are customarily carried by similarly situated businesses, including, without limitation, property and casualty insurance, so long as such insurance coverage (including deductibles, retentions and self-insurance amounts) at all times complies with the insurance coverage required under the Disbursement Agreement.

Section 4.31 Additional Collateral; Formation or Acquisition of Restricted Subsidiaries, Designation of Unrestricted Subsidiaries as Restricted Subsidiaries or Permitted C-Corp. Conversion.

Concurrently with (1) the formation or acquisition of any Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity that, in either case, becomes or is required under the Credit Agreement to become a Guarantor of any of the obligations under the Credit Agreement, (2) the designation of an Unrestricted Subsidiary of Wynn Las Vegas as a Restricted Subsidiary, or (3) the reorganization by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries as a subchapter "C" corporation in a Permitted C-Corp. Conversion, Wynn Las Vegas and the Restricted Entities shall, to the extent not prohibited by Gaming Authorities or applicable Gaming Laws and subject to the Intercreditor Agreements:

(a) (1) cause such Restricted Subsidiary or subchapter "C" corporation (if such subchapter "C" corporation is not an Issuer) to guarantee all obligations of the Issuers under this Indenture and the Notes by executing and delivering to the Trustee an assumption agreement in the form of Annex 1 to the applicable Guarantee and Collateral Agreement; or

(2) if such subchapter "C" corporation is an Issuer, cause such subchapter "C" corporation to execute and deliver to the Trustee (i) a supplemental indenture substantially in the form of Exhibit C hereto, (ii) an assumption agreement unconditionally and irrevocably assuming all of the right, title and interest of the Issuer that was so reorganized as a subchapter "C" corporation in, to and under this Indenture and the Notes, and (iii) replacement Notes for the Notes previously issued by the Issuer that was so reorganized as a subchapter "C" corporation to be issued to the Holders upon request and the concurrent return by such Holders of the Notes previously issued to them by the Issuer that was so reorganized as a "C" corporation;

(b) cause such Restricted Subsidiary or subchapter "C" corporation to execute and deliver to the Trustee, (a) an assumption agreement in the form of Annex 1 to the applicable Guarantee and Collateral Agreement (under which such Restricted Subsidiary or subchapter "C" corporation shall grant a security interest to the Trustee in those of its assets described in the Guarantee and Collateral Agreement), and (b) such Uniform Commercial Code financing statements as are necessary to perfect the Trustee's security interest in such assets;

(c) in the event such Restricted Subsidiary or subchapter "C" corporation owns real property that (i) is contiguous to any real property included in the Collateral (other than a Golf Course Home) or (ii) has a fair market value in excess of \$5.0 million in the aggregate or \$2.5 million individually, cause such Restricted Subsidiary or subchapter "C" corporation to execute and deliver to the Trustee:

(1) a deed of trust, substantially in the form of the Deeds of Trust (with such modifications as are necessary to comply with applicable law) (under which such Restricted Subsidiary or subchapter "C" corporation shall grant a security interest to the Trustee in such real property and any related fixtures),

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(2) in the case of any such Restricted Subsidiary, title and extended coverage insurance covering such real property in an amount at least equal to the purchase price of such real property, and

(3) in the case of any such subchapter "C" corporation, an agreement executed and delivered by the title company that issued the title and extended coverage insurance covering the real property owned by such subchapter "C" corporation naming such subchapter "C" corporation as an additional insured under such insurance,

(d) promptly pledge, or cause to be pledged, to the Trustee (i) all of the outstanding Capital Stock of such entity or subchapter "C" corporation owned by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries and (ii) all of the outstanding Capital Stock owned by such Restricted Subsidiary or subchapter "C" corporation, to secure Wynn Las Vegas' obligations under this Indenture and the Notes or such Restricted Subsidiary's Guarantee obligations under the applicable Collateral and Security Agreement, as the case may be;

(e) promptly take, and cause such Restricted Subsidiary or subchapter "C" corporation and each other Restricted Subsidiary to take all action necessary or, in the opinion of the Trustee, desirable to perfect and protect the security interests intended to be created by the Collateral Documents, as modified under this Section 4.31; and

(f) promptly deliver to the Trustee such Opinions of Counsel, if any, as the Trustee may reasonably require with respect to the foregoing (including opinions as to enforceability and perfection of security interests).

Section 4.32 Additional Collateral; Acquisition of Assets or Property.

Concurrently with the acquisition by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries of any assets or property (other than a Subsidiary of either Wynn Las Vegas or any Restricted Entity), to the extent not prohibited by Gaming Authorities or applicable Gaming Laws and subject to the Intercreditor Agreements, Wynn Las Vegas and the Restricted Entities shall, and shall cause their respective Restricted Subsidiaries to, cause the applicable entity to:

(a) in the case of the acquisition of personal property (other than FF&E Collateral and Aircraft Assets) with an aggregate fair market value in excess of \$50,000 for all such acquired personal property, execute and deliver to the Trustee such Uniform Commercial Code financing statements, if any, as are necessary or, in the opinion of the Trustee, desirable to perfect and protect the Trustee's security interest in such assets or property;

(b) in the case of the acquisition of real property, that (i) is contiguous to any real property included in the Collateral (other than a Golf Course Home) or (ii) has a fair market value in excess of \$5.0 million in the aggregate or \$2.5 million individually, execute and deliver to the Trustee:

(1) a deed of trust, substantially in the form of the Deeds of Trust (with such modifications as are necessary to comply with applicable law) (under which Wynn Las Vegas, such Restricted Entity or such Restricted Subsidiary shall grant a security interest to the Trustee in such real property and any related fixtures), and

(2) title and extended coverage insurance covering such real property in an amount at least equal to the purchase price of such real property; and

(c) in the case of the acquisition of personal property (other than personal property in which the Trustee has a perfected security interest (subject only to Permitted Liens)) or real property subject to clauses (a) and (b) above of this Section 4.32, as applicable, promptly deliver to the Trustee such Opinions of Counsel, if any, as the Trustee may reasonably require with respect to the foregoing (including opinions as to enforceability and perfection of security interests).

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Section 4.33 *Further Assurances.*

Wynn Las Vegas and the Restricted Entities shall, and shall cause their respective Restricted Subsidiaries to, execute and deliver such additional instruments, certificates or documents, and take all such actions as may be reasonably required from time to time in order to:

(a) carry out more effectively the purposes of the Collateral Documents;

(b) create, grant, perfect and maintain the validity, effectiveness, perfection and priority of any of the Collateral Documents and the Liens created, or intended to be created, by the Collateral Documents; and

(c) ensure that any of the rights granted or intended to be granted to the Trustee or any Holder under the Collateral Documents or under any other instrument executed in connection therewith or granted to Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries under the Collateral Documents or under any other instrument executed in connection therewith are protected and enforced.

Upon the exercise by the Trustee or any Holder of any power, right, privilege or remedy under this Indenture or any of the Collateral Documents which requires any consent, approval, recording, qualification or authorization of any governmental authority (including the Nevada PUC or any Gaming Authority), Wynn Las Vegas and the Restricted Entities shall, and shall cause their respective Restricted Subsidiaries to, execute and deliver all applications, certifications, instruments and other documents and papers that may be required from Wynn Resorts, Wynn Las Vegas, any Restricted Entity or any of Wynn Las Vegas' or any Restricted Entity's Restricted Subsidiaries for such governmental consent, approval, recording, qualification or authorization.

Section 4.34 *Nevada PUC Approvals.*

Wynn Las Vegas and the Restricted Entities shall, and shall cause each of their respective Restricted Subsidiaries and Desert Inn Improvement Co. to:

(a) use their commercially reasonable efforts to amend the DIIC Casino Water Permit in accordance with all applicable requirements of law so that the designated place of use for water available for draw under such permit includes the Le Rêve casino's water features to the extent such water is necessary to operate the Le Rêve casino water features as contemplated on the date of this Indenture;

(b) use their commercially reasonable efforts to amend the DIIC Water Permits (other than the DIIC Casino Water Permit, if necessary) in accordance with all applicable requirements of law so that the designated place of use for water available for draw under such permits includes the Golf Course Land;

(c) use their commercially reasonable efforts to effect the DIIC Water Transfer;

(d) unless the DIIC Water Transfer is effected prior thereto, use their commercially reasonable efforts to obtain approval of the Nevada PUC to the execution and delivery to the Trustee of a mortgage securing the Notes and covering the Water Utility Land and the DIIC Water Permits, substantially in the form of the Deeds of Trust executed and delivered on the date of this Indenture, to be entered into by Desert Inn Improvement Co. in favor of the Trustee for the benefit of the Holders, subject to any limitations imposed by the Nevada PUC;

(e) upon obtaining such approval, execute and deliver such mortgage; and

(f) upon effectuating the DIIC Water Transfer or executing the mortgage referred to in clause (d) of this Section 4.34, take such other actions as may be reasonably required from time to time to create, grant, perfect and maintain the validity, effectiveness, perfection and priority of the Trustee's security

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interest in the assets and property transferred pursuant to the DIIC Water Transfer or clause (d) of this Section 4.34, subject to any limitations imposed by the Nevada PUC.

Section 4.35 *Payments for Consent.*

Wynn Las Vegas and the Restricted Entities shall not, and shall not permit any of their respective Restricted Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Holder of Notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture, the Notes or the Collateral Documents unless such consideration is offered to be paid and is paid to all Holders of Notes that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or agreement.

Section 4.36 *Restrictions on Activities of Wynn Capital.*

Wynn Capital shall not hold any material assets, hold any Equity Securities, incur any Indebtedness, become liable for any obligations, engage in any business activities or have any Subsidiaries; *provided* that Wynn Capital may be a co-obligor with respect to Indebtedness if Wynn Las Vegas is a primary obligor of such Indebtedness and the net proceeds of such Indebtedness are received by Wynn Las Vegas or one or more of Wynn Las Vegas' Wholly Owned Restricted Subsidiaries other than Wynn Capital.

(a) No Issuer or Guarantor may, directly or indirectly, (1) consolidate or merge with or into another Person (whether or not such Issuer or such Guarantor is the surviving entity) or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of (a) Wynn Las Vegas, the Restricted Entities and their respective Restricted Subsidiaries, taken as a whole, (b) Wynn Las Vegas and its Restricted Subsidiaries, taken as a whole, or (c) in the case of a Guarantor, such Guarantor, in one or more related transactions, to another Person, unless:

(1) either (a) such Issuer or Guarantor is the surviving entity or (b) the Person formed by or surviving any such consolidation or merger (if other than such Issuer or Guarantor) or to which such sale, assignment, transfer, conveyance or other disposition shall have been made is a corporation organized or existing under the laws of the United States, any state of the United States or the District of Columbia;

(2) the Person formed by or surviving any such consolidation or merger (if other than such Issuer or Guarantor) or the Person to which such sale, assignment, transfer, conveyance or other disposition shall have been made assumes all the obligations of such Issuer or Guarantor under the Notes, this Indenture, the Note Guarantees and the Collateral Documents pursuant to agreements reasonably satisfactory to the Trustee; *provided* that this clause (2) shall not apply to any merger, consolidation, sale, assignment, transfer, conveyance or other disposition of assets of a Guarantor with, into or to Wynn Las Vegas, so long as, in the case of any consolidation or merger, Wynn Las Vegas is the survivor of such consolidation or merger;

(3) immediately after such transaction, no Default or Event of Default exists;

(4) such transaction would not result in the loss or suspension or material impairment of any Gaming License unless a comparable replacement Gaming License is effective at no material cost prior to or simultaneously with such loss, suspension or material impairment;

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(5) such Issuer or Guarantor or the Person formed by or surviving any such consolidation or merger (if other than such Issuer) or to which such sale, assignment, transfer, conveyance or other disposition shall have been made shall have Consolidated Net Worth immediately after the transaction equal to or greater than the Consolidated Net Worth of such Issuer or Guarantor immediately preceding the transaction (excluding the effect of the related professional fees, commissions, sales and other taxes, and other transactional costs that would otherwise reduce Consolidated Net Worth);

(6) (i) in the case of a consolidation or merger of such Issuer, such Issuer or the Person formed by or surviving any such consolidation or merger (if other than such Issuer) or to which such sale, assignment, transfer, conveyance or other disposition shall have been made shall, or (ii) in the case of a consolidation or merger of a Guarantor that is a Restricted Subsidiary of Wynn Las Vegas or the sale, assignment, transfer, conveyance or other disposition of the property or assets of such Guarantor, the Issuers shall, on the date of such transaction after giving pro forma effect thereto and any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period, be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.09(a) hereof; and

(7) such transaction, at the time it is undertaken, would not require any Holder or Beneficial Owner of Notes to obtain a Gaming License or be qualified or found suitable under the law of any applicable gaming jurisdiction; *provided* that such Holder or Beneficial Owner would not have been required to obtain a Gaming License or be qualified or found suitable under the laws of any applicable gaming jurisdiction in the absence of such transaction.

(b) Notwithstanding the provisions of Section 5.01(a), a Guarantor may consolidate or merge with or into another Guarantor, or sell, assign, transfer, convey or otherwise dispose of all or substantially all of its properties or assets to another Guarantor, so long as (1) the conditions in clauses (3), (4) and (7) of Section 5.01(a) are satisfied, and (2) such Guarantor or the Person formed by or surviving any such consolidation or merger, or the Guarantor to which such sale, assignment, transfer, conveyance or other disposition shall have been made, as the case may be, is Solvent.

In addition, no Issuer or Guarantor may, directly or indirectly, lease all or substantially all of its properties or assets, in one or more related transactions, to any other Person. This Section 5.01 shall not apply to a sale, assignment, transfer, conveyance or other disposition of assets (excluding any sale, assignment, transfer, conveyance or disposition of assets that would otherwise be subject to this Section 5.01 from a Person that is a Guarantor to a Person, other than Wynn Las Vegas, that is not a Guarantor):

(1) to Wynn Las Vegas and/or its Restricted Subsidiaries,

(2) between Wynn Resorts Holdings and Valvino Lamore, excluding a transfer of any or all of the Golf Course Land, unless such Golf Course Land is then a Released Asset,

(3) by (i) any Restricted Entity or any Restricted Subsidiary of a Restricted Entity, that, in each case, is not a Guarantor to (ii) any Restricted Entity or any Restricted Subsidiary of a Restricted Entity that, in each case, is a Guarantor, or

(4) by any Wynn Group Entity to any Restricted Entity.

For purposes of this Section 5.01, a sale of properties or assets by a Guarantor shall not constitute a sale of "substantially all of the properties or assets" of that Guarantor if, following that sale, the Guarantor owns or holds (1) any of the Water Rights for the Project (excluding Water Rights that are then Released Assets) or (2) any of the Phase II Land or the Golf Course Land (excluding any such land that is then a Released Asset).

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Notwithstanding the provisions of this Section 5.01, Wynn Las Vegas and each Guarantor are permitted to reorganize as a corporation pursuant to a Permitted C-Corp. Conversion.

Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of either Issuer or any Guarantor in a transaction that is subject to, and that complies with the provisions of, Section 5.01 hereof, the successor company or corporation formed by such consolidation or into or with which such Issuer or Guarantor is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this Indenture referring to such "Issuer" or "Guarantor" shall refer instead to the successor company or corporation and not to such Issuer or Guarantor), and may exercise every right and power of such Issuer or Guarantor under this Indenture with the same effect as if such successor Person had been named as such Issuer or Guarantor herein; *provided, however*, that the predecessor Issuer or Guarantor shall not be relieved from the obligation to pay the principal of and interest and premium, if any, on the Notes or the amounts payable under its Note Guarantee, as the case may be, except in the case of a sale of all of such Issuer's or Guarantor's assets in a transaction that is subject to, and that complies with the provisions of Section 5.01 hereof.

ARTICLE 6. DEFAULTS AND REMEDIES

Section 6.01 *Events of Default.*

Each of the following is an "Event of Default":

- (a) the Issuers default for 30 days in the payment when due of interest on the Notes;
- (b) the Issuers default in the payment when due of the principal of, or premium, if any, on the Notes;
- (c) failure by Wynn Capital, Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries:

(1) to comply with any payment obligations (including, without limitation, obligations as to the timing or amount of such payments) described under Sections 4.10, 4.15 or 4.16 hereof;

(2) to comply with Sections 4.07, 4.09 or 5.01 hereof;

(d) failure by Wynn Capital, any Restricted Entity or any of their respective Restricted Subsidiaries for 60 days after receipt of written notice from the Trustee to comply with any of the other agreements in this Indenture not set forth in Section 6.01(c) above, or failure by Wynn Resorts for 60 days after receipt of written notice from the Trustee to comply with the provisions of the Parent Guarantee or, if applicable, any Parent Security Agreement;

(e) the occurrence of any "event of default" under the Disbursement Agreement;

(f) failure by Wynn Capital, any Restricted Entity or any of their respective Restricted Subsidiaries, the Completion Guarantor or any other party thereto (other than the Trustee or any representative of the lenders under the Credit Agreement or other lenders party thereto) for 60 days after receipt of written notice from the Trustee to comply with any of its agreements, as applicable, in any Collateral Document;

(g) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries (or the payment of which is

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guaranteed by any such Person) whether such Indebtedness or guarantee now exists, or is created after the date of this Indenture, if that default:

(1) is caused by a failure to pay principal of, or interest or premium, if any, on such Indebtedness prior to the expiration of the grace period provided in such Indebtedness on the date of such default (a "*Payment Default*"); or

(2) results in the acceleration of such Indebtedness prior to its express maturity,

and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates \$10.0 million or more;

(h) failure by Wynn Capital, Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries to pay final non-appealable judgments (not paid or covered by insurance as to which the relevant insurance company has not denied responsibility) aggregating in excess of \$10.0 million, which judgments are not paid, bonded, discharged or stayed for a period of 60 days;

(i) any of the Collateral Documents shall cease, for any reason (other than pursuant to their terms), to be in full force and effect, or Wynn Capital, Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries or any Affiliate of any such Person or any Person acting on behalf of any such Person, shall so assert as to any of such Person's properties or assets, or any security interest created, or purported to be created, by any of the Collateral Documents shall cease to be enforceable and of the same effect and priority purported to be created by the Collateral Documents;

(j) any representation or warranty made or deemed made by Wynn Capital, Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries in any Collateral Document or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with any such Collateral Document shall prove to have been inaccurate in any material respect on or as of the date made or deemed made; *provided* that the inaccuracy of any representation or warranty contained only in the Disbursement Agreement shall constitute an Event of Default hereunder only to the extent such inaccuracy constitutes a Disbursement Agreement Event of Default;

(k) except as expressly provided therein, the Completion Guarantee, the Construction Contract Guarantee, any Note Guarantee issued by a Restricted Entity, a Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity, or the Parent Guarantee shall be held in any judicial proceeding to be unenforceable or invalid or shall cease for any reason to be in full force and effect or the Completion Guarantor, any Restricted Entity, any Restricted Subsidiary or the Parent Guarantor, or any Person acting on behalf of any such Person, shall deny or disaffirm its obligations under its Note Guarantee or, as the case may be, its Parent Guarantee;

- (l) any Material Entity pursuant to or within the meaning of Bankruptcy Law:
 - (1) commences a voluntary case,
 - (2) consents to the entry of an order for relief against it in an involuntary case,
 - (3) consents to the appointment of a custodian of it or for all or substantially all of its property,
 - (4) makes a general assignment for the benefit of its creditors, or
 - (5) generally is not paying its debts as they become due; or

(m) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

- (1) is for relief against any Material Entity in an involuntary case;

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(2) appoints a custodian of any Material Entity or for all or substantially all of the property of any Material Entity; or

(3) orders the liquidation of any Material Entity;

and the order or decree remains unstayed and in effect for 60 consecutive days; or

(n) the Project has not achieved Completion on or before the Outside Completion Deadline;

(o) after the Opening Date, revocation, termination, suspension or other cessation of effectiveness of any Gaming License which results in the cessation or suspension of gaming operations at any Gaming Facility for a period of more than 90 consecutive days; or

(p) if Wynn Las Vegas ever fails to own 100% of the issued and outstanding Equity Interests of Wynn Capital.

Section 6.02 Acceleration.

In the case of an Event of Default specified in clause (l) or (m) of Section 6.01 hereof, with respect to any Material Entity, all outstanding Notes shall become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the then outstanding Notes may declare all the Notes to be due and payable immediately. Upon any such declaration, the Notes shall become due and payable immediately. The Holders of a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may on behalf of all of the Holders rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest or premium, if any, that has become due solely because of the acceleration) have been cured or waived.

If an Event of Default occurs on or after November 1, 2006 by reason of any willful action or inaction taken or not taken by or on behalf of either Issuer, any Restricted Entity, any Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity, any Guarantor, the Parent Guarantor or any of their respective Subsidiaries with the intention of avoiding payment of the premium that the Issuers would have had to pay if the Issuers then had elected to redeem the Notes pursuant to Section 3.07 hereof, then, upon acceleration of the Notes, an equivalent premium shall also become and be immediately due and payable, to the extent permitted by law, anything in this Indenture or in the Notes to the contrary notwithstanding. If an Event of Default occurs prior to November 1, 2006 by reason of any willful action (or inaction) taken (or not taken) by or on behalf of either Issuer, any Restricted Entity, any Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity, any Guarantor, the Parent Guarantor or any of their respective Subsidiaries with the intention of avoiding the prohibition on redemption of the Notes prior to such date, then, upon acceleration of the Notes, an additional premium shall also become and be immediately due and payable in an amount, for each of the years beginning on November 1 of the years set forth below, as set forth below (expressed as a percentage of the principal amount of the Notes on the date of payment that would otherwise be due but for the provisions of this sentence):

| Year | Percentage |
|---------------------|------------|
| 2003 | 15.0% |
| 2004 | 14.0% |
| 2005 and thereafter | 13.0% |

Section 6.03 Other Remedies.

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal, premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

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The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

Section 6.04 Waiver of Past Defaults.

Holders of not less than a majority in aggregate principal amount of the then outstanding Notes by notice to the Trustee may on behalf of the Holders of all of the Notes waive an existing Default or Event of Default and its consequences hereunder, except a continuing Default or Event of Default in the payment of the

principal of, premium, if any, or interest on, the Notes (including in connection with an offer to purchase); *provided, however*, that the Holders of a majority in aggregate principal amount of the then outstanding Notes may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.05 *Control by Majority.*

Subject to the Intercreditor Agreements, Holders of a majority in principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture that the Trustee determines may be unduly prejudicial to the rights of other Holders of Notes or that may involve the Trustee in personal liability.

Section 6.06 *Limitation on Suits.*

A Holder of a Note may pursue a remedy with respect to this Indenture or the Notes only if:

- (a) the Holder of a Note gives to the Trustee written notice of a continuing Event of Default;
- (b) the Holders of at least 25% in principal amount of the then outstanding Notes make a written request to the Trustee to pursue the remedy;

(c) such Holder of a Note or Holders of Notes offer and, if requested, provide to the Trustee indemnity satisfactory to the Trustee against any loss, liability or expense;

(d) the Trustee does not comply with the request within 60 days after receipt of the request and the offer and, if requested, the provision of indemnity; and

(e) during such 60-day period the Holders of a majority in principal amount of the then outstanding Notes do not give the Trustee a direction inconsistent with the request.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder of a Note or to obtain a preference or priority over another Holder of a Note.

Section 6.07 *Rights of Holders of Notes to Receive Payment.*

Notwithstanding any other provision of this Indenture, the right of any Holder of a Note to receive payment of principal, premium, if any, and interest on the Note, on or after the respective due dates expressed in the Note (including in connection with an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder; *provided* that a Holder shall not have the right to institute any such suit for the enforcement of payment if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the Lien of this Indenture upon any property subject to such Lien.

Section 6.08 *Collection Suit by Trustee.*

If an Event of Default specified in Section 6.01(a) or (b) occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Issuers for the whole amount of principal of, premium, if any, and interest remaining unpaid on the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Section 6.09 *Trustee May File Proofs of Claim.*

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to the Issuers (or any other obligor upon the Notes), its creditors or its property and shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.10 *Priorities.*

If the Trustee collects any money pursuant to this Article 6, it shall pay out the money in the following order:

First: to the Trustee, its agents and attorneys for amounts due under Section 7.07 hereof, including payment of all compensation, expense and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

Second: to Holders of Notes for amounts due and unpaid on the Notes for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the

amounts due and payable on the Notes for principal, premium, if any and interest, respectively; and

Third: to the Issuers or to such party as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 6.10.

Section 6.11 *Undertaking for Costs.*

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.07 hereof, or a suit by Holders of more than 10% in principal amount of the then outstanding Notes.

ARTICLE 7. TRUSTEE

Section 7.01 *Duties of Trustee.*

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(1) the duties of the Trustee shall be determined solely by the express provisions of this Indenture and the Collateral Documents, and the Trustee need perform only those duties that are specifically set forth in this Indenture and the Collateral Documents, and no others, and no implied covenants or obligations shall be read into this Indenture and the Collateral Documents against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture and the Collateral Documents. However, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture and the Collateral Documents.

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) this Section 7.01(c) does not limit the effect of paragraph (b) of this Section 7.01;

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05 hereof.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), and (c) of this Section 7.01.

(e) No provision of this Indenture or the Collateral Documents shall require the Trustee to expend or risk its own funds or incur any liability. The Trustee shall be under no obligation to exercise any of its rights and powers under this Indenture and the Collateral Documents at the request of any Holders, unless such Holder shall have offered to the Trustee security and indemnity satisfactory to it against any loss, liability or expense.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuers. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 7.02 *Rights of Trustee.*

(a) The Trustee may conclusively rely upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel. The Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and shall be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture or the Collateral Documents, any demand, request, direction or notice from the Issuers shall be sufficient if signed by an Officer of either Issuer.

(f) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture or the Collateral Documents at the request or direction of any of the Holders unless such Holders have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

Section 7.03 *Individual Rights of Trustee.*

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuers or any Affiliate of the Issuers with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the SEC for permission to continue as trustee or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Sections 7.10 and 7.11 hereof.

Section 7.04 *Trustee's Disclaimer.*

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Issuers' use of the proceeds from the Notes or any money paid to the Issuers or upon the Issuers' direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication.

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Section 7.05 *Notice of Defaults.*

If a Default or Event of Default occurs and is continuing and if it is known to the Trustee, the Trustee shall mail a notice of the Default or Event of Default (1) to Holders within 90 days after it occurs and (2) to Wynn Las Vegas, each Guarantor and the Parent Guarantor (which notice shall be deemed to satisfy the notice requirement contained in clause (1) of Section 10.08(a) hereof) within 5 days after it occurs. Except in the case of a Default or Event of Default in payment of principal of, premium, if any, or interest on any Note, the Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of the Holders of the Notes.

Section 7.06 *Reports by Trustee to Holders of the Notes.*

(a) Within 60 days after each May 15 beginning with the May 15 following the date of this Indenture, and for so long as Notes remain outstanding, the Trustee shall mail to the Holders of the Notes a brief report dated as of such reporting date that complies with TIA § 313(a) (but if no event described in TIA § 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). The Trustee also shall comply with TIA § 313(b)(2). The Trustee shall also transmit by mail all reports as required by TIA § 313(c).

(b) A copy of each report at the time of its mailing to the Holders of Notes shall be mailed by the Trustee to the Issuers and filed by the Trustee with the SEC and each stock exchange on which the Notes are listed in accordance with TIA § 313(d). The Issuers shall promptly notify the Trustee when the Notes are listed on any stock exchange.

Section 7.07 *Compensation and Indemnity.*

(a) The Issuers shall pay to the Trustee from time to time reasonable compensation for its acceptance of this Indenture and services hereunder. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuers shall reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

(b) The Issuers and the Guarantors shall indemnify the Trustee against any and all losses, liabilities or expenses incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses of enforcing this Indenture against the Issuers and the Guarantors (including this Section 7.07) and defending itself against any claim (whether asserted by the Issuers, the Guarantors or any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such loss, liability or expense may be attributable to its negligence or bad faith. The Trustee shall notify the Issuers promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Issuers shall not relieve the Issuers or any of the Guarantors of their obligations hereunder. The Issuers or such Guarantor shall defend the claim and the Trustee shall cooperate in the defense. The Trustee may have separate counsel and the Issuers shall pay the reasonable fees and expenses of such counsel. Neither the Issuers nor any Guarantor need pay for any settlement made without its consent, which consent shall not be unreasonably withheld.

(c) The obligations of the Issuers and the Guarantors under this Section 7.07 shall survive the satisfaction and discharge of this Indenture.

(d) To secure the Issuers' payment obligations in this Section 7.07, the Trustee shall have a Lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal and interest on particular Notes. Such Lien shall survive the satisfaction and discharge of this Indenture.

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(e) When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(l) or (m) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

(f) The Trustee shall comply with the provisions of TIA § 313(b)(2) to the extent applicable.

Section 7.08 *Replacement of Trustee.*

(a) A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.08.

(b) The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Issuers in writing. The Holders of a majority in principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Issuers in writing. The Issuers may remove the Trustee if:

- (1) the Trustee fails to comply with Section 7.10 hereof;
- (2) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
- (3) a custodian or public officer takes charge of the Trustee or its property; or
- (4) the Trustee becomes incapable of acting.

(c) If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Issuers shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Issuers.

(d) If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Issuers, or the Holders of at least 10% in principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(e) If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 7.10, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(f) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuers. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, *provided* all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.07 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.08, the Issuers' obligations under Section 7.07 hereof shall continue for the benefit of the retiring Trustee.

Section 7.09 *Successor Trustee by Merger, etc.*

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee.

Section 7.10 *Eligibility; Disqualification.*

There shall at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such

laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least \$100 million as set forth in its most recent published annual report of condition.

This Indenture shall always have a Trustee who satisfies the requirements of TIA § 310(a)(1), (2) and (5). The Trustee is subject to TIA § 310(b).

Section 7.11 *Preferential Collection of Claims Against Issuers.*

The Trustee is subject to TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated therein.

ARTICLE 8. LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 8.01 *Option to Effect Legal Defeasance or Covenant Defeasance.*

The Issuers may, at the option of their respective Boards of Directors evidenced by a resolution set forth in an Officers' Certificate of each Issuer, at any time, elect to have either Section 8.02 or 8.03 hereof be applied to all outstanding Notes upon compliance with the conditions set forth below in this Article 8.

Section 8.02 *Legal Defeasance and Discharge.*

Upon the Issuers' exercise under Section 8.01 hereof of the option applicable to this Section 8.02, the Issuers shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be deemed to have been discharged from their obligations with respect to all outstanding Notes, the Guarantors and the Parent Guarantor shall be deemed to be discharged from their obligations with respect to their Note Guarantees and the Issuers, the Guarantors and the Parent Guarantor shall be deemed to be discharged from their obligations with respect to the Collateral Documents on the date the conditions set forth below are satisfied (hereinafter, "*Legal Defeasance*"). For this purpose, Legal Defeasance means that the Issuers, the Guarantors and the Parent Guarantor shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes (including the Note Guarantees), which shall thereafter be deemed to be "outstanding" only for the purposes of Section 8.05 hereof and the other Sections of this Indenture referred to in Sections 8.02(a) and (b) below, and to have satisfied all their other obligations under such Notes, the Note Guarantees, the Collateral Documents, and this Indenture (and the Trustee, on demand of and at the expense of the Issuers, shall execute proper instruments acknowledging the same), except for the following provisions which shall survive until otherwise terminated or discharged hereunder:

(a) the rights of Holders of outstanding Notes to receive payments in respect of the principal of, or interest or premium, if any, on such Notes when such payments are due from the trust referred to in Section 8.04 hereof;

(b) the Issuers' obligations with respect to such Notes under Article 2 and Section 4.02 hereof;

(c) the rights, powers, trusts, duties and immunities of the Trustee hereunder and the Issuers' and the Guarantors' (and the Parent Guarantor's, if any) obligations in connection therewith; and

(d) this Article 8.

Subject to compliance with this Article 8, the Issuers may exercise their option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03 hereof.

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Section 8.03 *Covenant Defeasance.*

Upon the Issuers' exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Issuers, the Restricted Entities, the Restricted Subsidiaries of Wynn Las Vegas and the Restricted Entities, and any Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from each of their obligations under the covenants contained in Sections 4.07, 4.08, 4.09, 4.10, 4.11, 4.12, 4.13 and 4.15 through 4.36 inclusive hereof and clauses (5) and (6) of Section 5.01(a) hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.04 hereof are satisfied (hereinafter, "*Covenant Defeasance*"), and the Notes shall thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes shall not be deemed outstanding for accounting purposes). For this purpose, *Covenant Defeasance* means that, with respect to the outstanding Notes and Note Guarantees, the Issuers, the Guarantors and the Parent Guarantor released shall omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes and Note Guarantees shall be unaffected thereby. In addition, upon the Issuers' exercise under Section 8.01 hereof of the option applicable to this Section 8.03 hereof, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, Sections 6.01(c) through 6.01(h), Section 6.01(j) and Sections 6.01(n) through 6.01(p) hereof shall not constitute Events of Default.

Section 8.04 *Conditions to Legal or Covenant Defeasance.*

In order to exercise either Legal Defeasance or Covenant Defeasance under either Section 8.02 or 8.03 hereof:

(a) the Issuers must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in U.S. dollars, Government Securities, or a combination of cash in U.S. dollars and Government Securities, in amounts as shall be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, or interest and premium, if any, on the outstanding Notes on the stated maturity or on the applicable redemption date, as the case may be, and the Issuers must specify whether the Notes are being defeased to maturity or to a particular redemption date;

(b) in the case of an election under Section 8.02 hereof, the Issuers have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that (1) the Issuers have received from, or there has been published by, the Internal Revenue Service a ruling or (2) since the date of this Indenture, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of the outstanding Notes shall not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and shall be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(c) in the case of an election under Section 8.03 hereof, the Issuers have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that the Holders of the outstanding Notes shall not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and shall be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

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(d) no Default or Event of Default has occurred and is continuing either:

(1) on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit), or

(2) in the case of Legal Defeasance, insofar as Events of Default of the type specified in Section 6.01(l) or Section 6.01(m) are concerned, at any time in the period ending on the 91st day after the date of deposit;

(e) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under any material agreement or instrument (other than this Indenture) to which either Issuer, any Restricted Entity, any Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity, any Guarantor or the Parent Guarantor is a party or by which any such Person is bound;

(f) in the case of an election under Section 8.02 hereof, the Issuers must deliver to the Trustee an Opinion of Counsel to the effect that, assuming no intervening bankruptcy of the Issuers, any Guarantor or the Parent Guarantor between the date of deposit and the 91st day following the deposit and assuming that no Holder of Notes is an "insider" of either Issuer under applicable bankruptcy law, after the 91st day following the deposit, the trust funds shall not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally;

(g) the Issuers must deliver to the Trustee an Officers' Certificate stating that the deposit was not made by the Issuers with the intent of preferring the Holders of Notes over the other creditors of the Issuers with the intent of defeating, hindering, delaying or defrauding creditors of the Issuers or others; and

(h) the Issuers must deliver to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

Section 8.05 Deposited Money and Government Securities to be Held in Trust; Other Miscellaneous Provisions.

Subject to Section 8.06 hereof, all money and Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "Trustee") pursuant to Section 8.04 hereof in respect of the outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuers acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium, if any, and interest, but such money need not be segregated from other funds except to the extent required by law.

The Issuers shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or Government Securities deposited pursuant to Section 8.04 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Notwithstanding anything in this Article 8 to the contrary, the Trustee shall deliver or pay to the Issuers from time to time upon the request of the Issuers any money or Government Securities held by it as provided in Section 8.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.04(b) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 8.06 Repayment to Issuers.

Any money deposited with the Trustee or any Paying Agent, or then held by the Issuers, in trust for the payment of the principal of, premium, if any, or interest on any Note and remaining unclaimed for two years after such principal, premium, if any, or interest has become due and payable shall be paid to the Issuers on its request or (if then held by the Issuers) shall be discharged from such trust; and the Holder of such Note shall thereafter be permitted to look only to the Issuers for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuers as trustee thereof, shall thereupon cease; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Issuers cause to be published once, in the New York Times (national edition) and The Wall Street Journal (national edition), notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining shall be repaid to the Issuers.

Section 8.07 Reinstatement.

If the Trustee or Paying Agent is unable to apply any United States dollars or Government Securities in accordance with Section 8.02 or 8.03 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Issuers', the Guarantors' and the Parent Guarantor's obligations under this Indenture, the Notes, the Note Guarantees and the Collateral Documents shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or 8.03 hereof, as the case may be; *provided, however*, that, if the Issuers make any payment of principal of, premium, if any, or interest on any Note following the reinstatement of its obligations, the Issuers shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

**ARTICLE 9.
AMENDMENT, SUPPLEMENT AND WAIVER**

Section 9.01 Without Consent of Holders of Notes.

Notwithstanding Section 9.02 of this Indenture, without the consent of any Holder, the Issuers, any Restricted Entity, any Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity, or any Guarantor or the Parent Guarantor, the Issuers, the Guarantors, the Parent Guarantor and the Trustee may amend or supplement this Indenture, the Notes, the Note Guarantees or the Collateral Documents to:

(a) cure any ambiguity, defect or inconsistency;

(b) provide for uncertificated Notes in addition to or in place of certificated Notes;

(c) provide for the assumption of the Issuers' or any Guarantor's obligations to the Holders of the Notes by a successor to the Issuers or such Guarantor, as the case may be, in the case of a merger or consolidation or sale of all or substantially all of the Issuers' or such Guarantor's assets pursuant to Article 5 hereof;

(d) make any change that would provide any additional rights or benefits to the Holders of the Notes or that does not adversely affect the legal rights hereunder of any such Holder;

(e) comply with requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA;

(f) allow any Guarantor or the Parent Guarantor to execute a supplemental indenture and/or a Note Guarantee;

(g) enter into additional or supplemental Collateral Documents, Guarantees or Parent Guarantees or an intercreditor agreement with respect thereto; or

(h) provide for Additional Notes in accordance with the limitations set forth in this Indenture as of the date of this Indenture.

Upon the request of the Issuers accompanied by a resolution of their respective Boards of Directors authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee of the documents described in Section 7.02 hereof, the Trustee shall join with the Issuers, the Guarantors and the Parent Guarantor in the execution of any amended or supplemental indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to enter into such amended or supplemental indenture that affects its own rights, duties or immunities under this Indenture or otherwise.

Section 9.02 *With Consent of Holders of Notes.*

Except as provided below in this Section 9.02, the Issuers, the Guarantors, the Parent Guarantor and the Trustee may amend or supplement this Indenture (including, without limitation, Section 3.10, 4.10, 4.15 and 4.16 hereof) the Notes, the Note Guarantees and the Collateral Documents with the consent of the Holders of at least a majority in principal amount of the Notes (including, without limitation, Additional Notes, if any) then outstanding voting as a single class (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes), and, subject to Sections 6.04 and 6.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, the Notes, the Note Guarantees or the Collateral Documents may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Notes voting as a single class (including, without limitation, consents obtained in connection with purchase of, or a tender offer or exchange offer for, the Notes).

Upon the request of the Issuers accompanied by a resolution of their respective Boards of Directors authorizing the execution of any such amended or supplemental Indenture, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders of Notes as aforesaid, and upon receipt by the Trustee of the documents described in Section 7.02 hereof, the Trustee shall join with the Issuers, the Guarantors and the Parent Guarantor in the execution of such amended or supplemental Indenture unless such amended or supplemental Indenture directly affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such amended or supplemental Indenture.

It is not necessary for the consent of the Holders of Notes under this Section 9.02 to approve the particular form of any proposed amendment or waiver, but it is sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Issuers shall mail to the Holders of Notes affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Issuers to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amended or supplemental Indenture or waiver. Subject to Sections 6.04 and 6.07 hereof, the Holders of a majority in aggregate principal amount of the Notes then outstanding voting as a single class may waive compliance in a particular instance by the Issuers with any provision of this Indenture or the Notes. However, without the consent

of each Holder affected, an amendment or waiver under this Section 9.02 may not (with respect to any Notes held by a non-consenting Holder):

(a) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(b) reduce the principal of or change the fixed maturity of any Note or alter or waive any of the provisions with respect to the redemption of the Notes, except as provided above with respect to Sections 3.10, 4.10, 4.15 and 4.16 hereof;

(c) reduce the rate of or change the time for payment of interest, including default interest, on any Note;

(d) waive a Default or Event of Default in the payment of principal of, or interest or premium, if any, on the Notes (except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the then outstanding Notes and a waiver of the payment default that resulted from such acceleration);

(e) make any Note payable in money other than that stated in the Notes;

(f) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders of Notes to receive payments of principal of, or interest or premium, if any, on the Notes;

(g) waive a redemption payment with respect to any note (other than a payment required by Sections 3.10, 4.10, 4.15 and 4.16 hereof);

(h) release all or substantially all of the Collateral or release any Material Project Assets from the Collateral, in each case except in accordance with the provisions of the Collateral Documents;

(i) release any Guarantor or the Parent Guarantor from any of its obligations under its Note Guarantee if the assets or properties of that Guarantor or the Parent Guarantor, as the case may be, (a) constitute all or substantially all of the Collateral or (b) include Material Project Assets; and

(j) make any change in the foregoing amendment and waiver provisions.

Section 9.03 *Compliance with Trust Indenture Act.*

Every amendment or supplement to this Indenture or the Notes shall be set forth in a amended or supplemental Indenture that complies with the TIA as then in effect.

Section 9.04 *Revocation and Effect of Consents.*

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the waiver, supplement or amendment becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

Section 9.05 *Notation on or Exchange of Notes.*

The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. The Issuers in exchange for all Notes may issue and the Trustee shall, upon receipt of an Authentication Order, authenticate new Notes that reflect the amendment, supplement or waiver.

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Failure to make the appropriate notation or issue a new Note shall not affect the validity and effect of such amendment, supplement or waiver.

Section 9.06 *Trustee to Sign Amendments, etc.*

The Trustee shall sign any amended or supplemental Indenture authorized pursuant to this Article 9 if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Issuers, the Guarantors and the Parent Guarantor may not sign an amendment or supplemental Indenture until their respective Boards of Directors approve it. In executing any amended or supplemental indenture, the Trustee shall be entitled to receive and (subject to Section 7.01 hereof) shall be fully protected in relying upon, in addition to the documents required by Section 13.04 hereof, an Officers' Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental Indenture is authorized or permitted by this Indenture.

**ARTICLE 10.
COLLATERAL AND SECURITY**

Section 10.01 *Collateral Documents.*

The due and punctual payment of the principal of and interest and premium, if any, on the Notes when and as the same shall be due and payable, whether on an interest payment date, at maturity, by acceleration, repurchase, redemption or otherwise, and interest on the overdue principal of and interest and premium (to the extent permitted by law), if any, on the Notes and performance of all other obligations of the Issuers, the Guarantors and the Parent Guarantor to the Holders of Notes or the Trustee under this Indenture and the Notes, according to the terms hereunder or thereunder, are secured as provided in the Collateral Documents which the Issuers and the Guarantors have entered into simultaneously with the execution of this Indenture (including, without limitation, the Collateral Documents listed on Exhibit E hereto). Each Holder of Notes, by its acceptance thereof, consents and agrees to the terms of the Collateral Documents (including, without limitation, the provisions providing for foreclosure and release of Collateral and limitations on exercise of rights and remedies) as the same may be in effect or may be amended from time to time in accordance with the terms of this Indenture and the Collateral Documents and authorizes and directs the Trustee to enter into the Collateral Documents and to perform its obligations and exercise its rights thereunder in accordance therewith. The Issuers shall do or cause to be done all such acts and things as may be necessary or proper, or as may be required by the provisions of the Collateral Documents, to assure and confirm to the Trustee the security interests in the Collateral contemplated hereby, by the Collateral Documents or any part thereof, as from time to time constituted, so as to render the same available (subject to the terms of the Intercreditor Agreements) for the security and benefit of this Indenture, the Notes and the Note Guarantees secured by the Collateral Documents, according to the intent and purposes therein expressed. Subject to the terms of the Intercreditor Agreements, the Issuers and the Restricted Entities shall take, and shall cause their respective Restricted Subsidiaries that are party to one or more Collateral Documents to take, upon request of the Trustee, any and all actions reasonably required to cause the Collateral Documents to create and maintain, as security for the Obligations of the Issuers hereunder and of the Guarantors and the Parent Guarantor under the Note Guarantees, a valid and enforceable perfected Lien of the priority required by the Collateral Documents in and on all the Collateral, in favor of the Trustee for the benefit of the Holders of Notes, superior to and prior to the rights of all third Persons, in each case, subject only to the Liens securing the obligations under the Credit Agreement and other Permitted Liens and the terms of the Intercreditor Agreements.

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Section 10.02 *Recording and Opinions.*

(a) The Issuers shall furnish to the Trustee simultaneously with the execution and delivery of this Indenture an Opinion of Counsel either:

(1) stating that, in the opinion of such counsel, all action has been taken with respect to the recording, registering and filing of this Indenture, financing statements or other instruments necessary to make effective the Lien intended to be created by the Collateral Documents, and reciting with respect to the security interests in the Collateral, the details of such action; or

(2) stating that, in the opinion of such counsel, no such action is necessary to make such Lien effective.

(b) The Issuers shall furnish to the Trustee within 30 days after November 1 in each year beginning with November 30, 2003, an Opinion of Counsel, dated as of such date, either:

(1) (A) stating that, in the opinion of such counsel, action has been taken with respect to the recording, registering, filing, re-recording, re-registering and re-filing of all supplemental indentures, financing statements, continuation statements or other instruments of further assurance as is necessary to maintain the Lien of the Collateral Documents and reciting with respect to the security interests in the Collateral the details of such action or referring to prior Opinions of Counsel in which such details are given, and (B) stating that, in the opinion of such counsel, based on relevant laws as in effect on the date of such Opinion of Counsel, all financing statements and continuation statements have been executed and filed that are necessary as of such date and during the succeeding 12 months fully to preserve and protect, to the extent such protection and preservation are possible by filing, the rights of the Holders of Notes and the Trustee hereunder and under the Collateral Documents with respect to the security interests in the Collateral;

(2) stating that, in the opinion of such counsel, no such action is necessary to maintain such Lien and assignment.

(c) The Issuers shall otherwise comply with the provisions of TIA §314(b).

Section 10.03 Release of Collateral.

(a) Subject to the other provisions of this Section 10.03 and the terms of the Intercreditor Agreements and the other Collateral Documents, the Trustee will determine the circumstances and manner in which the Collateral will be disposed of, including the determination of whether to release all or any portion of the Collateral from the security interests created by the Collateral Documents and whether to foreclose on the Collateral following an Event of Default. Collateral may be released from the Lien and security interests created by the Collateral Documents at any time or from time to time in accordance with the provisions of the Collateral Documents and as provided in this Section 10.03. Subject to the provisions of the Intercreditor Agreements, upon the request of the Issuers pursuant to an Officers' Certificate certifying that all terms for release and conditions precedent under this Indenture and under any applicable Collateral Document have been met and specifying (1) the identity of the Collateral to be released and (2) the provisions of this Indenture or the applicable Collateral Document which authorize such release, the Trustee shall release the Liens in favor of the Trustee (at the sole cost and expense of the Issuers) on:

(1) all Collateral that is contributed, sold, leased, conveyed, transferred or otherwise disposed of (a) in an Asset Sale, Permitted Investment or Restricted Payment in accordance with this Indenture and the Collateral Documents, (b) to an Unrestricted Subsidiary of Wynn Las Vegas in accordance with this Indenture and the Collateral Documents or (c) as expressly permitted by the Collateral Documents;

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(2) all Collateral that is condemned, seized or taken by the power of eminent domain or otherwise confiscated pursuant to an Event of Loss; provided that the Net Loss Proceeds, if any, from the Event of Loss are or shall be applied in accordance with Sections 3.10 and 4.16 hereof;

(3) all Collateral (except as provided in Articles 8 and 12 of this Indenture) upon discharge or defeasance of this Indenture in accordance with Article 8 or Article 12 hereof;

(4) all Collateral upon the payment in full in immediately available funds of all Obligations of the Issuers, the Guarantors and the Parent Guarantor under this Indenture, the Notes and the Collateral Documents;

(5) except as otherwise provided in this Indenture, the Collateral Documents or the Parent Guarantee, Collateral of a Guarantor or of the Parent Guarantor whose Note Guarantee is released or terminated pursuant to the terms of this Indenture or the Parent Guarantee, as the case may be;

(6) the Released Assets; and

(7) Government Transfers consisting of transfers of fee interests in real property.

(b) The Trustee shall release (at the sole cost and expense of the Issuers) the Liens in favor of the Trustee for the benefit of the Holders on all of the Golf Course Land, the Equity Interests in Desert Inn Improvement Co. and/or Desert Inn Water Company and the DIIC Water Permits (other than the DIIC Casino Water Permit), so long as:

(1) both immediately prior to the release of the Liens (or, in the case of the release of the Golf Course Land, at the time a binding agreement for the disposition of that land is entered into, so long as the disposition takes place within 60 days following the date on which that binding agreement is entered into) and after giving pro forma effect to that release (as if, for purposes of calculating the Consolidated Leverage Ratio, such release had been made at the beginning of the applicable four-quarter period):

(A) no Default or Event of Default exists,

(B) the Consolidated Leverage Ratio of the Issuers and their Restricted Subsidiaries for the period of four full consecutive fiscal quarters of Wynn Las Vegas ending immediately prior to the release date is 3.0 to 1.0 or less, and

(C) the senior secured long-term Indebtedness under the Credit Agreement is rated BB+ or higher by S&P and Ba1 or higher by Moody's,

(2) the release occurs on or after the third anniversary of the Opening Date,

(3) the lenders under the Credit Agreement concurrently release their Liens on the Golf Course Land, the Equity Interests in Desert Inn Improvement Co. and/or Desert Inn Water Company and the DIIC Water Permits (other than the DIIC Casino Water Permit), in each case, to be released by the Trustee,

(4) Desert Inn Water Company owns no assets other than the stock of Desert Inn Improvement Co.,

(5) either (A) no Points of Diversion with respect to the Valvino Water Permits and the DIIC Casino Water Permit, wells associated therewith or rights-of-way necessary for the transportation to the Le Rêve casino water features of water drawn or to be drawn pursuant to such Water Permits, are located on the Golf Course Land or (B) the applicable entities that own the Golf Course Land to be released shall have transferred at no cost such easements to Wynn Las Vegas as are necessary for Wynn Las Vegas to access such Points of Diversion, own and operate such wells and transport the water drawn therefrom to the Le Rêve casino water features,

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(6) Wynn Las Vegas shall have taken all actions required pursuant to Section 4.32 hereof with respect to any assets or property acquired pursuant to clause (5) above, and

(7) Wynn Resorts Holdings delivers an Officers' Certificate (including supporting calculations in reasonable detail) to the Trustee confirming that the conditions in clauses (1), (2), (3), (4), (5) and (6) of this Section 10.03(b) have been satisfied.

(c) The Trustee shall release (at the sole cost and expense of the Issuers) the Liens granted by Wynn Resorts Holdings in favor of the Trustee for the benefit of the Holders in the Home Site Land if the lenders under the Credit Agreement concurrently release their first Liens on the Home Site Land, so long as no Default or Event of Default exists or is continuing immediately prior to or after giving effect to such release; *provided* that it shall not be deemed to be a release of such first priority Liens requiring the release by the Trustee of its Liens (for the benefit of the Holders) on the Home Site Land if the release of such first priority Liens is as a result of an extension, refinancing, renewal, replacement, amendment and restatement, restatement, defeasance or refunding (collectively, a "*refinancing*") of the Credit Agreement, as a result of which the first priority Liens in favor of the administrative agent (for the benefit of the lenders under the Credit Agreement) are replaced with Liens in favor of the lenders or holders of such refinancing Indebtedness (or a representative on their behalf). In the event that, following the release of the Trustee's Liens (for the benefit of the Holders) in the Home Site Land, Wynn Las Vegas, the Restricted Entities or any of their respective Restricted Subsidiaries grants a Lien on any or all of the Home Site Land to secure such refinancing Indebtedness or any guarantee thereof, such Person shall concurrently grant a Lien on such portions of the Home Site Land in favor of the Trustee for the benefit of the Holders to secure the Notes (or, if such Person is a Guarantor, its Note Guarantee); *provided* that the Lien in favor of the Trustee for the benefit of the Holders shall be a second priority Lien, subject only to the Liens securing the refinancing Indebtedness or the guarantee of such Indebtedness, as applicable, and other Permitted Liens).

(d) The Trustee shall release (at the sole cost and expense of the Issuers) the Liens granted by Wynn Resorts Holdings on the Wynn Home Site Land to secure its Obligations under its Note Guarantee in order to permit the construction of a personal residence for Stephen A. Wynn, so long as:

- (1) no Default or Event of Default exists or is continuing immediately prior to or after giving effect to that release,
- (2) the cash purchase price paid by Stephen A. Wynn for the Wynn Home Site Land prior to the release of such Liens in immediately available funds shall not be less than the then fair market value of the Wynn Home Site Land,
- (3) the purchase price is paid directly to Wynn Resorts Holdings so long as, prior to the release of such Liens, such purchase price is contributed in immediately available funds to Wynn Las Vegas as a common equity capital contribution (the "*Steve Wynn Capital Contribution*"),
- (4) the construction of Stephen A. Wynn's personal residence shall not interfere with the design, construction, operation or use of the remainder of the Golf Course Land as a Golf Course and otherwise could not reasonably be expected to materially impair the overall value of the Project,
- (5) the lenders under the Credit Agreement concurrently release their Liens on the Wynn Home Site Land,
- (6) either (1) no Points of Diversion with respect to the Water Permits, wells associated therewith or rights-of-way necessary for the transportation to the Golf Course Land or the Le Rêve casino water features of water drawn or to be drawn pursuant to Water Permits, are located

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on the released Golf Course Land or (2) the entity that owns the released Golf Course Land shall have transferred at no cost:

(A) in the case of Points of Diversion and associated wells with respect to the Valvino Water Permits and the DIIC Casino Water Permit, and rights-of-way necessary for the transportation to the Le Rêve casino water features of water drawn or to be drawn pursuant to Water Permits, such easements to Wynn Las Vegas as are necessary for Wynn Las Vegas to access such Points of Diversion, own and operate such wells and transport the water drawn therefrom to the Le Rêve casino water features, and

(B) in the case of Points of Diversion with respect to all other DIIC Water Permits and the wells associated therewith, such easements to Wynn Las Vegas and Wynn Resorts Holdings as are necessary for Wynn Las Vegas and Wynn Resorts Holdings to access such Points of Diversion, own and operate such wells and transport the water drawn therefrom to the Golf Course Land,

(7) Wynn Las Vegas and Wynn Resorts Holdings, as the case may be, shall have taken all actions required pursuant to Section 4.32 hereof with respect to any assets or property acquired pursuant to clause (6) above, and

(8) Wynn Resorts Holdings delivers an Officers' Certificate to the Trustee confirming that the conditions in clauses (1), (2), (3), (4), (5), (6) and (7) of this Section 10.03(d) have been satisfied.

(e) The Trustee shall release (at the sole cost and expense of the Issuers) the Liens granted by Valvino Lamore in favor of the Trustee for the benefit of the Holders on the Phase II Land to secure its Obligations under its Note Guarantee if the lenders under the Credit Agreement concurrently release their first priority Liens in the Phase II Land, so long as no Default or Event of Default exists or is continuing immediately prior to or after giving effect to that release; *provided* that it shall not be deemed to be a release of such first priority Liens requiring the release by the Trustee of its Liens on the Phase II Land if the release of such first priority Liens is as a result of a refinancing of the Credit Agreement, as a result of which the first priority Liens in favor of the administrative agent (for the benefit of the lenders under the Credit Agreement) are replaced with Liens in favor of the lenders or holders of such refinancing Indebtedness (or a representative on their behalf). In the event that, following the release of the Trustee's Liens (for the benefit of the Holders) in the Phase II Land, Wynn Las Vegas, the Restricted Entities or any of their respective Restricted Subsidiaries grants a Lien on any or all of the Phase II Land to secure such refinancing Indebtedness or any guarantee thereof, such Person shall concurrently grant a Lien on such Phase II Land in favor of the Trustee for the benefit of the Holders to secure the Notes (or, if such Person is a Guarantor, its Note Guarantee); *provided* that the Lien in favor of the Trustee for the benefit of the Holders shall be a second priority Lien, subject only to the Liens securing the refinancing Indebtedness or the guarantee of such Indebtedness, as applicable, and other Permitted Liens). Notwithstanding anything to the contrary herein, nothing in this Section 10.03(e) shall permit the release of any portions of the Phase II Land on which any Entertainment Facility is being or has been constructed from time to time.

(f) Upon receipt by the Trustee of the applicable Officers' Certificate required to be delivered pursuant to Sections 10.03(a), (b), (c), (d) or (e), as the case may be, the Trustee shall execute, deliver or acknowledge any necessary or proper instruments of termination, satisfaction or release to evidence the release of any Collateral permitted to be released pursuant to this Section 10.03.

(g) The release of any Collateral from the terms of this Indenture and the Collateral Documents shall not be deemed to impair the security under this Indenture in contravention of the provisions hereof if and to the extent the Collateral is released pursuant to the terms of the Collateral Documents or this Indenture. To the extent applicable, the Issuers shall cause TIA § 313(b), relating to reports, and TIA § 314(d), relating to the release of property or securities from the Lien and security interest

of the Collateral Documents and this Indenture and relating to the substitution therefor of any property or securities to be subjected to the Lien and security interest of the Collateral Documents and this Indenture, to be complied with. Any certificate or opinion required by TIA § 314(d) may be made by an Officer of Wynn Las Vegas except in cases where TIA § 314(d) requires that such certificate or opinion be made by an independent Person, which Person shall be an independent engineer, appraiser or other expert selected or approved by the Trustee in the exercise of reasonable care.

(h) Notwithstanding anything to the contrary in this Indenture or the Collateral Documents, no Collateral may be released from the Lien and security interests created by the Collateral Documents unless the Officers' Certificate required by this Section 10.03 has been delivered to the Trustee and any applicable provisions of the Intercreditor Agreements have been complied with.

(i) At any time when a Default or Event of Default has occurred and is continuing and the maturity of the Notes has been accelerated (whether by declaration or otherwise), no release of Collateral pursuant to the provisions of this Section 10.03 or the Collateral Documents shall be effective as against the Holders of Notes.

Section 10.04 *Certificates of the Issuers.*

In addition to the requirements under Section 10.03, the Issuers shall furnish to the Trustee, prior to each proposed release of Collateral pursuant to the Collateral Documents:

(a) all documents required by TIA §314(d) and the Collateral Documents; and

(b) an Opinion of Counsel, which may be rendered by internal counsel to the Issuers, to the effect that such accompanying documents constitute all documents required by TIA §314(d).

The Trustee may, to the extent permitted by Sections 7.01 and 7.02 hereof, accept as conclusive evidence of compliance with the foregoing provisions the appropriate statements contained in such documents and such Opinion of Counsel.

Section 10.05 *Certificates of the Trustee.*

In the event that the Issuers wish to release Collateral in accordance with the Collateral Documents and have delivered the certificates and documents required by the Collateral Documents and Sections 10.03 and 10.04 hereof, the Trustee shall determine whether it has received all documentation required by TIA § 314(d) in connection with such release.

Section 10.06 *Authorization of Actions to Be Taken by the Trustee Under the Collateral Documents.*

Subject to the provisions of Section 7.01 and 7.02 hereof and the Collateral Documents, the Trustee may, in its sole discretion and without the consent of the Holders of Notes, on behalf of the Holders of Notes, take all actions it deems necessary or appropriate in order to:

(a) enforce any of the terms of the Collateral Documents; and

(b) collect and receive any and all amounts payable in respect of the Obligations of the Issuers, the Guarantors and the Parent Guarantor hereunder and under the Collateral Documents.

The Trustee shall have power to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Collateral by any acts that may be unlawful or in violation of the Collateral Documents or this Indenture, and such suits and proceedings as the Trustee may deem expedient to preserve or protect its interests and the interests of the Holders of Notes in the Collateral (including power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the security interest hereunder or be prejudicial to the interests of the Holders of Notes or of the Trustee).

Section 10.07 *Authorization of Receipt of Funds by the Trustee Under the Collateral Documents.*

The Trustee is authorized to receive any funds for the benefit of the Holders of Notes distributed under the Collateral Documents, and to make further distributions of such funds to the Holders of Notes according to the provisions of this Indenture.

Section 10.08 *Rights in the Pledged Collateral.*

(a) So long as no Event of Default shall have occurred and be continuing, and subject to the provisions of this Indenture, the Intercreditor Agreements and the other Collateral Documents, Wynn Las Vegas and each Guarantor shall be entitled to receive the benefit of all cash dividends, interest and other payments made upon or with respect to the Collateral pledged by such Person and to exercise any voting and other consensual rights pertaining to the Collateral pledged by such Person. Upon the occurrence and during the continuance of an Event of Default and, subject to the terms of the Collateral Documents and the limitations in the Intercreditor Agreements and the exercise by the Trustee of its rights under the Collateral Documents:

(1) upon receipt by the affected Person of notice from the Trustee so stating, all rights of such Person to exercise such voting or other consensual rights shall cease, and all such rights shall become vested in the Trustee which, to the extent permitted by law, shall have the sole right to exercise such rights;

(2) all rights of such Person to receive all cash dividends, interest and other payments made upon, or with respect to, the Collateral shall cease and such cash dividends, interest and other payments shall be paid to the Trustee; and

(3) subject to applicable law, the Trustee may sell the Collateral or any part thereof in accordance with the terms of this Indenture, the Intercreditor Agreements and the other Collateral Documents.

(b) Nothing contained in this Section 10.08 shall be deemed to apply to the Parent Guarantor or to restrict the ability of Wynn Las Vegas to make the Restricted Payments permitted to be made during the occurrence of an Event of Default under Section 4.07(b) hereof.

Section 10.09 *Termination of Security Interest.*

Upon the payment in full in immediately available funds of all Obligations of the Issuers under this Indenture and the Notes, or upon Legal Defeasance, the Trustee shall, at the written request of the Issuers, release the Liens on the Collateral and take such actions at the Issuers' sole cost and expense as the Issuers may reasonably request to evidence such release, including, without limitation, the return of assets pledged as Collateral and the execution and delivery of related instruments of transfer, lien, releases, reconveyances, termination statements and any similar documents and instruments.

ARTICLE 11. NOTE GUARANTEES

Section 11.01 *Note Guarantee.*

(a) Subject to this Article 11, each of the Guarantors and the Parent Guarantor hereby, jointly and severally, unconditionally guarantees to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes, the Collateral Documents or the obligations of the Issuers hereunder or thereunder, that:

(1) the principal of, premium, if any, and interest on the Notes shall be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of the

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Issuers to the Holders or the Trustee hereunder or thereunder shall be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and

(2) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise.

Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors and the Parent Guarantor shall be jointly and severally obligated to pay the same immediately. Each Guarantor and the Parent Guarantor agrees that this is a guarantee of payment and performance and not a guarantee of collection.

(b) The Guarantors and the Parent Guarantor hereby agree that their obligations hereunder are unconditional, irrespective of the validity, regularity or enforceability of the Notes, this Indenture or the Collateral Documents, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuers, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor or the Parent Guarantor. Each of the Guarantors and the Parent Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of either Issuer, any right to require a proceeding first against the Issuers, protest, notice and all demands whatsoever and covenant that this Note Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes and this Indenture.

(c) If any Holder or the Trustee is required by any court or otherwise to return to the Issuers, the Guarantors, the Parent Guarantor or any custodian, trustee, liquidator or other similar official acting in relation to either Issuer, any Guarantor or the Parent Guarantor, any amount paid by either to the Trustee or such Holder, this Note Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

(d) Each of the Guarantors and the Parent Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each of the Guarantors and the Parent Guarantor further agrees that, as between the Guarantors and the Parent Guarantor, on the one hand, and the Holders and the Trustee, on the other hand, (1) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 hereof for the purposes of this Note Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (2) in the event of any declaration of acceleration of such obligations as provided in Article 6 hereof, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors and the Parent Guarantor for the purpose of this Note Guarantee. The Guarantors and the Parent Guarantor shall have the right to seek contribution from any non-paying Guarantor or the Parent Guarantor, as the case may be, so long as the exercise of such right does not impair the rights of the Holders under the Note Guarantee.

Section 11.02 *Limitation on Guarantor Liability.*

Each Guarantor and the Parent Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Note Guarantee of such Guarantor and the Parent Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Note Guarantee. To effectuate the foregoing intention, the Trustee, the Holders, the Guarantors and the Parent Guarantor hereby irrevocably agree that the obligations of each such Guarantor and the Parent Guarantor shall be limited to the maximum amount that shall, after giving effect to such maximum amount and all other contingent and fixed liabilities of

such Guarantor or the Parent Guarantor, as the case may be, that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor or the Parent Guarantor, as the case may be, in respect of the obligations of such other Guarantor or the Parent Guarantor, as the case may be, under this Article 11, result in the obligations of such Guarantor or the Parent Guarantor, as the case may be, under its Note Guarantee not constituting a fraudulent transfer or conveyance.

Section 11.03 *Execution and Delivery of Note Guarantee.*

To evidence its Note Guarantee set forth in Section 11.01, each of the Guarantors and the Parent Guarantor hereby agrees that a notation of such Note Guarantee substantially in the form attached as Exhibit B hereto shall be endorsed by an Officer of such Guarantor and the Parent Guarantor on each Note authenticated and delivered by the Trustee and that this Indenture shall be executed on behalf of such Guarantor and the Parent Guarantor by one of its Officers.

Each of the Guarantors and the Parent Guarantor hereby agrees that its Note Guarantee set forth in Section 11.01 shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Note Guarantee.

If an Officer whose signature is on this Indenture or on the Note Guarantee no longer holds that office at the time the Trustee authenticates the Note on which a Note Guarantee is endorsed, the Note Guarantee shall be valid nevertheless.

The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Note Guarantee set forth in this Indenture on behalf of the Guarantors and the Parent Guarantor.

In the event that the Issuers create or acquire any Subsidiary after the date of this Indenture, if required by Sections 4.26 and 4.31 hereof, the Issuers shall cause such Subsidiary to comply with the provisions of Sections 4.26 and 4.31 hereof and this Article 11, to the extent applicable.

Section 11.04 *Guarantors May Consolidate, etc., on Certain Terms.*

In case of any consolidation, merger, sale or conveyance of or involving a Guarantor under Section 5.01 hereof, and upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the Note Guarantee endorsed upon the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Guarantor, such successor Person shall succeed to and be substituted for the Guarantor with the same effect as if it had been named herein as a Guarantor. Such successor Person thereupon may cause to be signed any or all of the Note Guarantees to be endorsed upon all of the Notes issuable hereunder which theretofore shall not have been signed by the Issuers and delivered to the Trustee. All the Note Guarantees so issued shall in all respects have the same legal rank and benefit under this Indenture as the Note Guarantees theretofore and thereafter issued in accordance with the terms of this Indenture as though all of such Note Guarantees had been issued at the date of the execution hereof.

Except as set forth in Articles 4 and 5 hereof, nothing contained in this Indenture or in any of the Notes shall prevent any consolidation or merger of a Guarantor with or into the Issuers or another Guarantor, or shall prevent any sale or conveyance of the property of a Guarantor as an entirety or substantially as an entirety to the Issuers or another Guarantor.

Section 11.05 *Releases Following Sale of Assets.*

Subject to compliance with Section 5.01 hereof, the Note Guarantee of a Guarantor and the security interests granted by that Guarantor to secure its Note Guarantee shall be released: (1) in connection with any sale or other disposition of all or substantially all of the assets of that Guarantor

(including by way of merger or consolidation) to a Person that is not (either before or after giving effect to such transaction) Wynn Las Vegas, a Restricted Entity or one of their respective Restricted Subsidiaries, or the Parent Guarantor, if the sale or other disposition complies with the applicable provisions of this Indenture, including, without limitation, Section 4.10 hereof; or (2) in connection with any sale of all of the Capital Stock of a Guarantor to a Person that is not (either before or after giving effect to such transaction) Wynn Las Vegas, a Restricted Entity or one of their respective Restricted Subsidiaries, or the Parent Guarantor, if the sale complies with the applicable provisions of this Indenture, including, without limitation, Section 4.10 hereof. Upon delivery by Wynn Las Vegas to the Trustee of an Officers' Certificate and an Opinion of Counsel to the effect that such sale or other disposition was made by the Issuers in accordance with the provisions of this Indenture, including, without limitation, Section 4.10 hereof, the Trustee shall execute any documents reasonably required in order to evidence the release of any Guarantor from its obligations under its Note Guarantee.

Any Guarantor not released from its obligations under its Note Guarantee shall remain liable for the full amount of principal of and interest and premium, if any, on the Notes and for the other obligations of any Guarantor and the Parent Guarantor under this Indenture as provided in this Article 11.

ARTICLE 12. SATISFACTION AND DISCHARGE

Section 12.01 *Satisfaction and Discharge.*

This Indenture and the Collateral Documents shall be discharged and shall cease to be of further effect as to all Notes issued hereunder, when:

(a) either:

(1) all Notes that have been authenticated, except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust and thereafter repaid to the Issuers, have been delivered to the Trustee for cancellation; or

(2) all Notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the mailing of a notice of redemption or otherwise or shall become due and payable within one year and the Issuers have or any Guarantor or the Parent Guarantor has irrevocably

deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts as shall be sufficient without consideration of any reinvestment of interest, to pay and discharge the entire indebtedness on the Notes not delivered to the Trustee for cancellation for principal, premium and accrued interest to the date of maturity or redemption;

(b) no Default or Event of Default has occurred and is continuing on the date of such deposit or shall occur as a result of the deposit and the deposit shall not result in a breach or violation of, or constitute a default under, any other instrument to which either Issuer, any Guarantor or the Parent Guarantor is a party or by which either Issuer, any Guarantor or the Parent Guarantor is bound;

(c) the Issuers, any Guarantor or the Parent Guarantor have paid or caused to be paid all sums payable by the Issuers under this Indenture; and

(d) the Issuers have delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of the Notes at maturity or the redemption date, as the case may be.

In addition, the Issuers must deliver an Officers' Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

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Notwithstanding the satisfaction and discharge of this Indenture, if money has been deposited with the Trustee pursuant to subclause (1) of clause (a) of this Section, the provisions of Section 12.02 and Section 8.06 shall survive. In addition, nothing in this Section 12.01 shall be deemed to discharge those provisions of Section 7.07 hereof, that, by their terms, survive the satisfaction and discharge of this Indenture.

Section 12.02 *Application of Trust Money.*

Subject to the provisions of Section 8.06, all money deposited with the Trustee pursuant to Section 12.01 shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuers acting as their own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 12.01 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Issuers', any Guarantor's and the Parent Guarantor's obligations under this Indenture, the Notes and the Collateral Documents shall be revived and reinstated as though no deposit had occurred pursuant to Section 12.01; *provided* that if the Issuers have made any payment of principal of, premium, if any, or interest on any Notes because of the reinstatement of its obligations, the Issuers shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or Government Securities held by the Trustee or Paying Agent.

ARTICLE 13. MISCELLANEOUS

Section 13.01 *Trust Indenture Act Controls.*

If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by TIA §318(c), the imposed duties shall control.

Section 13.02 *Notices.*

Any notice or communication by the Issuers, any Guarantor, the Parent Guarantor or the Trustee to the others is duly given if in writing and delivered in Person or mailed by first class mail (registered or certified, return receipt requested), telex, telecopier or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Issuers and/or any Guarantor and/or the Parent Guarantor:

c/o Wynn Las Vegas, LLC
3145 Las Vegas Boulevard South
Las Vegas, NV 89109
Telecopier No.: (702) 733-4596
Attention: Marc Rubinstein, General Counsel

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With a copy to:

Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, CA 90067-4276
Telecopier No.: (310) 203-7199
Attention: C. Kevin McGeehan, Esq.
Meredith Jackson, Esq.

If to the Trustee:

Wells Fargo Bank, National Association
MAC N9303-110
Sixth & Marquette
Minneapolis, MN 55479
Telecopier: (612) 667-2160
Attention: Michael Slade, Corporate Trust Services

The Issuers, any Guarantor, the Parent Guarantor or the Trustee, by notice to the others may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when answered back, if telexed; when receipt acknowledged, if telecopied; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice or communication to a Holder shall be mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the register kept by the Registrar. Any notice or communication shall also be so mailed to any Person described in TIA § 313(c), to the extent required by the TIA. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If the Issuers mail a notice or communication to Holders, they shall mail a copy to the Trustee and each Agent at the same time.

Section 13.03 *Communication by Holders of Notes with Other Holders of Notes.*

Holders may communicate pursuant to TIA § 312(b) with other Holders with respect to their rights under this Indenture or the Notes. The Issuers, the Guarantors, the Parent Guarantor, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

Section 13.04 *Certificate and Opinion as to Conditions Precedent.*

Upon any request or application by the Issuers to the Trustee to take any action under this Indenture, the Issuers shall furnish to the Trustee:

(a) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 13.05 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

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(b) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 13.05 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

Section 13.05 *Statements Required in Certificate or Opinion.*

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to TIA § 314(a)(4)) must comply with the provisions of TIA § 314(e) and must include:

(a) a statement that the Person making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied.

Section 13.06 *Rules by Trustee and Agents.*

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 13.07 *No Personal Liability of Directors, Officers, Employees and Equity Holders.*

No director, officer, employee, incorporator, organizer, equity holder or member of either Issuer, any Restricted Entity, any of the Restricted Subsidiaries of Wynn Las Vegas or any Restricted Entity or any Guarantor or the Parent Guarantor, as such, shall have any liability for any obligations of either Issuer, any Restricted Entity, any such Restricted Subsidiary or any Guarantor or the Parent Guarantor under the Notes, the Note Guarantees, this Indenture, the Collateral Documents or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

Section 13.08 *Governing Law.*

THE INTERNAL LAW OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THIS INDENTURE, THE NOTES AND THE NOTE GUARANTEES WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

Section 13.09 *No Adverse Interpretation of Other Agreements.*

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Issuers, the Restricted Entities or their respective Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 13.10 *Successors.*

All agreements of the Issuers in this Indenture and the Notes shall bind their successors. All agreements of the Trustee in this Indenture shall bind its successors. All agreements of each Guarantor

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and the Parent Guarantor in this Indenture shall bind its successors, except as otherwise provided in Section 11.05.

Section 13.11 *Severability.*

In case any provision in this Indenture or in the Notes is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 13.12 *Counterpart Originals.*

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

Section 13.13 *Table of Contents, Headings, etc.*

The Table of Contents, Cross-Reference Table and Headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

[Signatures on following pages]

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SIGNATURES

Dated as of October 30, 2002

ISSUERS:

WYNN LAS VEGAS, LLC,
a Nevada limited liability company,

By: Wynn Resorts Holdings, LLC, a Nevada limited liability company, its sole member

By: Valvino Lamore, LLC, a Nevada limited liability company, its sole member

By: Wynn Resorts, Limited, a Nevada corporation, its sole member

/s/ RONALD KRAMER

Name: Ronald Kramer
Title: *President*

WYNN LAS VEGAS CAPITAL CORP.,
a Nevada corporation,

By: /s/ RONALD KRAMER

Name: Ronald Kramer
Title: *Vice President*

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GUARANTORS:

DESERT INN WATER COMPANY, LLC,

a Nevada limited liability company,

By: Valvino Lamore, LLC, a Nevada limited liability company, its sole member

By: Wynn Resorts, Limited, a Nevada corporation, its sole member

/s/ RONALD KRAMER

Name: Ronald Kramer

Title: *President*

WYNN DESIGN & DEVELOPMENT, LLC,

a Nevada limited liability company,

By: Valvino Lamore, LLC, a Nevada limited liability company, its sole member

By: Wynn Resorts, Limited, a Nevada corporation, its sole member

/s/ RONALD KRAMER

Name: Ronald Kramer

Title: *President*

WYNN RESORTS HOLDINGS, LLC,

a Nevada limited liability company,

By: Valvino Lamore, LLC, a Nevada limited liability company, its sole member

By: Wynn Resorts, Limited, a Nevada corporation, its sole member

/s/ RONALD KRAMER

Name: Ronald Kramer

Title: *President*

LAS VEGAS JET, LLC,

a Nevada limited liability company,

By: Wynn Las Vegas, LLC, a Nevada limited liability company,

By: Wynn Resorts Holdings, LLC, a Nevada limited liability company, its sole member

By: Valvino Lamore, LLC, a Nevada limited liability company, its sole member

By: Wynn Resorts, Limited, a Nevada corporation, its sole member

/s/ RONALD KRAMER

Name: Ronald Kramer

Title: *President*

WORLD TRAVEL, LLC,

a Nevada limited liability company,

By: Wynn Las Vegas, LLC, a Nevada limited liability company,

By: Wynn Resorts Holdings, LLC, a Nevada limited liability company, its sole member

By: Valvino Lamore, LLC, a Nevada limited liability company, its sole member

By: Wynn Resorts, Limited, a Nevada corporation, its sole member

/s/ RONALD KRAMER

Name: Ronald Kramer
Title: *President*

PALO, LLC,
a Delaware limited liability company,

By: Wynn Resorts Holdings, LLC, a Nevada limited liability company, its sole member

By: Valvino Lamore, LLC, a Nevada limited liability company, its sole member

By: Wynn Resorts, Limited, a Nevada corporation, its sole member

/s/ RONALD KRAMER

Name: Ronald Kramer
Title: *President*

VALVINO LAMORE, LLC,
a Nevada limited liability company,

By: Wynn Resorts, Limited, a Nevada corporation, its sole member

/s/ RONALD KRAMER

Name: Ronald Kramer
Title: *President*

WYNN RESORTS, LIMITED,
a Nevada corporation

By: /s/ RONALD KRAMER

Name: Ronald Kramer
Title: *President*

Attest:

Name:
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: /s/ MICHAEL SLADE

Name: Michael Slade
Title:

Attest:

/s/ ILLEGIBLE

Authorized Signatory
Date: October 30, 2002

[Face of Note]

CUSIP/CINS 983130 AA3

12.0% Second Mortgage Notes due 2010

No. ____

\$ _____

WYNN LAS VEGAS, LLC
WYNN LAS VEGAS CAPITAL CORP.

promises to pay to CEDE & CO.
or registered assigns, the principal sum of _____
Dollars on November 1, 2010.
Interest Payment Dates: May 1 and November 1
Record Dates: April 15 and October 15
Dated: October 30, 2002

WYNN LAS VEGAS, LLC,
a Nevada limited liability company,

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited, a Nevada
corporation, its sole member

Name:
Title:

By: _____
Name:
Title:

WYNN LAS VEGAS CAPITAL CORP.,
a Nevada corporation,

By: _____
Name:
Title:

By: _____
Name:
Title:

This is one of the Notes referred to
in the within-mentioned Indenture:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) ("DTC"), TO THE ISSUERS OR THEIR AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.(1)

(1) *This legend should be included on the Global Notes and omitted from Definitive Notes.*

Capitalized terms used herein have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

(1) *Interest.* Wynn Las Vegas, LLC, a Nevada limited liability company ("*Wynn Las Vegas*") and Wynn Las Vegas Capital Corp., a Nevada corporation ("*Wynn Capital*," and together with Wynn Las Vegas, the "*Issuers*"), as joint and several obligors, promise to pay interest on the principal amount of this Note at 12.0% per annum from October 30, 2002 until maturity. The Issuers shall pay interest semi-annually in arrears on May 1 and November 1 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each, an "*Interest Payment Date*"). Interest on the Notes shall accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance; *provided* that if there is no existing Default in the payment of interest, and if this Note is authenticated between a record date referred to on the face hereof and the next succeeding Interest Payment Date, interest shall accrue from such next succeeding Interest Payment Date; *provided, further*, that the first Interest Payment Date shall be May 1, 2003. The Issuers shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, from time to time on demand at a rate that is 1% per annum in excess of the rate then in effect; they shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue

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installments of interest (without regard to any applicable grace periods) from time to time on demand at the same rate to the extent lawful. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

(2) *Method of Payment.* The Issuers shall pay interest on the Notes (except defaulted interest) to the Persons who are registered Holders of Notes at the close of business on the April 15 or October 15 next preceding the Interest Payment Date, even if such Notes are canceled after such record date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. The Notes shall be payable as to principal, premium, if any, and interest at the office or agency of the Issuers maintained for such purpose within or without the City and State of New York, or, at the option of the Issuers, payment of interest may be made by check mailed to the Holders at their addresses set forth in the register of Holders; *provided* that payment by wire transfer of immediately available funds shall be required with respect to principal of and interest and premium, if any, on, all Global Notes and all other Notes the Holders of which shall have provided wire transfer instructions to the Issuers or the Paying Agent. Such payment shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

(3) *Paying Agent and Registrar.* Initially, Wells Fargo Bank, National Association, the Trustee under the Indenture, shall act as Paying Agent and Registrar. The Issuers may change any Paying Agent or Registrar without notice to any Holder. Either Issuer or any of their Restricted Subsidiaries may act in any such capacity.

(4) *Indenture and Collateral Documents.* The Issuers issued the Notes under an Indenture dated as of October 30, 2002 (the "*Indenture*") among the Issuers, the Guarantors, the Parent Guarantor and the Trustee. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended (15 U.S. Code §§ 77aaa-77bbb). The Notes are subject to all such terms, and Holders are referred to the Indenture and such Act for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling. The Notes are secured obligations of the Issuers. The Issuers may issue Notes in a maximum aggregate principal amount of (a) \$470.0 million, *less* (b) the aggregate principal amount of all Indebtedness incurred pursuant to clauses (11) and (12) of Section 4.09(b) of the Indenture, other than through the issuance of Additional Notes under the Indenture. The Notes and the Note Guarantees are secured by a grant of a security interest in Collateral pursuant to the Collateral Documents referred to in the Indenture.

(5) *Optional Redemption.*

(a) Except as set forth in subparagraph (b) of this Paragraph 5, the Issuers shall not have the option to redeem the Notes prior to November 1, 2006. Thereafter, the Issuers shall have the option to redeem the Notes, in whole or in part, upon not less than 30 nor more than 60 days' notice, at the redemption prices (expressed as percentages of principal amount) set forth below plus accrued and unpaid interest thereon to the applicable redemption date, if redeemed during the twelve-month period beginning on November 1 of the years indicated below:

| Year | Percentage |
|---------------------|------------|
| 2006 | 112.00% |
| 2007 | 108.00% |
| 2008 | 104.00% |
| 2009 and thereafter | 100.00% |

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(b) Notwithstanding the provisions of subparagraph (a) of this Paragraph 5, at any time prior to November 1, 2005, the Issuers may on one or more occasions redeem up to 35% of the aggregate principal amount of Notes with the net cash proceeds of one or more Qualified Equity Offerings (other than the IPO) at a redemption price equal to 112.0% of the principal amount redeemed, plus accrued and unpaid interest thereon to the redemption date; *provided* that at least 65% of the aggregate principal amount of the Notes issued under the Indenture remains outstanding immediately after the occurrence of such redemption (excluding Notes held by Wynn Resorts, any of its Affiliates, any of their respective employees or the Existing Stockholders), and that such redemption occurs within 60 days of the date of the closing of such Qualified Equity Offering.

(6) *Mandatory Redemption.* Other than as set forth in Paragraph 7 below, the Issuers shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes.

(7) *Mandatory Disposition or Redemption Pursuant to Gaming Laws.* Notwithstanding any other provision of the Indenture or this Note, if any Gaming Authority requires a Holder or Beneficial Owner of Notes to be licensed, qualified or found suitable under any applicable Gaming Law and the Holder or Beneficial Owner (a) fails to apply for a license, qualification or finding of suitability within 30 days after being requested to do so (or such lesser period as required by the Gaming Authority), or (b) is notified by a Gaming Authority that it shall not be licensed, qualified or found suitable, the Issuers shall have the right, at their option, to: (1) require the Holder or Beneficial Owner to dispose of its Notes within 30 days (or such lesser period as required by the Gaming Authority) following the earlier of: (a) the termination of the period described above for the Holder or Beneficial Owner to apply for a license, qualification or finding of suitability, or (b) the receipt of the notice from the Gaming Authority that the Holder or Beneficial Owner shall not be licensed, qualified or found suitable by the Gaming Authority; or (2) redeem the Notes of the Holder or Beneficial Owner at a redemption price equal to: (a) the price determined by the Gaming Authority, or (b) if the Gaming Authority does not determine a price, the lesser of: (i) the principal amount of the Notes, and (ii) the price that the Holder or Beneficial Owner paid for the Notes, in each case, together with accrued and unpaid interest on the Notes to the earlier of (A) the date of redemption or such earlier date as is required by the Gaming Authority or (B) the date of the finding of unsuitability by the Gaming Authority, which may be less than 30 days following the notice of redemption. The Issuers shall notify the Trustee in writing of any redemption pursuant to this Section 7 as soon as practicable.

Immediately upon a determination by a Gaming Authority that a Holder or Beneficial Owner of Notes shall not be licensed, qualified or found suitable, the Holder or Beneficial Owner shall not have any further rights with respect to the Notes to: (a) exercise, directly or indirectly, through any Person, any right conferred by the Notes; or (b) receive any interest or any other distribution or payment with respect to the Notes, or any remuneration in any form from the Issuers for services rendered or otherwise, except the redemption price of the Notes.

The Issuers are not required to pay or reimburse any Holder or Beneficial Owner of Notes who is required to apply for such license, qualification or finding of suitability for the costs relating thereto. Those expenses shall be the obligation of the Holder or Beneficial Owner.

(8) *Repurchase at Option of Holder.*

(a) If a Change of Control, occurs, the Issuers shall make an offer (a "*Change of Control Offer*") to repurchase all or any part (equal to \$1,000 or an integral multiple thereof) of each Holder's Notes at a purchase price equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest thereon, if any, to the date of purchase (the "*Change of Control Payment*"). Within 10 days following any Change of Control, the Issuers shall mail a

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notice to each Holder setting forth the procedures governing the Change of Control Offer as required by the Indenture.

(b) If Wynn Las Vegas, the Restricted Entities or any of their respective Subsidiaries consummate any Asset Sales, within 10 days of each date on which the aggregate amount of Excess Proceeds exceeds \$10.0 million, Wynn Las Vegas shall make an offer to all Holders of Notes (an "*Asset Sale Offer*") pursuant to Sections 3.10 and 4.10 of the Indenture to purchase the maximum principal amount of Notes that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to 100% of the principal amount thereof plus accrued and unpaid interest thereon, if any, to the date fixed for the closing of such offer, in accordance with the procedures set forth in the Indenture. If any Excess Proceeds remain after consummation of an Asset Sale Offer, the applicable entity may use those Excess Proceeds for any general corporate purpose not prohibited by the Indenture and the Collateral Documents. If the aggregate principal amount of Notes tendered into such Asset Sale Offer exceeds the amount of Excess Proceeds, the Trustee shall select the Notes to be purchased in accordance with the terms of the Indenture. Holders of Notes that are the subject of an offer to purchase shall receive an Asset Sale Offer from Wynn Las Vegas prior to any related purchase date and may elect to have such Notes purchased by completing the form entitled "Option of Holder to Elect Purchase" on the reverse of the Notes. Until the Credit Agreement has been repaid in full, there will not be any Excess Proceeds of Asset Sales. Upon completion of each Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero.

(c) If Wynn Las Vegas, any Restricted Entity or any of their Restricted Subsidiaries experiences an Event of Loss after the Final Completion Date and, within ten days of each date on which the aggregate amount of Excess Loss Proceeds exceeds \$10.0 million, Wynn Las Vegas shall commence an offer (an "*Event of Loss Offer*") to all Holders of Notes pursuant to Sections 3.10 and 4.16 of the Indenture, to purchase the maximum principal amount of Notes that may be purchased out of the Excess Loss Proceeds at an offer price in cash in an amount equal to 100% of the principal amount thereof plus accrued and unpaid interest thereon, if any, to the date fixed for the closing of such offer, in accordance with the procedures set forth in the Indenture. If any Excess Loss Proceeds remain after consummation of an Event of Loss Offer, the applicable entity may use such Excess Loss Proceeds for any general corporate purpose not prohibited by the Indenture and the Collateral Documents. If the aggregate principal amount of Notes tendered into such Event of Loss Offer exceeds the amount of Excess Loss Proceeds, the Trustee shall select the Notes to be purchased in accordance with the terms of the Indenture. Holders of Notes that are the subject of an offer to purchase shall receive an Event of Loss Offer from Wynn Las Vegas prior to any related purchase date and may elect to have such Notes purchased by completing the form entitled "Option of Holder to Elect Purchase" on the reverse of the Notes. Until the Credit Agreement has been paid in full, there will not be any Excess Loss Proceeds. Upon completion of each Event of Loss Offer, the amount of Excess Proceeds shall be reset at zero.

(9) *Notice of Redemption.* Notice of redemption shall be mailed at least 30 days but not more than 60 days before the redemption date to each Holder whose Notes are to be redeemed at its registered address. Notes in denominations larger than \$1,000 may be redeemed in part but only in whole multiples of \$1,000, unless all of the Notes held by a Holder are to be redeemed. On and after the redemption date interest ceases to accrue on Notes or portions thereof called for redemption.

Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Issuers may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Issuers need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, the Issuers need not exchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed or during the period between a record date and the corresponding Interest Payment Date.

(11) *Persons Deemed Owners.* The registered Holder of a Note may be treated as its owner for all purposes.

(12) *Amendment, Supplement and Waiver.* Subject to certain exceptions, the Indenture, the Notes, the Note Guarantees and the Collateral Documents may be amended or supplemented with the consent of the Holders of at least a majority in principal amount of the then outstanding Notes, and Additional Notes, if any, voting as a single class, and any existing default or compliance with any provision of the Indenture, the Notes, the Note Guarantees or the Collateral Documents may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Notes voting as a single class. Without the consent of any Holder, the Issuers, any Restricted Entity, any Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity, or any Guarantor or the Parent Guarantor, the Issuers, the Guarantors, the Parent Guarantor and the Trustee may amend or supplement the Indenture, the Notes, the Note Guarantees or the Collateral Documents to (i) cure any ambiguity, defect or inconsistency, (ii) provide for uncertificated Notes in addition to or in place of certificated Notes, (iii) provide for the assumption of the Issuers' or any Guarantor's obligations to the Holders of the Notes by a successor to the Issuers or such Guarantor, as the case may be, in the case of a merger or consolidation or sale of all or substantially all of the Issuers' of such Guarantor's assets pursuant to Article 5 of the Indenture, (iv) make any change that would provide any additional rights or benefits to the Holders of the Notes or that does not adversely affect the legal rights of any such Holder under the Indenture, (v) comply with requirements of the SEC in order to effect or maintain the qualification of the Indenture under the TIA, (vi) allow any Guarantor or the Parent Guarantor to execute a supplemental indenture and/or a Note Guarantee, (vii) enter into additional or supplemental Collateral Documents or Guarantees or Parent Guarantees, as the case may be, or an intercreditor agreement with respect thereto, or (viii) provide for Additional Notes in accordance with the limitations set forth in the Indenture as of the date of the Indenture.

(13) *Defaults and Remedies.* Events of Default include: (i) default for 30 days in the payment when due of interest on the Notes; (ii) default in payment when due of principal of, or premium, if any, on the Notes when the same becomes due and payable at maturity, upon redemption (including in connection with an offer to purchase) or otherwise, (iii) failure by Wynn Capital, Wynn Las Vegas, any Restricted Entity or any of their Restricted Subsidiaries to comply with Section 4.07, 4.09, 4.10, 4.15, 4.16 or 5.01 of the Indenture; (iv) failure by Wynn Capital, any Restricted Entity or any of their Restricted Subsidiaries for 60 days after written notice from the Trustee to comply with certain other agreements in the Indenture, not set forth in clause (iii) above, or failure by Wynn Resorts for 60 days after receipt of written notice from the Trustee to comply with the provisions of the Parent Guarantee or, if applicable, any Parent Security Agreement; (v) default under the Disbursement Agreement; (vi) failure by Wynn Capital, any Restricted Entity or any of their respective Restricted Subsidiaries, the Completion Guarantor or any other party thereto (other than the Trustee or any representative of the lenders under the Credit Agreement or other lenders party thereto) for 60 days after receipt of written notice from the Trustee to comply with any of its agreements, as applicable, in any Collateral Document; (vii) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by Wynn Las

Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries (or the payment of which is guaranteed by any such Person) whether such Indebtedness or guarantee now exists, or is created after the date of the Indenture, if that default (a) is caused by a Payment Default or (b) results in the acceleration of such Indebtedness prior to its express maturity, and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates \$10.0 million or more; (viii) failure by Wynn Capital, Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries to pay final non-appealable judgments (not paid or covered by insurance as to which the relevant insurance company has not denied responsibility) aggregating in excess of \$10.0 million, which judgments are not paid, bonded, discharged or stayed for a period of 60 days; (ix) any of the Collateral Documents shall cease, for any reason (other than pursuant to their terms), to be in full force and effect, or Wynn Capital, Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries or any Affiliate of any such Person or any Person acting on behalf of any such Person, shall so assert as to any of such Person's properties or assets, or any security interest created, or purported to be created, by any of the Collateral Documents shall cease to be enforceable and of the same effect and priority purported to be created by the Collateral Documents; (x) any representation or warranty made or deemed made by Wynn Capital, Wynn Las Vegas, any Restricted Entity or any of their respective Restricted Subsidiaries in any Collateral Document or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with any such Collateral Document shall prove to have been inaccurate in any material respect on or as of the date made or deemed made; *provided* that the inaccuracy of any representation or warranty contained only in the Disbursement Agreement shall constitute an Event of Default under the Indenture only to the extent such inaccuracy constitutes a Disbursement Agreement Event of Default; (xi) except as expressly provided therein, the Completion Guarantee, the Construction Contract Guarantee, any Note Guarantee issued by a Restricted Entity, a Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity, or the Parent Guarantee shall be held in any judicial proceeding to be unenforceable or invalid or shall cease for any reason to be in full force and effect or the Completion Guarantor, any Restricted Entity, any Restricted Subsidiary or the Parent Guarantor, or any Person acting on behalf of any such Person, shall deny or disaffirm its obligations under its Note Guarantee or, as the case may be, its Parent Guarantee; (xii) certain events of bankruptcy or insolvency described in the Indenture with respect to any Material Entity; (xiii) the Project has not achieved Completion on or before the Outside Completion Deadline; (xiv) after the Opening Date, revocation, termination, suspension or other cessation of effectiveness of any Gaming License which results in the cessation or suspension of gaming operations at any Gaming Facility for a period of more than 90 consecutive days; or (xv) if Wynn Las Vegas ever fails to own 100% of the issued and outstanding Equity Interests of Wynn Capital.

In the case of an Event of Default arising from certain events of bankruptcy or insolvency with respect to any Material Entity, all outstanding Notes shall become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the Trustee or the

Holders of at least 25% in principal amount of the then outstanding Notes may declare all the Notes to be due and payable immediately. Holders of the Notes may not enforce the Indenture or the Notes except as provided in the Indenture, the Intercreditor Agreements and in the other Collateral Documents. Subject to certain limitations, Holders of a majority in principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of the Notes notice of any continuing Default or Event of Default if it determines that withholding notice is in their interest, except a Default or Event of Default relating to the payment of principal or interest or premium, if any. The Holders of a majority in aggregate principal amount of the Notes then outstanding by notice

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to the Trustee may on behalf of the Holders of all of the Notes waive any existing Default or Event of Default and its consequences under the Indenture, except a continuing Default or Event of Default in the payment of interest or premium, if any, on, or the principal of, the Notes. In the case of any Event of Default occurring on or after November 1, 2006 by reason of any willful action or inaction taken or not taken by or on behalf of either Issuer, any Restricted Entity, any Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity, any Guarantor or the Parent Guarantor or any of their respective Subsidiaries with the intention of avoiding payment of the premium that the Issuers would have had to pay if the Issuers then had elected to redeem the Notes pursuant to the optional redemption provisions of the Indenture, an equivalent premium shall also become and be immediately due and payable to the extent permitted by law upon the acceleration of the Notes. If an Event of Default occurs prior to November 1, 2006, by reason of any willful action (or inaction) taken (or not taken) by or on behalf of either Issuer, any Restricted Entity, any Restricted Subsidiary of Wynn Las Vegas or any Restricted Entity, any Guarantor or the Parent Guarantor or any of their respective Subsidiaries with the intention of avoiding the prohibition on redemption of the Notes prior to November 1, 2006, then the premium specified in the Indenture shall also become immediately due and payable to the extent permitted by law upon the acceleration of the Notes. The Issuers are required to deliver to the Trustee annually a statement regarding compliance with the Indenture and the Collateral Documents. Upon becoming aware of any Default or Event of Default, the Issuers are required to deliver to the Trustee a statement specifying such Default or Event of Default.

(14) *Trustee Dealings with Issuers.* The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuers or any Affiliate of the Issuers with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the SEC for permission to continue as trustee or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Sections 7.10 and 7.11 of the Indenture.

(15) *No Recourse Against Others.* No director, officer, employee, incorporator, organizer, equity holder or member of either Issuer, any Restricted Entity, any of the Restricted Subsidiaries of Wynn Las Vegas or any Restricted Entity, or any Guarantor or the Parent Guarantor, as such, shall have any liability for any obligations of either Issuer, any Restricted Entity, any such Restricted Subsidiary or any Guarantor or the Parent Guarantor under the Notes, the Note Guarantees the Indenture, the Collateral Documents or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

(16) *Authentication.* This Note shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.

(17) *Abbreviations.* Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

(18) *CUSIP Numbers.* Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Issuers have caused CUSIP numbers to be printed on the Notes and the Trustee may use CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

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The Issuers shall furnish to any Holder upon written request and without charge a copy of the Indenture and/or the Collateral Documents. Requests may be made to:

c/o Wynn Las Vegas, LLC
3145 Las Vegas Boulevard South
Las Vegas, NV 89109
Telecopier No.: (702) 733-4596
Attention: Marc Rubinstein, General Counsel

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ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to:

(Insert assignee's legal name)

(Print or type assignee's name, address and zip code)

and irrevocably appoint _____ to transfer this Note on the books of the Issuers. The agent may substitute another to act for him.

Date: _____

Your Signature:

(Sign exactly as your name appears on the face of this Note)

Signature Guarantee*:

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

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OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Issuers pursuant to Section 4.10, 4.15 or 4.16 of the Indenture, check the appropriate box below:

- Section 4.10 Section 4.15 Section 4.16

If you want to elect to have only part of the Note purchased by the Issuers pursuant to Section 4.10, Section 4.15 or Section 4.16 of the Indenture, state the amount you elect to have purchased:

\$ _____

Date: _____

Your Signature:

(Sign exactly as your name appears on the face of this Note)

Tax Identification No.:

Signature Guarantee*:

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

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SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE*

The following exchanges of a part of this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of a part of another Global Note or Definitive Note for an interest in this Global Note, have been made:

| Date of Exchange | Amount of decrease in Principal Amount of this Global Note | Amount of increase in Principal Amount of this Global Note | Principal Amount of this Global Note following such decrease (or increase) | Signature of authorized officer of Trustee or Custodian |
|------------------|--|--|--|---|
| _____ | _____ | _____ | _____ | _____ |

[FORM OF NOTATION OF GUARANTEE]

For value received, each of the Guarantors and the Parent Guarantor (which terms include any successor Person under the Indenture) has, jointly and severally, unconditionally guaranteed, to the extent set forth in the Indenture and subject to the provisions in the Indenture dated as of October 30, 2002 (the "Indenture") among Wynn Las Vegas, LLC, a Nevada limited liability company ("Wynn Las Vegas") and Wynn Las Vegas Capital Corp., a Nevada corporation ("Wynn Capital," and together with Wynn Las Vegas, the "Issuers"), as joint and several obligors, and Desert Inn Water Company, LLC, a Nevada limited liability company, Wynn Design & Development, LLC, a Nevada limited liability company, Wynn Resorts Holdings, LLC, a Nevada limited liability company, Las Vegas Jet, LLC, a Nevada limited liability company, World Travel, LLC, a Nevada limited liability company, Palo, LLC, a Delaware limited liability company, Valvino Lamore, LLC, a Nevada limited liability company, and Wynn Resorts, Limited, a Nevada corporation, as guarantors (the "Guarantors") and Wells Fargo Bank, National Association, as trustee (the "Trustee"), (a) the due and punctual payment of the principal of, premium, if any, and interest on the Notes (as defined in the Indenture), whether at maturity, by acceleration, redemption or otherwise, the due and punctual payment of interest on overdue principal of and interest on the Notes, if any, if lawful, and the due and punctual performance of all other obligations of the Issuers to the Holders or the Trustee all in accordance with the terms of the Indenture and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that the same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. The obligations of the Guarantors to the Holders of Notes and to the Trustee pursuant to the Note Guarantee and the Indenture are expressly set forth in Article 11 of the Indenture and reference is hereby made to the Indenture for the precise terms of the Note Guarantee. Each Holder of a Note, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee, on behalf of such Holder, to take such action as may be necessary or appropriate to effectuate the subordination as provided in the Indenture and (c) appoints the Trustee attorney-in-fact of such Holder for such purpose; provided, however, that the Indebtedness evidenced by this Note Guarantee shall cease to be so subordinated and subject in right of payment upon any defeasance of this Note in accordance with the provisions of the Indenture.

[NAME OF GUARANTOR(S)]

By:

Name:

Title:

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[FORM OF SUPPLEMENTAL INDENTURE TO BE DELIVERED BY SUBSEQUENT GUARANTORS]

SUPPLEMENTAL INDENTURE (this "Supplemental Indenture"), dated as of _____, 200____, among _____ (the "Guaranteeing Subsidiary"), a subsidiary of Valvino Lamore, LLC, a Nevada limited liability company, Wynn Las Vegas, LLC, a Nevada limited liability company ("Wynn Las Vegas"), Wynn Las Vegas Capital Corp., a Nevada corporation ("Wynn Capital," and together with Wynn Las Vegas, the "Issuers"), the Guarantors and the Parent Guarantor (each, as defined in the Indenture referred to herein) and Wells Fargo Bank, National Association, as trustee under the indenture referred to below (the "Trustee").

WITNESSETH

WHEREAS, the Guaranteeing Subsidiary, the other Guarantors, the Parent Guarantor and the Issuers are members of a consolidated group of entities, the success of each member of which is mutually interdependent on the success of the other members, and the Guaranteeing Subsidiary expects to derive substantial direct and indirect benefit from the issuance of the Notes under the Indenture and the application of the proceeds thereof;

WHEREAS, the Issuers have heretofore executed and delivered to the Trustee an indenture (the "Indenture"), dated as of October 30, 2002 providing for the issuance of an aggregate principal amount of (a) \$470.0 million, less (b) the aggregate principal amount of all Indebtedness incurred pursuant to clauses (11) and (12) of Section 4.09(b) of the Indenture, other than through the issuance of Additional Notes under the Indenture, of 12.0% Second Mortgage Notes due 2010 (the "Notes");

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranteeing Subsidiary shall unconditionally guarantee all of the Issuers' Obligations under the Notes and the Indenture on the terms and conditions set forth herein (the "Note Guarantee"); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guaranteeing Subsidiary and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

- 1. CAPITALIZED TERMS. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.
2. AGREEMENT TO GUARANTEE. The Guaranteeing Subsidiary hereby agrees as follows:

(a) Along with all Guarantors named in the Indenture and the Parent Guarantor, to jointly, severally and unconditionally Guarantee to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, the Notes, the Collateral Documents or the obligations of the Issuers hereunder or thereunder, that:

(i) the principal of, and premium, if any, and interest on the Notes shall be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of the Issuers to the Holders or the Trustee hereunder or thereunder shall be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and

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(ii) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise.

Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors and the Parent Guarantor shall be jointly and severally obligated to pay the same immediately.

(b) The obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes, the Indenture or the Collateral Documents, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuers, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor or the Parent Guarantor.

(c) The following is hereby waived: diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of either Issuer, any right to require a proceeding first against the Issuers, protest, notice and all demands whatsoever.

(d) This Note Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes and the Indenture, and the Guaranteeing Subsidiary accepts all obligations of a Guarantor under the Indenture.

(e) If any Holder or the Trustee is required by any court or otherwise to return to the Issuers, the Guarantors, the Parent Guarantor or any custodian, trustee, liquidator or other similar official acting in relation to either of the Issuers, any Guarantor or the Parent Guarantor, any amount paid by either to the Trustee or such Holder, this Note Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

(f) The Guaranteeing Subsidiary shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby.

(g) As between the Guarantors and the Parent Guarantor, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 of the Indenture for the purposes of this Note Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article 6 of the Indenture, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors and the Parent Guarantor for the purpose of this Note Guarantee.

(h) The Guarantors and the Parent Guarantor shall have the right to seek contribution from any non-paying Guarantor or the Parent Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Note Guarantee.

(i) Pursuant to Section 11.02 of the Indenture, after giving effect to any maximum amount and all other contingent and fixed liabilities that are relevant under any applicable Bankruptcy or fraudulent conveyance laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor or the Parent Guarantor in respect of the obligations of such other Guarantor or the Parent Guarantor under Article 11 of the Indenture, this new Note Guarantee shall be limited to the maximum amount permissible such that the obligations of such Guarantor or the Parent Guarantor under this Note Guarantee shall not constitute a fraudulent transfer or conveyance.

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3. EXECUTION AND DELIVERY. Each Guaranteeing Subsidiary agrees that the Note Guarantees shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Note Guarantee.

4. GUARANTEEING SUBSIDIARY MAY CONSOLIDATE, ETC. ON CERTAIN TERMS.

(a) The Guaranteeing Subsidiary may not, directly or indirectly (1) consolidate or merge with or into another Person (whether or not such Guarantor is the surviving entity) or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of (a) Wynn Las Vegas, the Restricted Entities and their respective Restricted Subsidiaries, taken as a whole, (b) Wynn Las Vegas and its Restricted Subsidiaries, taken as a whole, or (c) such Guarantor, in one or more related transactions, to another Person, unless:

(i) either (a) such Guarantor is the surviving entity or (b) the Person formed by or surviving any such consolidation or merger (if other than such Guarantor) or to which such sale, assignment, transfer, conveyance or other disposition shall have been made is a corporation organized or existing under the laws of the United States, any state of the United States or the District of Columbia;

(ii) the Person formed by or surviving any such consolidation or merger (if other than such Guarantor) or the Person to which such sale, assignment, transfer, conveyance or other disposition shall have been made assumes all the obligations of such Guarantor under the Notes, the Indenture, the Note Guarantees and the Collateral Documents pursuant to agreements reasonably satisfactory to the Trustee; *provided* that this Section 4(a)(ii) shall not apply to any merger, consolidation, sale, assignment, transfer, conveyance or other disposition of assets of a Guarantor with, into or to Wynn Las Vegas, so long as, in the case of any consolidation or merger, Wynn Las Vegas is the survivor of such consolidation or merger;

(iii) immediately after such transaction, no Default or Event of Default exists;

(iv) such transaction would not result in the loss or suspension or material impairment of any Gaming License unless a comparable replacement Gaming License is effective at no material cost prior to or simultaneously with such loss, suspension or material impairment;

(v) such Guarantor or the Person formed by or surviving any such consolidation or merger or to which such sale, assignment, transfer, conveyance or other disposition shall have been made shall have Consolidated Net Worth immediately after the transaction equal to or greater than the Consolidated Net Worth of such Guarantor immediately preceding the transaction (excluding the effect of the related professional fees, commissions, sales and other taxes, and other transactional costs that would otherwise reduce Consolidated Net Worth);

(vi) in the case of a consolidation or merger of a Guarantor that is a Restricted Subsidiary of Wynn Las Vegas or the sale, assignment, transfer, conveyance or other disposition of the property or assets of such Guarantor, the Issuers shall, on the date of such transaction after giving pro forma effect thereto and any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period, be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.09(a) of the Indenture; and

(vii) such transaction, at the time it is undertaken, would not require any Holder or Beneficial Owner of Notes to obtain a Gaming License or be qualified or found suitable under the law of any applicable gaming jurisdiction; *provided* that such Holder or Beneficial Owner would not have been required to obtain a Gaming License or be qualified or found suitable under the laws of any applicable gaming jurisdiction in the absence of such transaction.

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Notwithstanding the foregoing provisions or the provisions of Section 5.01(a) of the Indenture, a Guarantor may consolidate or merge with or into another Guarantor, or sell, assign, transfer, convey or otherwise dispose of all or substantially all of its properties or assets to another Guarantor, so long as (1) the conditions in clauses (iii), (iv) and (vii) of the preceding paragraph are satisfied, and (2) such Guarantor or the Person formed by or surviving any such consolidation or merger, or the Guarantor to which such sale, assignment, transfer, conveyance or other disposition shall have been made, as the case may be, is Solvent.

(b) In addition, no Guarantor may, directly or indirectly, lease all or substantially all of its properties or assets, in one or more related transactions, to any other Person. This Section 4 shall not apply to a sale, assignment, transfer, conveyance or other disposition of assets (excluding any sale, assignment, transfer, conveyance or disposition of assets that would otherwise be subject to this Section 4 from a Person that is a Guarantor to a Person, other than Wynn Las Vegas, that is not a Guarantor):

(i) to Wynn Las Vegas and/or its Restricted Subsidiaries,

(ii) between Wynn Resorts Holdings and Valvino Lamore, excluding a transfer of any or all of the Golf Course Land, unless such Golf Course Land is then a Released Asset,

(iii) by (i) any Restricted Entity or any Restricted Subsidiary of a Restricted Entity, that, in each case, is not a Guarantor to (ii) any Restricted Entity or any Restricted Subsidiary of a Restricted Entity that, in each case, is a Guarantor, or

(iv) by any Wynn Group Entity to any Restricted Entity.

For purposes of this Section 4, a sale of properties or assets by a Guarantor shall not constitute a sale of "substantially all of the properties or assets" of that Guarantor if, following that sale, the Guarantor owns or holds (1) any of the Water Rights for the Project (excluding Water Rights that are then Released Assets), or (2) any of the Phase II Land or the Golf Course Land (excluding any such land that is then a Released Asset).

Notwithstanding the provisions of this Section 4 or the provisions of Section 5.01 of the Indenture, each Guarantor is permitted to reorganize as a corporation pursuant to a Permitted C-Corp. Conversion.

(c) In case of any such consolidation, merger, sale or conveyance of or involving a Guarantor and upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the Note Guarantee endorsed upon the Notes and the due and punctual performance of all of the covenants and conditions of the Indenture to be performed by the Guarantor, such successor Person shall succeed to and be substituted for the Guarantor with the same effect as if it had been named in the Indenture as a Guarantor. Such successor Person thereupon may cause to be signed any or all of the Note Guarantees to be endorsed upon all of the Notes issuable under the Indenture which theretofore shall not have been signed by the Issuers and delivered to the Trustee. All the Note Guarantees so issued shall in all respects have the same legal rank and benefit under the Indenture as the Note Guarantees theretofore and thereafter issued in accordance with the terms of the Indenture as though all of such Note Guarantees had been issued at the date of the execution hereof.

(d) Except as set forth in Articles 4 and 5 of the Indenture, and notwithstanding clauses (a), (b) and (c) above, nothing contained in the Indenture or in any of the Notes shall prevent any consolidation or merger of a Guarantor with or into the Issuers or another Guarantor, or shall prevent any sale or conveyance of the property of a Guarantor as an entirety or substantially as an entirety to the Issuers or another Guarantor.

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5. RELEASES.

(a) Subject to compliance with Section 5.01 of the Indenture, the Note Guarantee of a Guarantor and the security interests granted by that Guarantor to secure its Note Guarantee shall be released: (1) in connection with any sale or other disposition of all or substantially all of the assets of that Guarantor (including by way of merger or consolidation) to a Person that is not (either before or after giving effect to such transaction) Wynn Las Vegas, a Restricted Entity or one of their respective Restricted Subsidiaries, or the Parent Guarantor, if the sale or other disposition complies with the applicable provisions of

the Indenture, including, without limitation, Section 4.10 of the Indenture; or (2) in connection with any sale of all of the Capital Stock of a Guarantor to a Person that is not (either before or after giving effect to such transaction) Wynn Las Vegas, a Restricted Entity or one of their respective Restricted Subsidiaries, or the Parent Guarantor, if the sale complies with the applicable provisions of the Indenture, including, without limitation, Section 4.10 of the Indenture. Upon delivery by Wynn Las Vegas to the Trustee of an Officers' Certificate and an Opinion of Counsel to the effect that such sale or other disposition was made by the Issuers in accordance with the provisions of the Indenture, including, without limitation, Section 4.10 of the Indenture, the Trustee shall execute any documents reasonably required in order to evidence the release of any Guarantor from its obligations under its Note Guarantee.

(b) In the event Wynn Las Vegas properly designates any Restricted Subsidiary that is a Guarantor as an Unrestricted Subsidiary pursuant to the terms of the Indenture, such Guarantor shall be released and relieved of any obligations under its Note Guarantee.

(c) Any Guarantor not released from its obligations under its Note Guarantee shall remain liable for the full amount of principal of and interest on the Notes and for the other obligations of any Guarantor and the Parent Guarantor under the Indenture as provided in Article 11 of the Indenture.

6. **NO RECOURSE AGAINST OTHERS.** No director, officer, employee, incorporator, organizer, equity holder or member of any Guarantor or the Parent Guarantor shall have any liability for any obligations of either Issuer, any Restricted Entity, any such Restricted Subsidiary or any Guarantor or the Parent Guarantor under the Notes, the Note Guarantees, the Indenture, the Collateral Documents or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

7. **NEW YORK LAW TO GOVERN.** THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUCT THIS SUPPLEMENTAL INDENTURE BUT WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

8. **CONFLICTS WITH INDENTURE.** This Supplemental Indenture is subject to all terms of the Indenture. To the extent any provision of this Supplemental Indenture conflicts with express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling.

9. **COUNTERPARTS.** The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

10. **EFFECT OF HEADINGS.** The Section headings herein are for convenience only and shall not affect the construction hereof.

11. **THE TRUSTEE.** The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary and the Issuers.

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IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed and attested, all as of the date first above written.

Dated: _____, 20____

[GUARANTEEING SUBSIDIARY]

By:
Name: _____
Title:

ISSUERS:

WYNN LAS VEGAS, LLC,
a Nevada limited liability company,

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

Name:
Title:

WYNN LAS VEGAS CAPITAL CORP.,
a Nevada corporation,

By:
Name: _____
Title:

[EXISTING GUARANTORS]

By:
Name: _____
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Trustee

By: _____

Authorized Signatory

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EXHIBIT D

PROJECT SITE

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EXHIBIT E

COLLATERAL DOCUMENTS

1. Disbursement Agreement
2. FF&E Intercreditor Agreement
3. Project Lenders Intercreditor Agreement
4. Management Fees Subordination Agreement
5. Guarantee and Collateral Agreement by and between Wynn Las Vegas and the other Grantors (as defined therein) in favor of the Trustee
6. Local Second Mortgage Notes Collateral Account Agreement by and between the Issuers, Wynn Design, the Trustee and the entity named therein as custodian and securities intermediary (the "Securities Intermediary")
7. Second Mortgage Notes Company Collateral Account Agreement by and between the Issuers, Wynn Design, the Trustee and the Securities Intermediary
8. Second Mortgage Notes Completion Guaranty Collateral Account Agreement by and between Wynn Completion Guarantor, LLC, the Trustee and the Securities Intermediary
9. Deeds of Trust:
 - a. Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by Palo, LLC in favor of the Trustee
 - b. Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by Wynn Las Vegas in favor of the Trustee
 - c. Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by Wynn Resorts Holdings in favor of the Trustee
 - d. Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by Valvino Lamore in favor of the Trustee
10. Intellectual Property Security Agreements:
 - a. Intellectual Property Security Agreement by _____ in favor of the Trustee
 - b. Intellectual Property Security Agreement by _____ in favor of the Trustee
 - c. Intellectual Property Security Agreement by _____ in favor of the Trustee
11. Indemnity Agreements:
 - a. Indemnity Agreement executed by Palo, LLC in favor of the Trustee regarding environmental indemnity

- b. Indemnity Agreement executed by Wynn Las Vegas in favor of the Trustee regarding environmental indemnity
- c. Indemnity Agreement executed by Wynn Resorts Holdings in favor of the Trustee regarding environmental indemnity
- d. Indemnity Agreement executed by Valvino Lamore in favor of the Trustee regarding environmental indemnity

12. Parent Guaranty by Wynn Resorts, Limited in favor of the Trustee

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13. UCC Financing Statements:

- a. UCC Financing Statement of Wynn Las Vegas in favor of the Trustee
- b. UCC Financing Statement of Valvino Lamore in favor of the Trustee
- c. UCC Financing Statement of Wynn Capital in favor of the Trustee
- d. UCC Financing Statement of Palo, LLC in favor of the Trustee
- e. UCC Financing Statement of Wynn Resorts Holdings in favor of the Trustee
- f. UCC Financing Statement of Desert Inn Water Company, LLC in favor of the Trustee
- g. UCC Financing Statement of Wynn Design in favor of the Trustee
- h. UCC Financing Statement of World Travel, LLC in favor of the Trustee
- i. UCC Financing Statement of Las Vegas Jet, LLC in favor of the Trustee
- j. UCC Financing Statement of Wynn Completion Guarantor, LLC in favor of the Trustee

14. UCC-1 Fixture Filings:

- a. UCC-1 Fixture Filing of Valvino Lamore in favor of the Trustee
- b. UCC-1 Fixture Filing of Wynn Las Vegas in favor of the Trustee
- c. UCC-1 Fixture Filing of Palo, LLC in favor of the Trustee
- d. UCC-1 Fixture Filing of Wynn Resorts Holdings in favor of the Trustee

Capitalized terms not defined herein shall have the meanings assigned to such terms in the Indenture to which this Exhibit E is attached.

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EXHIBIT F

FORM OF INTERCOMPANY NOTE

\$

Las Vegas, Nevada

FOR VALUE RECEIVED, the undersigned, [INSERT NAME OF GUARANTOR], a ("Maker"), hereby promises to pay to the order of [](1), a Nevada [] ("Lender"), the principal amount of \$ on , and to pay interest thereon from the date hereof, semiannually on and of each year (each, an "Interest Payment Date"), commencing , at the rate of % per annum, until the principal hereof is paid or duly made available for payment. Interest on this Note shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. In no event shall interest be charged under this Note which would violate any applicable law. All such payments of principal and interest shall be payable without defense, set-off or counterclaim, in lawful money of the United States of America, and delivered to Lender by good and sufficient funds by wire transfer to Lender's account or by check delivered to Lender's address or at such other place as Lender or any holder hereof shall designate in writing for such purpose from time to time. If a payment hereunder otherwise would become due and payable on a Saturday, Sunday or legal holiday, the due date thereof shall be extended to the next succeeding business day.

(1) *Insert the name of Wynn Las Vegas or the applicable Restricted Entity or Restricted Subsidiary, as the case may be.*

This Note may be prepaid in whole or in part at any time. Any prepayment shall be without penalty. Any partial principal prepayment under this Note shall be applied against the principal due hereunder at maturity. This Note shall be non-negotiable.

No waiver or modification of any of the terms of this Note shall be valid or binding unless set forth in a writing specifically referring to this Note and signed by a duly authorized officer of Lender or any holder hereof, and then only to the extent specifically set forth therein.

If any default occurs in any payment due under this Note, Maker and all guarantors and endorsers hereof, if any, and their successors and assigns, promise to pay all costs and expenses, including attorneys' fees, incurred by each holder hereof in collecting or attempting to collect the indebtedness under this Note, whether or not any action or proceeding is commenced. None of the provisions hereof and none of the holder's rights or remedies hereunder on account of any past or future defaults shall be deemed to have been waived by the holder's acceptance of any past due installments or by any indulgence granted by the holder to Maker.

This Note shall inure to the benefit of Lender, its successors and assigns and shall bind the heirs, executors, administrators, successors and assigns of Maker.

In the event that any one or more provisions of this Note shall be held to be illegal, invalid or otherwise unenforceable, the same shall not affect any other provision of this Note and the remaining provisions of this Note shall remain in full force and effect.

Notwithstanding anything to the contrary in this Note, the indebtedness represented by the Aircraft Note (as defined in the Indenture, dated as of October 30, 2002 (the "*Indenture*"), among Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp. as issuers, Wynn Resorts, Limited and the other guarantors named therein and Wells Fargo Bank, National Association, as trustee (in such capacity, the

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"Trustee") shall be (1) separate and distinct from the indebtedness represented by this Note and (2) neither reflected in the principal amount hereof nor subject to the terms hereof.

This Note has been pledged by the Lender in favor of the Trustee under the Indenture to secure any and all of its obligations under the Indenture and the Notes and the Collateral Documents (in each case, as defined in the Indenture). The Maker acknowledges and agrees that the Trustee may, subject to the Intercreditor Agreements (as defined in the Indenture), exercise all the rights of the Lender under this Note after the occurrence and during the continuance of an Event of Default (as defined in the Indenture) and will not be subject to any abatement, reduction, recoupment, defense, setoff or counterclaim available to the Maker.

This Note shall be governed by and construed in accordance with the internal laws of the State of Nevada.

IN WITNESS WHEREOF, the Maker has caused this Note to be duly executed as of the day and year first written above.

[INSERT NAME OF GUARANTOR]

By:

Name:

Title:

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QuickLinks

[Exhibit 4.1](#)

GUARANTEE AND COLLATERAL AGREEMENT

made by

VALVINO LAMORE, LLC,

WYNN LAS VEGAS CAPITAL CORP.,

PALO, LLC,

WYNN RESORTS HOLDINGS, LLC,

DESERT INN WATER COMPANY, LLC,

WYNN DESIGN & DEVELOPMENT, LLC,

WORLD TRAVEL LLC,

LAS VEGAS JET, LLC,

WYNN LAS VEGAS, LLC

and

THE OTHER GRANTORS FROM TIME TO TIME PARTY HERETO

in favor of

**WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Mortgage Notes Indenture Trustee**

Dated as of October 30, 2002

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GUARANTEE AND COLLATERAL AGREEMENT

This GUARANTEE AND COLLATERAL AGREEMENT, dated as of October 30, 2002, is made by each of the signatories hereto (together with any other entity that may become a party hereto as provided herein, the "*Grantors*"), in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, in its capacity as the Mortgage Notes Indenture Trustee (in such capacity, the "*Mortgage Notes Indenture Trustee*"), for the registered holders (the "*Holder*s") of the 12.0% Mortgage Notes due 2010 (the "*Notes*") issued by Wynn Las Vegas, LLC, a Nevada limited liability company ("*Wynn Las Vegas*"), and Wynn Las Vegas Capital Corp., a Nevada corporation (together with Wynn Las Vegas, the "*Note Issuers*"), in the aggregate principal amount of \$370,000,000 under that certain Indenture, dated as of even date herewith (as amended, supplemented or otherwise modified from time to time, the "*Indenture*"), among the Note Issuers, the other Grantors and the Mortgage Notes Indenture Trustee.

RECITALS:

WHEREAS, pursuant to the Indenture, the Holders have agreed to purchase the Notes upon the terms and subject to the conditions set forth therein;

WHEREAS, the Note Issuers are members of an affiliated group of companies that includes each other Grantor;

WHEREAS, the proceeds of the Notes issued under the Indenture will be used in part to enable the Note Issuers to make valuable transfers to one or more of the other Grantors in connection with the operation of their respective businesses;

WHEREAS, the Note Issuers and the other Grantors are engaged in related businesses, and each Grantor will derive substantial direct and indirect benefit from the purchase of the Notes by the Holders under the Indenture; and

WHEREAS, it is a condition precedent to the obligation of the Holders to purchase the Notes under the Indenture that the Grantors shall have executed and delivered this Agreement to the Mortgage Notes Indenture Trustee for the ratable benefit of the Secured Parties;

NOW, THEREFORE, in consideration of the premises and to induce the Mortgage Notes Indenture Trustee and the Holders to enter into the Indenture and purchase the Notes, as the case may be, each Grantor hereby agrees with the Mortgage Notes Indenture Trustee, for the ratable benefit of the Secured Parties, as follows:

SECTION 1. DEFINED TERMS

1.1. *Definitions.* (a) Any capitalized terms used in this Agreement which are not otherwise defined herein shall have the respective meanings ascribed to such terms in the Disbursement Agreement (as defined below) and, if not defined therein, the respective meanings ascribed to such terms in the Indenture; *provided*, that (1) any such capitalized terms used in this Agreement which are defined in both the Disbursement Agreement and the Indenture shall have the respective meanings ascribed to such terms in the Disbursement Agreement, and (2) upon termination of the Disbursement Agreement, any defined terms used herein having meanings given to such terms in the Disbursement Agreement shall continue to have the meanings given to such terms in the Disbursement Agreement as amended and in effect immediately prior to such termination (provided that, following any such termination of the Disbursement Agreement, such terms and the meanings therefor may be amended or modified in accordance with the Indenture). The following terms which are defined in the Uniform Commercial Code in effect in the State of New York on the date hereof are used herein as so defined: Accounts, Certificated Security, Chattel Paper, Commodity Account, Commodity Contract, Commodity Intermediary, Documents, Entitlement Order, Equipment, Farm Products, Financial Asset, Goods, Instruments, Inventory, Letters of Credit, Letter of Credit Rights, Payment Intangible, Securities Account, Securities Intermediary, Security, Security Entitlement, Supporting Obligation and Uncertificated Security.

(b) The following terms shall have the following meanings:

"*Administrative Agent*": as defined in Section 8.18.

"*Agreement*": this Guarantee and Collateral Agreement, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"*Bank Guarantee and Collateral Agreement*": as defined in Section 8.18.

"*Collateral*": as defined in Section 3.

"*Collateral Account*": any collateral account established by the Mortgage Notes Indenture Trustee as provided in Section 6.2 or 6.5.

"*Contracts*": the contracts and agreements listed in *Schedule 7* (which include, without limitation, all Material Contracts (as defined in the Credit Agreement) and all Material Project Documents (as defined in the Disbursement Agreement)) as such schedule may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof, including, without limitation, (i) all rights of any Grantor to receive moneys due and to become due to it thereunder or in connection therewith, (ii) all rights of any Grantor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect thereto, (iii) all rights of any Grantor to damages arising thereunder, (iv) all rights of any Grantor to cancel, terminate or suspend such Contracts or the performance of work thereunder, and to perform and compel performance of, such Contracts and to exercise all remedies thereunder and (v) all rights of any Grantor to amend or modify such Contracts and to consent to any sale, assignment or disposition (by operation of law or otherwise) by the counterparty thereto of any part of such counterparty's interest in any such Contract.

"*Copyright Licenses*": any written agreement naming any Grantor as licensor or licensee (including, without limitation, those listed in *Schedule 6*), granting any right under any Copyright, including, without limitation, the grant of rights to manufacture, distribute, exploit and sell materials derived from any Copyright.

"*Copyrights*": (i) all copyrights, whether or not the underlying works of authorship have been published, including, but not limited to, copyrights in software and databases, all Mask Works (as defined in 17 U.S.C. 901 of the U.S. Copyright Act) and all such underlying works of authorship and other intellectual property rights therein, all copyrights of works based on, incorporated in, derived from or relating to works covered by such copyrights, all right, title and interest to make and exploit all derivative works based on or adopted from works covered by such copyrights, and all copyright registrations and copyright applications, and any renewals or extensions thereof, including, without limitation, each registration and application identified in *Schedule 6*, (ii) the rights to print, publish and distribute any of the foregoing, (iii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iv) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all Copyright Licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (v) all other rights of any kind whatsoever accruing thereunder or pertaining thereto.

"*Deposit Account*": as defined in the Uniform Commercial Code of any applicable jurisdiction and, in any event, including, without limitation, any demand, time, savings, passbook or like account maintained with a depository institution.

"*Disbursement Agreement*": that certain Master Disbursement Agreement dated as of October 30, 2002 among the Note Issuers, the Mortgage Notes Indenture Trustee and the other parties signatory thereto, as the same may hereafter be amended or modified in accordance with its terms and the terms of the Indenture.

"*Excluded Assets*": (i) the Aircraft Assets, (ii) the Company Accounts (it being understood that certain of the Company Accounts have been pledged to the Mortgage Notes Indenture Trustee pursuant to the Company Collateral Account Agreements), (iii) any assets the acquisition of which was financed by Indebtedness permitted by Section 4.09(b)(7) of the Indenture, to the extent that the terms of such Indebtedness prohibit additional Liens on such assets (but only to the extent and so long as so prohibited), (iv) any Contract that prohibits the creation of a security interest therein or requires consent to such security interest (other than to the extent that any such prohibition or consent requirement would be rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the New York UCC); provided, however, that the security interest shall attach immediately at such time as the restriction prohibiting assignment shall be removed or any condition thereto shall be satisfied, and (v) all Intellectual Property related to the name "Wynn Resorts".

"*General Intangibles*": all "general intangibles" as such term is defined in Section 9-102(a)(42) of the Uniform Commercial Code in effect in the State of New York on the date hereof and, in any event, including, without limitation, with respect to any Grantor, all rights and interests in, to and under contracts, agreements, instruments and indentures, including, without limitation, the Contracts, and all licenses, permits, concessions, franchises and authorizations issued by Governmental Authorities in any form, and portions thereof, to which such Grantor is a party or under which such Grantor has any right, title or interest or to which such Grantor or any property of such Grantor is subject, as the same may from time to time be amended, supplemented, replaced or otherwise modified, including, without limitation, (i) all rights of such Grantor to receive moneys due and to become due to it thereunder or in connection therewith, (ii) all rights of such Grantor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect thereto, (iii) all rights of such Grantor to damages arising thereunder, (iv) all rights of such Grantor to receive any tax refunds, and (v) all rights of such Grantor to terminate and to perform, compel performance and to exercise all remedies thereunder.

"*Governmental Authority*": any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity, (including the Gaming Authorities, any zoning authority, the FDIC, the Comptroller of the Currency or the Federal Reserve Board, any central bank or any comparable authority), any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any arbitrator with authority to bind a party at law.

"*Guarantor Obligations*": with respect to any Guarantor, all obligations and liabilities of such Guarantor which may arise under or in connection with this Agreement (including, without limitation, Section 2), any other Collateral Document, the Indenture or other agreement associated with the Indenture to which such Guarantor is a party, in each case whether on account of guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to any Secured Party that are required to be paid by such Guarantor pursuant to the terms of this Agreement, the Indenture or any other Collateral Document).

"*Guarantors*": the collective reference to the Grantors other than the Note Issuers.

"*Intellectual Property*": the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including, without limitation, the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks, the Trademark Licenses, the Trade Secrets and the Trade Secret Licenses, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

"*Intercompany Note*": any promissory note evidencing loans made by any Grantor to either Note Issuer or any of the other Grantors, other than the Aircraft Note.

"*Investment Property*": the collective reference to (i) all "investment property" as such term is defined in Section 9-102(a)(49) of the Uniform Commercial Code in effect in the State of New York on the date hereof including, without limitation, all Certificated Securities and Uncertificated Securities, all Security Entitlements, all Securities Accounts, all Commodity Contracts and all Commodity Accounts, (ii) security entitlements, in the case of any United States Treasury book-entry securities, as defined in 31 C.F.R. section 357.2, or, in the case of any United States federal agency book-entry securities, as defined in the corresponding United States federal regulations governing such book-entry securities, and (iii) whether or not constituting "investment property" as defined in the Uniform Commercial Code in effect in the State of New York on the date hereof, all Pledged Notes, all Pledged Stock, all Pledged Security Entitlements, all Pledged Debt Securities and all Pledged Commodity Contracts.

"*Issuer Obligations*": with respect to each Note Issuer, the collective reference to the payment and performance by such Note Issuer of each covenant and agreement of such Note Issuer contained in the Indenture, the Notes, each Collateral Document to which such Note Issuer is a party and each other document related thereto to which such Note Issuer is a party.

"*Issuers*": the collective reference to each issuer of a Pledged Security.

"*Material Adverse Effect*": a material adverse condition or material adverse change in or affecting (a) the business, assets, liabilities, property, condition (financial or otherwise), results of operations, prospects, value or management of the Issuers and the other Grantors taken as a whole, (b) the Project, (c) the validity or enforceability of this Agreement, the Indenture or any of the other Collateral Documents, (d) the validity, enforceability or priority of the Liens purported to be created by the Collateral Documents, or (e) the rights or remedies of any Secured Party hereunder, under the Indenture or under any of the other Collateral Documents.

"*New York UCC*": the Uniform Commercial Code as from time to time in effect in the State of New York.

"*Non-Deliverable Collateral*": as defined in Section 4.7(a).

"*Obligations*": (i) in the case of each of the Note Issuers, the Issuer Obligations, and (ii) in the case of each Guarantor, its Guarantor Obligations.

"*Patent License*": all agreements, whether written or oral, providing for the grant by or to any Grantor of any right to manufacture, use or sell any invention covered in whole or in part by a Patent, including, without limitation, any of the foregoing referred to in *Schedule 6*.

"*Patents*": (i) all patents, patent applications and patentable inventions, including, without limitation, each issued patent and patent application identified in *Schedule 6*, all certificates of invention or similar industrial property rights, (ii) all inventions and improvements described and claimed

therein, (iii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iv) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all Patent Licenses entered into in connection therewith, and damages and payments for past, present or future infringement thereof), and (v) all reissues, divisions, continuations, continuations-in-part, substitutes, renewals, and extensions thereof, all improvements thereon and all other rights of any kind whatsoever accruing thereunder or pertaining thereto.

"*Phase II Land Building*": the building existing on the Phase II Land as of the date of the Indenture that is subject to the Office Building Lease.

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"*Pledged Commodity Contracts*": all commodity contracts listed on *Schedule 2* and all other commodity contracts to which any Grantor is party from time to time.

"*Pledged Debt Securities*": the debt securities listed on *Schedule 2*, together with any other certificates, options, rights or security entitlements of any nature whatsoever in respect of the debt securities of any Person that may be issued or granted to, or held by, any Grantor while this Agreement is in effect.

"*Pledged Notes*": all promissory notes listed on *Schedule 2*, all Intercompany Notes at any time issued to any Grantor and all other promissory notes issued to or held by any Grantor.

"*Pledged Securities*": the collective reference to the Pledged Debt Securities, the Pledged Notes and the Pledged Stock.

"*Pledged Security Entitlements*": all security entitlements with respect to the financial assets listed on *Schedule 2* and all other security entitlements of any Grantor.

"*Pledged Stock*": the shares of Capital Stock listed on *Schedule 2*, together with any other shares, stock certificates, options, rights or security entitlements of any nature whatsoever in respect of the Capital Stock of any Person that may be issued or granted to, or held by, any Grantor while this Agreement is in effect.

"*Proceeds*": all "proceeds" as such term is defined in Section 9-102(a)(64) of the Uniform Commercial Code in effect in the State of New York on the date hereof and, in any event, shall include, without limitation, all dividends or other income from the Pledged Securities, collections thereon or distributions or payments with respect thereto.

"*Receivable*": any right to payment for goods or other property sold, leased, licensed or otherwise disposed of or for services rendered, whether or not such right is evidenced by an Instrument or Chattel Paper and whether or not it has been earned by performance (including, without limitation, any Account or Payment Intangible). References herein to a Receivable shall include any Supporting Obligation or collateral securing such Receivable.

"*Requirement of Law*": as to any Person, the governing documents or other constituent documents of such Person, and any law, treaty, order, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

"*Secured Parties*": collectively, the Mortgage Notes Indenture Trustee and the Holders.

"*Securities Act*": the Securities Act of 1933, as amended.

"*Trademark License*": any agreement, whether written or oral, providing for the grant by or to any Grantor of any right to use any Trademark, including, without limitation, any of the foregoing referred to in *Schedule 6*.

"*Trademarks*": (i) all trademarks, service marks, trade names, corporate names, company names, business names, trade dress, trade styles, logos, or other indicia of origin or source identification, internet domain names, trademark and service mark registrations, and applications for trademark or service mark registrations and any renewals thereof, including, without limitation, each registration and application identified in *Schedule 6*, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all Trademark Licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever accruing thereunder or pertaining thereto,

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together in each case with the goodwill of the business connected with the use of, and symbolized by, each of the above.

"*Trade Secret License*": any agreement, whether written or oral, providing for the grant by or to any Grantor of any right to use any Trade Secret, including, without limitation, any of the foregoing referred to in *Schedule 6*.

"*Trade Secrets*": (i) all trade secrets and all confidential and proprietary information, including know-how, manufacturing and production processes and techniques, inventions, research and development information, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, and customer and supplier lists and information, including, without limitation, any of the foregoing referred to in *Schedule 6*, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of any Grantor accruing thereunder or pertaining thereto.

"Vehicles": all cars, trucks, trailers, construction and earth moving equipment and other vehicles covered by a certificate of title law of any jurisdiction and, in any event including, without limitation, the vehicles listed on *Schedule 8* and all tires and other appurtenances to any of the foregoing; provided, that the term "Vehicles" shall not include the Aircraft Assets.

1.2 *Other Definitional Provisions.* (a) The words "hereof", "herein", "hereto" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and Schedule references are to this Agreement unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(c) Where the context requires, terms relating to the Collateral or any part thereof, when used in relation to a Grantor, shall refer to such Grantor's Collateral or the relevant part thereof.

(d) The expressions "payment in full," "paid in full" and any other similar terms or phrases when used herein with respect to the Issuer Obligations or the Guarantor Obligations shall mean the unconditional, final and irrevocable payment in full, in immediately available funds, of all of the Issuer Obligations or the Guarantor Obligations, as the case may be.

SECTION 2. GUARANTEE

2.1. *Guarantee.*

(a) Each of the Guarantors hereby, jointly and severally, unconditionally and irrevocably, guarantees to the Mortgage Notes Indenture Trustee, for the ratable benefit of the Secured Parties and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by each of the Note Issuers when due (whether at the stated maturity, by acceleration or otherwise) of the Issuer Obligations.

(b) Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Obligations of such Guarantor under this Section 2 not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any such Obligation. If and to the extent required in order for the Obligations of any Guarantor to be enforceable under applicable federal, state and other laws

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relating to the insolvency of debtors, the maximum liability of such Guarantor hereunder shall be limited to the greatest amount which can lawfully be guaranteed by such Guarantor under such laws, after giving effect to any rights of contribution, reimbursement and subrogation arising under Section 2.2. Each Guarantor acknowledges and agrees that, to the extent not prohibited by applicable law, (i) such Guarantor (as opposed to its creditors, representatives of creditors or bankruptcy trustee, including such Guarantor in its capacity as debtor in possession exercising any powers of a bankruptcy trustee) has no personal right under such laws to reduce, or request any judicial relief that has the effect of reducing, the amount of its liability under this Agreement, (ii) such Guarantor (as opposed to its creditors, representatives of creditors or bankruptcy trustee, including such Guarantor in its capacity as debtor in possession exercising any powers of a bankruptcy trustee) has no personal right to enforce the limitation set forth in this Section 2.1(b) or to reduce, or request judicial relief reducing, the amount of its liability under this Agreement, and (iii) the limitation set forth in this Section 2.1(b) may be enforced only to the extent required under such laws in order for the obligations of such Guarantor under this Agreement to be enforceable under such laws and only by or for the benefit of a creditor, representative of creditors or bankruptcy trustee of such Guarantor or other Person entitled, under such laws, to enforce the provisions thereof.

(c) Each Guarantor agrees that the Issuer Obligations may at any time and from time to time be incurred or permitted in an amount exceeding the maximum liability of such Guarantor under Section 2.1(b) without impairing the guarantee contained in this Section 2 or affecting the rights and remedies of any Secured Party hereunder.

(d) The guarantee contained in this Section 2 shall remain in full force and effect until payment in full of all Obligations, notwithstanding that from time to time during the term of the Indenture the Note Issuers may be free from any Issuer Obligations.

(e) No payment made by either of the Note Issuers, any of the Guarantors, any other guarantor or any other Person or received or collected by any Secured Party from either of the Note Issuers, any of the Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Issuer Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Issuer Obligations or any payment received or collected from such Guarantor in respect of the Issuer Obligations), remain liable for the Issuer Obligations up to the maximum liability of such Guarantor hereunder until the Issuer Obligations are paid in full.

2.2 *Rights of Reimbursement, Contribution and Subrogation.* In case any payment is made on account of the Obligations by any Grantor or is received or collected on account of the Obligations from any Grantor or its property:

(a) If such payment is made by either of the Note Issuers or from their property, then, if and to the extent such payment is made on account of Obligations arising from or relating to a Note issued by the Note Issuers, neither of the Note Issuers shall be entitled (A) to demand or enforce reimbursement or contribution in respect of such payment from any other Grantor or (B) to be subrogated to any claim, interest, right or remedy of any Secured Party against any other Person, including any other Grantor or its property; and

(b) If such payment is made by a Guarantor or from its property, such Guarantor shall be entitled, subject to and upon payment in full of the Obligations, (A) to demand and enforce reimbursement for the full amount of such payment from the Note Issuers and (B) to demand and enforce contribution in respect of such payment from each other Guarantor which has not paid its fair share of such payment, as necessary to ensure that (after giving effect to any enforcement of

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reimbursement rights provided hereby) each Guarantor pays its fair share of the unreimbursed portion of such payment. For this purpose, the fair share of each Guarantor as to any unreimbursed payment shall be determined based on an equitable apportionment of such unreimbursed payment among all Guarantors based on the relative value of their assets and any other equitable considerations deemed appropriate by the court.

(c) If and whenever (after payment in full of the Obligations) any right of reimbursement or contribution becomes enforceable by any Grantor against any other Grantor under Sections 2.2(a) and 2.2(b), such Grantor shall be entitled, subject to and upon payment in full of the Obligations, to be subrogated (equally and ratably with all other Grantors entitled to reimbursement or contribution from any other Grantor as set forth in this Section 2.2) to any security interest that may then be held by the Mortgage Notes Indenture Trustee upon any Collateral granted to it in this Agreement. Such right of subrogation shall be enforceable solely against the Grantors, and not against the Secured Parties, and neither the Mortgage Notes Indenture Trustee nor any other Secured Party shall have any duty whatsoever to warrant, ensure or protect any such right of subrogation or to obtain, perfect, maintain, hold, enforce or retain any Collateral for any purpose related to any such right of subrogation. If subrogation is demanded by any Grantor, then (after payment in full of the Obligations) the Mortgage Notes Indenture Trustee shall deliver to the Grantors making such demand, or to a representative of such Grantors or of the Grantors generally, an instrument satisfactory to the Mortgage Notes Indenture Trustee transferring, on a quitclaim basis without any recourse, representation, warranty or obligation whatsoever, whatever security interest the Mortgage Notes Indenture Trustee then may hold in whatever Collateral may then exist that was not previously released or disposed of by the Mortgage Notes Indenture Trustee.

(d) All rights and claims arising under this Section 2.2 or based upon or relating to any other right of reimbursement, indemnification, contribution or subrogation that may at any time arise or exist in favor of any Grantor as to any payment on account of the Obligations made by it or received or collected from its property shall be fully subordinated in all respects to the prior payment in full of all of the Obligations. Until payment in full of the Obligations, no Grantor shall demand or receive any collateral security, payment or distribution whatsoever (whether in cash, property or securities or otherwise) on account of any such right or claim. If any such payment or distribution is made or becomes available to any Grantor in any bankruptcy case or receivership, insolvency or liquidation proceeding, such payment or distribution shall be delivered by the person making such payment or distribution directly to the Mortgage Notes Indenture Trustee, for application to the payment of the Obligations. If any such payment or distribution is received by any Grantor, it shall be held by such Grantor in trust, as trustee of an express trust for the benefit of the Secured Parties, and shall forthwith be transferred and delivered by such Grantor to the Mortgage Notes Indenture Trustee, in the exact form received and, if necessary, duly endorsed.

(e) The obligations of the Grantors under the Indenture and the Collateral Documents, including their liability for the Obligations and the enforceability of the security interests granted thereby, are not contingent upon the validity, legality, enforceability, collectibility or sufficiency of any right of reimbursement, contribution or subrogation arising under this Section 2.2. The invalidity, insufficiency, unenforceability or uncollectibility of any such right shall not in any respect diminish, affect or impair any such obligation or any other claim, interest, right or remedy at any time held by any Secured Party against any Guarantor or its property. The Secured Parties make no representations or warranties in respect of any such right and shall have no duty to assure, protect, enforce or ensure any such right or otherwise relating to any such right.

(f) Each Grantor reserves any and all other rights of reimbursement, contribution or subrogation at any time available to it as against any other Grantor, but (i) the exercise and enforcement of such rights shall be subject to Section 2.2(d) and (ii) neither the Mortgage Notes

Indenture Trustee nor any other Secured Party shall ever have any duty or liability whatsoever in respect of any such right, except as provided in Section 2.2(c).

(g) Each Guarantor waives any right or claims of right to cause a marshalling of the Note Issuers' or another Guarantor's assets or to proceed against any Guarantor, the Note Issuers or any other guarantor or any of the Note Issuers' obligations in any particular order, including, but not limited to, any right arising out of Nevada Revised Statutes 40.430, to the fullest extent permitted by Nevada Revised Statutes 40.495(2).

2.3 *Amendments, etc. with respect to the Issuer Obligations.* Each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, any demand for payment of any of the Issuer Obligations made by any Secured Party may be rescinded by such Secured Party and any of the Issuer Obligations continued, and the Issuer Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, increased, extended, amended, modified, accelerated, compromised, waived, surrendered or released by any Secured Party, and the Indenture and the Collateral Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Mortgage Notes Indenture Trustee (or the requisite Holders under the Indenture or all Holders, as the case may be) may deem advisable from time to time, and any collateral security, guarantee or right of offset at any time held by any Secured Party for the payment of the Issuer Obligations may be sold, exchanged, waived, surrendered or released. No Secured Party shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Issuer Obligations or for the guarantee contained in this Section 2 or any property subject thereto.

2.4 *Guarantee Absolute and Unconditional.* Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Issuer Obligations and notice of or proof of reliance by any Secured Party upon the guarantee contained in this Section 2 or acceptance of the guarantee contained in this Section 2; the Issuer Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this Section 2; and all dealings between the Note Issuers and any of the Guarantors, on the one hand, and the Secured Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Section 2. Each Guarantor waives diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon either of the Note Issuers or any of the Guarantors with respect to the Issuer Obligations. Each Guarantor understands and agrees that the guarantee contained in this Section 2 shall be construed as a continuing, absolute and unconditional guarantee of payment and performance without regard to (a) the validity or enforceability of the Indenture or any Collateral Document, any of the Issuer Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by any Secured Party, (b) any defense, set-off or counterclaim (other than a defense of payment or performance hereunder) which may at any time be available to or be asserted by either of the Note Issuers or any other Person against any Secured Party, or (c) any other circumstance whatsoever (with or without notice to or knowledge of either of the Note Issuers or such Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of either of the Note Issuers for the Issuer Obligations, or of such Guarantor under the guarantee contained in this Section 2, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, any Secured Party may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against either of the Note Issuers, any

any such demand, to pursue such other rights or remedies or to collect any payments from either of the Note Issuers, any other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of either of the Note Issuers, any other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of any Secured Party against any Guarantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

2.5 *Reinstatement.* The guarantee contained in this Section 2 shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Issuer Obligations is rescinded or must otherwise be restored or returned by any Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of either of the Note Issuers or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, either of the Note Issuers or any Guarantor or any substantial part of its property, or otherwise, all as though such payments had not been made.

2.6 *Payments.* Each Guarantor hereby guarantees that payments hereunder will be paid to the Mortgage Notes Indenture Trustee without set-off or counterclaim in Dollars in immediately available funds at the Corporate Trust Office of the Trustee.

SECTION 3. GRANT OF SECURITY INTEREST

Each Grantor, subject to compliance with applicable Gaming Laws, hereby assigns and transfers to the Mortgage Notes Indenture Trustee, and hereby grants to the Mortgage Notes Indenture Trustee, for the ratable benefit of the Secured Parties, a security interest in, all of the personal property of such Grantor, including, without limitation, the following property, in each case, wherever located and now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the "*Collateral*"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of such Grantor's Obligations:

- (a) all Accounts;
- (b) all Chattel Paper;
- (c) all Contracts;
- (d) all Deposit Accounts;
- (e) all Documents;
- (f) all Equipment;
- (g) all General Intangibles (including, without limitation, Payment Intangibles);
- (h) all Instruments;
- (i) all Intellectual Property;
- (j) all Inventory;
- (k) all Investment Property;
- (l) all Letters of Credit and Letter of Credit Rights;

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- (m) all money;
 - (n) all Vehicles;
 - (o) all Goods and other property not otherwise described above;
 - (p) all bank accounts, all funds held therein and all certificates and instruments, if any, from time to time representing or evidencing such bank accounts;
 - (q) all books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and other electronic storage media and related data processing software and similar items that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon.;
 - (r) all Permits;
 - (s) all insurance policies and all loss proceeds and other amounts payable thereunder (including, without limitation, Insurance Proceeds) and all eminent domain proceeds; and

(t) to the extent not otherwise included, all Proceeds, accessions and products of any kind and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing (including, without limitation, Supporting Obligations).

Notwithstanding anything to the contrary in this Agreement, the term "Collateral" shall not include (i) any of the Excluded Assets, (ii) any license, permit, or authorization issued by any of the Gaming Authorities or any other Governmental Authority, or any other Collateral, which may not be pledged or in which a security interest may not be granted under Gaming Laws, or other applicable law, or under the terms of any such license, permit, or authorization, or which would require a finding of suitability or other similar approval or procedure by any of the Gaming Authorities or any other Governmental Authority prior to being pledged, hypothecated, or given as collateral security (to the extent such finding or approval has not been obtained), and (iii) any water rights, to the extent that the requisite approvals from the Nevada Public Utility Commission for the granting of security interests therein have not been obtained.

SECTION 4. REPRESENTATIONS AND WARRANTIES

To induce the Mortgage Notes Indenture Trustee and the Holders to enter into the Indenture and purchase the Notes, as the case may be, each Grantor hereby represents and warrants to the Secured Parties that:

4.1. *Title; No Other Liens.* Such Grantor owns each item of the Collateral free and clear of any and all Liens or claims, including, without limitation, Liens arising as a result of such Grantor becoming bound (as a result of merger or otherwise) as Grantor under a security agreement entered into by another Person, except for Permitted Liens. No effective financing statement, mortgage or other instrument similar in effect with respect to all or any part of the Collateral is on file or of record in any public office, except such as have been filed in favor of the Mortgage Notes Indenture Trustee, for the ratable benefit of the Secured Parties, pursuant to this Agreement or as are otherwise permitted by the Indenture.

4.2. *Perfected Liens.* (a) The security interests granted pursuant to this Agreement (i) constitute valid and, subject only to the filing of the financing statements and the taking of the other actions listed on *Schedule 3* hereto, fully perfected security interests in all of the Collateral (other than Intellectual Property arising under foreign laws which is not listed on *Schedule 6* or which is listed as "immaterial" on *Schedule 6*) in favor of the Mortgage Notes Indenture Trustee, for the ratable benefit of the Secured Parties, as collateral security for such Grantor's Obligations, enforceable in accordance

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with the terms hereof against all creditors of such Grantor and (ii) are subject to no other Liens on the Collateral except for Permitted Liens. Without limiting the foregoing, each Grantor has taken all actions necessary or desirable, including, without limitation, those specified in Section 5.2 to: (i) establish the Mortgage Notes Indenture Trustee's "control" (within the meanings of Sections 8-106 and 9-106 of the New York UCC) over any portion of the Investment Property constituting Certificated Securities, Uncertificated Securities, Securities Accounts, Securities Entitlements or Commodity Accounts (each as defined in the New York UCC), (ii) establish the Mortgage Notes Indenture Trustee's "control" (within the meaning of Section 9-104 of the New York UCC) over all Deposit Accounts, and (iii) establish the Mortgage Notes Indenture Trustee's "control" (within the meaning of Section 9-107 of the New York UCC) over all Letter of Credit Rights.

(b) No authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body (except those which have been made or obtained) is required for either (i) the pledge or grant by any Grantor of the security interests purported to be created in favor of the Mortgage Notes Indenture Trustee hereunder or (ii) the exercise by the Mortgage Notes Indenture Trustee of any rights or remedies in respect of any Collateral (whether specifically granted or created hereunder or created or provided for by applicable law), except (A) for filings and actions specified on *Schedule 3* and (B) as may be required, in connection with the disposition of any Investment Property, by laws generally affecting the offering and sale of securities;

4.3. *Name; Jurisdiction of Organization, etc.* On the date hereof, such Grantor's exact legal name (as indicated on the public record of such Grantor's jurisdiction of formation or organization), jurisdiction of organization and the location of such Grantor's chief executive office or sole place of business are specified on *Schedule 4*. Each Grantor is organized solely under the law of the jurisdiction so specified and has not filed any certificates of domestication, transfer or continuance in any other jurisdiction. Except as otherwise indicated on *Schedule 4*, the jurisdiction of each such Grantor's organization of formation is required to maintain a public record showing the Grantor to have been organized or formed. Except as specified on *Schedule 4*, such Grantor has not changed its name, jurisdiction of organization, chief executive office or sole place of business or its corporate structure in any way (e.g. by merger, consolidation, change in corporate form or otherwise) within the previous five year period ending on the date hereof and has not within such period become bound (whether as a result of merger or otherwise) as grantor under a security agreement entered into by another Person, which has not heretofore been terminated.

4.4. *Inventory, Equipment and Books and Records.* On the date hereof, the Inventory and the Equipment (other than mobile goods) and the books and records pertaining to the Collateral are kept at the locations listed on *Schedule 5*. No material Inventory or Equipment (in the aggregate) of such Grantor is in the possession of an issuer of a negotiable document (as defined in Section 7-104 of the UCC) therefor that has not been delivered to the Mortgage Notes Indenture Trustee or is otherwise in the possession of any bailee or warehouseman.

4.5. *Farm Products.* None of the Collateral constitutes, or is the Proceeds of, Farm Products.

4.6. *Investment Property.* (a) The shares of Pledged Stock pledged by such Grantor hereunder constitute all of the issued and outstanding shares of all classes of the Capital Stock of each Issuer owned by such Grantor.

(b) All the shares of the Pledged Stock of such Grantor have been duly and validly issued and are fully paid and nonassessable.

(c) Each limited liability company interest or partnership interest owned by such Grantor and included in the Pledged Stock is certificated (and each Grantor covenants that it will not issue or cause or permit its Subsidiaries to issue any Capital Stock in uncertificated form or seek to convert

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all or any part of its existing Capital Stock into uncertificated form) and the terms of such certificated limited liability company interests and partnership interests expressly provide that they are securities governed by Article 8 of the Uniform Commercial Code in effect from time to time in the applicable jurisdiction.

(d) Each of the Pledged Notes issued to such Grantor constitutes the legal, valid and binding obligation of the obligor with respect thereto, enforceable in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

(e) Such Grantor is the record and beneficial owner of, and has good and marketable title to, the Investment Property pledged by it hereunder, free of any and all Liens or options in favor of, or claims of, any other Person, except Permitted Liens.

(f) Each Issuer that is not a Grantor hereunder but is an Affiliate of any Grantor has executed and delivered to the Mortgage Notes Indenture Trustee an Acknowledgment and Agreement, in substantially the form of *Exhibit A*, to the pledge of the Pledged Securities pursuant to this Agreement.

4.7. *Receivables.* (a) No amount payable to such Grantor under or in connection with any Receivable is evidenced by any Instrument or Chattel Paper which has not been delivered to the Mortgage Notes Indenture Trustee (other than Receivables evidenced by Instruments representing (i) extensions of credit by the Note Issuers to individual customers of its gaming operations in the ordinary course of business and (ii) loans to employees expressly permitted under the Indenture (collectively, the "*Non-Deliverable Collateral*").

(b) None of the obligors on any material Receivables is a Governmental Authority.

(c) The amounts represented by such Grantor to the Secured Parties from time to time as owing to such Grantor in respect of the Receivables will at such times be materially accurate.

4.8. *Contracts.* (a) Except as specified on *Schedule 7*, hereto, no Contract prohibits assignment by the applicable Grantor or requires or purports to require the consent of any party (other than such Grantor) to such Contract in connection with the execution, delivery and performance of this Agreement.

(b) Except, after the Closing Date, as expressly permitted by the Indenture or the Disbursement Agreement, each Contract is in full force and effect and constitutes a valid and legally enforceable obligation of the parties thereto, subject to the effects of bankruptcy, insolvency, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law).

(c) No consent or authorization of, filing with or other act by or in respect of any Governmental Authority is required in connection with the execution, delivery, performance, validity or enforceability of any of the Contracts by any party thereto other than (i) those which have been duly obtained, made or performed, are in full force and effect and do not subject the scope of any such Contract to any material adverse limitation, either specific or general in nature and (ii) with respect to the performance of such Contracts only, filings, Permits or authorizations to be subsequently obtained as contemplated by the Indenture or the Disbursement Agreement.

(d) Neither such Grantor nor (to the best of such Grantor's knowledge) any of the other parties to the Contracts is in default in the performance or observance of any of the terms thereof

in any manner that, in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(e) The right, title and interest of such Grantor in, to and under the Contracts are not subject to any defenses, offsets, counterclaims or claims that, in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(f) Such Grantor has delivered to the Mortgage Notes Indenture Trustee a complete and correct copy of each Contract, including all amendments, supplements and other modifications thereto.

(g) No amount payable to such Grantor under or in connection with any Contract is evidenced by any Instrument or Chattel Paper which has not been delivered to the Mortgage Notes Indenture Trustee.

(h) None of the parties to any Contract is a Governmental Authority.

4.9. *Intellectual Property.* (a) *Schedules 6* includes, without limitation, lists all Intellectual Property material to the conduct of such Grantor's Permitted Businesses (which material Intellectual Property shall include, at all times, all Intellectual Property relating to the "Le Rêve" name), which Intellectual Property is owned by such Grantor in its own name on the date hereof. Except as set forth in *Schedule 6*, such Grantor is the exclusive owner of the entire and unencumbered right, title and interest in and to such Intellectual Property and is otherwise entitled to use all such Intellectual Property, without limitation, subject only to the license terms of the licensing or franchise agreements referred to in paragraph (c) below.

(b) On the date hereof, all of such Grantor's material Intellectual Property is valid, subsisting, unexpired and enforceable and has not been abandoned.

(c) Except as set forth in *Schedule 6* and for licenses between Grantors in the ordinary course of business, on the date hereof (i) none of such Grantor's Intellectual Property is the subject of any licensing or franchise agreement pursuant to which such Grantor is the licensor or franchisor, and (ii) there are no other agreements, obligations, orders or judgments which affect the use of any material Intellectual Property.

(d) With respect to Wynn Resorts Holdings, (i) the rights of Wynn Resorts Holdings in or to the "Le Rêve" name do not infringe upon the rights of any third party, which infringement could reasonably be expected to have a material adverse effect on such Grantor's ability to use the "Le Reve" name in its Permitted Businesses as currently used or contemplated to be used, (ii) no claim has been asserted that the use of such Intellectual Property does or

may infringe upon the rights of any third party which claim, if determined adversely to Wynn Resorts Holdings, could reasonably be expected to have a material adverse effect on such Grantor's ability to use such Intellectual Property in its Permitted Businesses, (iii) there is currently no infringement or unauthorized use of any item of such Intellectual Property which infringement or unauthorized use could reasonably be expected to have a material adverse effect on Wynn Resorts Holdings' ability to use such Intellectual Property in its Permitted Businesses and (iv) no holding, decision or judgment has been rendered by any Governmental Authority which could reasonably be expected to have a material adverse effect on Wynn Resorts Holdings' ability to use such Intellectual Property in its Permitted Businesses.

(e) The rights of such Grantor in or to the Intellectual Property do not infringe upon the rights of any third party, and no claim has been asserted that the use of such Intellectual Property does or may infringe upon the rights of any third party, in either case, which conflict or infringement could reasonably be expected to have a Material Adverse Effect. To such Grantor's

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knowledge, there is currently no infringement or unauthorized use of any item of Intellectual Property that could reasonably be expected to have a Material Adverse Effect.

(f) No holding, decision or judgment has been rendered by any Governmental Authority which would limit, cancel or question the validity or enforceability of, or such Grantor's rights in, any of such Grantor's Intellectual Property in any respect that could reasonably be expected to have a Material Adverse Effect. Such Grantor is not aware of any uses of any item of its material Intellectual Property that could reasonably be expected to lead to such item becoming invalid or unenforceable.

(g) Except as could not reasonably be expected to have a Material Adverse Effect, no action or proceeding is pending, or, to the knowledge of such Grantor, threatened, on the date hereof (i) seeking to limit, cancel or question the validity of any of such Grantor's Intellectual Property or such Grantor's ownership interest therein, (ii) alleging that any services provided by, processes used by, or products manufactured or sold by such Grantor infringe any patent, trademark, copyright, or any other right of any third party, (iii) alleging that any material Intellectual Property of such Grantor is being licensed, sublicensed or used in violation of any patent, trademark, copyright or any other right of any third party, or (iv) which, if adversely determined, would have a material adverse effect on the value of any of such Grantor's Intellectual Property. To the knowledge of such Grantor, no Person is engaging in any activity that infringes upon Grantor's material Intellectual Property or upon the rights of such Grantor therein, except (i) with respect to the Intellectual Property related to or otherwise associated with the Grantor's use of the "Le Reve" name, such claims that, if determined adversely to a Grantor, could not reasonably be expected to have a material adverse effect on such Grantor's ability to use the "Le Reve" name in its Permitted Businesses as currently used or contemplated to be used and (ii) with respect to all other material Intellectual Property of such Grantor, as could not reasonably be expected to have a Material Adverse Effect. Except as set forth in *Schedule 6* hereto, such Grantor has not granted any material license, or any release, covenant not to sue, non-assertion assurance, or other material right to any person with respect to any part of its material Intellectual Property. The consummation of the transactions contemplated by this Agreement will not result in the termination or impairment of any of the material Intellectual Property of such Grantor.

(h) With respect to each Copyright License, Trademark License and Patent License, as of the date hereof, and with respect to each material Copyright License, material Trademark License and material Patent License after the date hereof: (i) except as could not reasonably be expected to have a Material Adverse Effect, such license is valid and binding and in full force and effect and such license represents the entire agreement between the respective licensor and licensee with respect to the subject matter of such license; (ii) such license will not cease to be valid and binding and in full force and effect on terms identical to those currently in effect as a result of the rights and interests granted herein, nor will the grant of such rights and interests constitute a breach or default under such license or otherwise give the licensor or licensee a right to terminate such license; (iii) such Grantor has not received any notice of termination or cancellation under such license, which notice could reasonably be expected to have a Material Adverse Effect; (iv) such Grantor has not received any notice of a breach or default under such license, which notice could reasonably be expected to have a Material Adverse Effect, which breach or default has not been cured; (v) such Grantor has not granted to any other third party any rights, adverse or otherwise, under such license which could reasonably be expected to have a Material Adverse Effect; and (vi) such Grantor is not in breach or default in any material respect, and no event has occurred that, with notice and/or lapse of time, would constitute such a breach or default or permit termination, modification or acceleration under such license.

(i) Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor has performed all acts and has paid all required fees and taxes to maintain each and every

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item of its material Intellectual Property in full force and effect and to protect and maintain its interest therein. Such Grantor has either used proper statutory notice in connection with its use of each material Patent, Trademark and Copyright included in its Intellectual Property, or such Grantor's failure to use proper statutory notice could not reasonably be expected to have a Material Adverse Effect.

(j) To its knowledge, except as could not reasonably be expected to have a Material Adverse Effect, (i) none of the Trade Secrets of such Grantor has been used, divulged, disclosed or appropriated to the detriment of such Grantor for the benefit of any other Person; (ii) no employee, independent contractor or agent of such Grantor has misappropriated any trade secrets of any other Person in the course of the performance of his or her duties as an employee, independent contractor or agent of such Grantor; and (iii) no employee, independent contractor or agent of such Grantor is in default or breach of any term of any employment agreement, non-disclosure agreement, assignment of inventions agreement or similar agreement or contract relating in any way to the protection, ownership, development, use or transfer of such Grantor's material Intellectual Property.

(k) Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor has made all filings and recordations necessary to adequately protect its interest in its Intellectual Property including, without limitation, recordation of its interests in the Patents and Trademarks with the United States Patent and Trademark Office and in corresponding national and international patent offices, and recordation of any of its interests in the Copyrights with the United States Copyright Office and in corresponding national and international copyright offices.

(l) Such Grantor has taken all commercially reasonable steps to ensure that all licensed users of any of its material Intellectual Property use consistent standards of quality which are controlled by such Grantor.

(m) The name "Wynn Resorts" and any Intellectual Property related thereto is not material to the Permitted Businesses of any Grantor and Wynn Resorts Holdings will transfer all such Intellectual Property to Wynn Resorts as soon as practicable.

4.10. *Vehicles.* *Schedule 8* is a complete and correct list of all Vehicles owned by such Grantor on the date hereof.

SECTION 5. COVENANTS

Each Grantor covenants and agrees with the Secured Parties that, from and after the date of this Agreement until the Obligations (other than unmatured contingent reimbursement and indemnification Obligations) shall have been paid in full:

5.1. *Delivery and Control of Instruments, Chattel Paper, Investment Property and Deposit Accounts.* (a) If any of the Collateral shall be or become evidenced or represented by any Instrument, Certificated Security, Chattel Paper or Negotiable Document, such Instrument, Certificated Security, Chattel Paper or Negotiable Document shall be promptly delivered to the Mortgage Notes Indenture Trustee, duly endorsed in a manner satisfactory to the Mortgage Notes Indenture Trustee, to be held as Collateral pursuant to this Agreement (other than Non-Deliverable Collateral).

(b) If any of the Collateral shall be or become evidenced or represented by an Uncertificated Security, such Grantor shall cause, or with respect to any Issuer that is not an Affiliate of any Grantor, use commercially reasonable efforts to cause, the Issuer thereof either (i) to register the Mortgage Notes Indenture Trustee as the registered owner of such Uncertificated Security, upon original issue or registration of transfer or (ii) to agree in writing with such Grantor and the Mortgage Notes Indenture Trustee that such Issuer will comply with instructions with respect to such Uncertificated Security originated by the Mortgage Notes Indenture Trustee without further

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consent of such Grantor, such agreement to be in substantially the form of *Exhibit C*. Notwithstanding the foregoing, each Grantor covenants that (x) the representations and warranties contained in Section 4.6(c) shall at all times be true and correct and (y) it will not issue or cause or permit its Subsidiaries to issue any Capital Stock in uncertificated form or seek to convert all or any part of its existing Capital Stock into uncertificated form.

(c) If any of the Collateral now or hereafter constitutes a Deposit Account or a Securities Account, such Grantor shall cause the financial institution maintaining such account to agree in writing with such Grantor and the Mortgage Notes Indenture Trustee that such financial institution shall comply with all Entitlement Orders and instructions originated or issued by the Mortgage Notes Indenture Trustee with respect to such Deposit Account or Securities Account without further consent of such Grantor, such agreement to be substantially in the form of *Exhibit D* or in such other form as shall be satisfactory to the Mortgage Notes Indenture Trustee (including, without limitation, the Collateral Account Agreements (as defined in the Disbursement Agreement), which such agreements must be satisfactory to the Mortgage Notes Indenture Trustee).

(d) If any of the Collateral shall be or become evidenced or represented by a Commodity Contract, such Grantor shall cause the Commodity Intermediary with respect to such Commodity Contract to agree in writing with such Grantor and the Mortgage Notes Indenture Trustee that such Commodity Intermediary will apply any value distributed on account of such Commodity Contract as directed by the Mortgage Notes Indenture Trustee without further consent of such Grantor, such agreement to be in substantially the form of *Exhibit E* or in such other form as may be satisfactory to the Mortgage Notes Indenture Trustee.

(e) If any of the Collateral shall be or become evidenced or represented by or held in a Securities Account or a Commodity Account, such Grantor shall, in the case of a Securities Account, comply with Section 5.1(c) with respect to all Security Entitlements carried in such Securities Account and, in the case of a Commodity Account, comply with Section 5.2(d) with respect to all Commodity Contracts carried in such Commodity Account.

5.2. *Payment of Obligations.* Such Grantor will pay and discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all taxes, assessments and governmental charges or levies imposed upon the Collateral or in respect of income or profits therefrom, as well as all claims of any kind (including, without limitation, claims for labor, materials and supplies) against or with respect to the Collateral, except that no such charge need be paid if the amount or validity thereof is currently being contested in good faith by appropriate proceedings, reserves in conformity with GAAP with respect thereto have been provided on the books of such Grantor and such proceedings could not reasonably be expected to result in the sale, forfeiture or loss of any material portion of the Collateral or any interest therein.

5.3. *Maintenance of Perfected Security Interest; Further Documentation.* (a) Such Grantor shall maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in Section 4.2 and shall defend such security interest against the claims and demands of all Persons whomsoever.

(b) Such Grantor will furnish to the Secured Parties from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the assets and property of such Grantor as the Mortgage Notes Indenture Trustee may reasonably request, all in reasonable detail.

(c) At any time and from time to time, upon the written request of the Mortgage Notes Indenture Trustee, and at the sole expense of such Grantor, such Grantor will promptly and duly authorize, execute and deliver, and have recorded, such further instruments and documents and

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take such further actions as the Mortgage Notes Indenture Trustee may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, (i) the filing of any financing or continuation statements under the Uniform Commercial Code (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby and (ii) in the case of Investment Property, Deposit Accounts and any other relevant Collateral, taking any actions necessary to enable the Mortgage Notes Indenture Trustee to obtain "control" (within the meaning of the applicable Uniform Commercial Code) with respect thereto, including without limitation, executing and

delivering and causing the relevant depository bank or securities intermediary to execute and deliver a Control Agreement in the form attached hereto as Exhibit D, or in such other form as may be satisfactory to the Mortgage Notes Indenture Trustee.

5.4. *Changes in Locations, Name, Jurisdiction of Incorporation, etc.* Such Grantor will not, except upon 15 days' prior written notice to the Mortgage Notes Indenture Trustee and delivery to the Mortgage Notes Indenture Trustee of (a) all additional executed financing statements and other documents reasonably requested by the Mortgage Notes Indenture Trustee to maintain the validity, perfection and priority of the security interests provided for herein and (b) if applicable, a written supplement to *Schedule 5* showing any additional location at which Inventory or Equipment (other than mobile goods) or books and records pertaining to the Collateral shall be kept:

(i) permit any of the Inventory or Equipment (other than mobile goods) or books and records pertaining to the Collateral to be kept at a location other than those listed on *Schedule 5*;

(ii) without limiting the prohibitions on mergers involving the Grantors contained in the Indenture, change its legal name, jurisdiction of organization or the location of its chief executive office or sole place of business from that referred to in Section 4.3; or

(iii) change its legal name, identity or structure to such an extent that any financing statement filed by the Mortgage Notes Indenture Trustee in connection with this Agreement would become misleading.

5.5. *Notices.* Such Grantor will advise the Secured Parties promptly, in reasonable detail, of:

(a) any Lien (other than any Permitted Lien) on any of the Collateral which would adversely affect the ability of the Mortgage Notes Indenture Trustee to exercise any of its remedies hereunder; and

(b) of the occurrence of any other event which could reasonably be expected to have a material adverse effect on the aggregate value of the Collateral or on the security interests created hereby.

5.6. *Investment Property.* (a) Subject to compliance with applicable Gaming Laws, if such Grantor shall become entitled to receive or shall receive any stock or other ownership certificate (including, without limitation, any certificate representing a stock dividend or a distribution in connection with any reclassification, increase or reduction of capital or any certificate issued in connection with any reorganization), option or rights in respect of the Capital Stock of any Issuer, whether in addition to, in substitution of, as a conversion of, or in exchange for, any shares of or other ownership interests in the Pledged Stock, or otherwise in respect thereof, such Grantor shall accept the same as the agent of the Secured Parties, hold the same in trust for the Secured Parties and deliver the same forthwith to the Mortgage Notes Indenture Trustee in the exact form received, duly endorsed by such Grantor to the Mortgage Notes Indenture Trustee, if required, together with an undated stock power covering such certificate duly executed in blank by such Grantor and with, if the Mortgage Notes Indenture Trustee so requests, signature guaranteed, to be held by the Mortgage Notes Indenture Trustee, subject to the terms hereof, as additional collateral security for the Obligations. So long as no Event of Default shall have occurred and be continuing, the Mortgage Notes Indenture Trustee

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authorizes each Grantor to retain all ordinary cash dividends and distributions paid in the normal course of the business of the Issuer and all scheduled payments of interest. All other dividends and distributions of any type or nature, including, without limitation, any dividends or distributions paid in respect of Pledged Securities upon liquidation or dissolution of any Issuer shall immediately be delivered to the Mortgage Notes Indenture Trustee to be held as additional Collateral hereunder. If any sums of money or property so paid or distributed in respect of the Pledged Securities shall be received by such Grantor, such Grantor shall, until such money or property is paid or delivered to the Mortgage Notes Indenture Trustee, hold such money or property in trust for the Secured Parties, segregated from other funds of such Grantor, as additional collateral security for the Obligations.

(b) Without the prior written consent of the Mortgage Notes Indenture Trustee (which consent shall not be unreasonably withheld), such Grantor will not (i) vote to enable, or take any other action to permit, any Issuer to issue any stock or other equity securities of any nature or to issue any other securities convertible into or granting the right to purchase or exchange for any stock or other equity securities of any nature of any Issuer (except pursuant to a transaction permitted by the Indenture), (ii) sell, assign, transfer, exchange, or otherwise dispose of, or grant any option with respect to, any of the Investment Property or Proceeds thereof or any interest therein (except pursuant to a transaction expressly permitted by the Indenture), (iii) create, incur or permit to exist any Lien or option in favor of, or any claim of any Person with respect to, any of the Investment Property or Proceeds thereof, or any interest therein, except for the security interests created by this Agreement and other Permitted Liens or (iv) enter into any agreement or undertaking restricting the right or ability of such Grantor or the Mortgage Notes Indenture Trustee to sell, assign or transfer any of the Investment Property or Proceeds thereof or any interest therein (except pursuant to a transaction expressly permitted by the Indenture).

(c) In the case of each Grantor which is an Issuer, such Issuer agrees that (i) it will be bound by the terms of this Agreement relating to the Pledged Securities issued by it and will comply with such terms insofar as such terms are applicable to it, (ii) it will notify the Mortgage Notes Indenture Trustee promptly in writing of the occurrence of any of the events described in Section 5.6(a) with respect to the Pledged Securities issued by it and (iii) the terms of Sections 6.3(c) and 6.7 shall apply to it, *mutatis mutandis*, with respect to all actions that may be required of it pursuant to Section 6.4(c) or 6.8 with respect to the Pledged Securities issued by it. In addition, each Grantor which is either an Issuer or an owner of any Pledged Security hereby consents to the grant by each other Grantor of the security interest hereunder in favor of the Mortgage Notes Indenture Trustee and to the transfer of any Pledged Security to the Mortgage Notes Indenture Trustee or its nominee following an Event of Default and to the substitution of the Mortgage Notes Indenture Trustee or its nominee as a partner, member or shareholder of the Issuer of the related Pledged Security.

5.7. *Receivables.* (a) Other than in the ordinary course of business consistent with customary gaming practices in its Permitted Businesses and so long as no Event of Default shall have occurred and be continuing, such Grantor will not (i) grant any extension of the time of payment of any Receivable, (ii) compromise or settle any Receivable for less than the full amount thereof, (iii) release, wholly or partially, any Person liable for the payment of any Receivable, (iv) allow any credit or discount whatsoever on any Receivable or (v) amend, supplement or modify any Receivable in any manner that could materially adversely affect the value thereof.

(b) Such Grantor will deliver to the Mortgage Notes Indenture Trustee a copy of each material demand, notice or document received by it that questions or calls into doubt the validity or enforceability of more than 5% of the aggregate amount of the then outstanding Receivables.

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5.8. *Contracts.* (a) Except to the extent permitted under the Indenture or Disbursement Agreement, such Grantor will perform and comply in all material respects with all its obligations under the Contracts.

(b) Except to the extent the same could not reasonably be expected to have a Material Adverse Effect, such Grantor will not amend, modify, cancel, terminate, waive or fail to enforce any provision of any Contract or suspend such Contract or the performance of work thereunder, or agree to the sale, assignment or disposition by any counterparty to such Contract of any part of its interest therein (all of which powers are rested in the Mortgage Notes Indenture Trustee).

(c) Except to the extent the same could not reasonably be expected to have a Material Adverse Effect, such Grantor will exercise promptly and diligently each and every material right which it may have under each Contract.

(d) Such Grantor will deliver to the Mortgage Notes Indenture Trustee a copy of each material demand, notice or document received by it relating in any way to any Contract that questions the validity or enforceability of such Contract that is material to its business.

(e) In the event that such Grantor enters into any new contract (i) that would qualify as a Material Project Document (as defined in the Disbursement Agreement) or (ii) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect (taking into consideration any viable replacements or substitutions therefor at the time such determination is made), such Grantor shall provide the Mortgage Notes Indenture Trustee promptly with an amended *Schedule 7* hereto and any such new contract shall be deemed for all purposes to be a Contract hereunder.

5.9. *Intellectual Property.* (a) Such Grantor (either itself or through licensees) will (i) continue to use each of its material Trademarks on each and every trademark class of goods necessary in order to maintain such Trademark (in the trademark classes of goods in which it is used) in full force free from any claim of abandonment for non-use, (ii) use such Trademark with the appropriate notice of registration and all other notices and legends required by applicable Requirements of Law, (iii) not adopt or use any mark which is confusingly similar or a colorable imitation of such Trademark unless the Mortgage Notes Indenture Trustee, for the ratable benefit of the Secured Parties, shall obtain a perfected security interest in such mark pursuant to this Agreement and the Intellectual Property Security Agreement, and (iv) not (and not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby such Trademark may become invalidated or impaired in any way.

(b) Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor (either itself or through licensees) will not do any act, or omit to do any act, whereby any material Patent may become forfeited, abandoned or dedicated to the public.

(c) Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor (either itself or through licensees) (i) will employ each of its material Copyrights and (ii) will not (and will not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby any material portion of the Copyrights may become invalidated or otherwise impaired. Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor will not (either itself or through licensees) do any act whereby any material Copyright may fall into the public domain.

(d) Such Grantor (either itself or through licensees) will not do any act that knowingly uses any material Intellectual Property to infringe the intellectual property rights of any other Person.

(e) Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor (either itself or through licensees) will use proper statutory notice in connection with the use of each material Patent, Trademark and Copyright included in its Intellectual Property.

(f) Such Grantor will notify the Secured Parties promptly if it knows that any application or registration relating to any of its material Intellectual Property may become forfeited, abandoned or dedicated to the public, or of any adverse determination or development (including, without limitation, the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court or tribunal in any country) regarding such Grantor's ownership of, or the validity of, any material Intellectual Property or such Grantor's right to register the same or to own and maintain the same, unless such forfeiture, abandonment, dedication to the public, or adverse determination or development could not reasonably be expected to have a Material Adverse Effect.

(g) Whenever such Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, such Grantor shall report such filing to the Mortgage Notes Indenture Trustee within five Business Days after the last day of the fiscal quarter in which such filing occurs. Upon request of the Mortgage Notes Indenture Trustee, such Grantor shall execute and deliver, and have recorded, any and all agreements, instruments, documents, and papers as the Mortgage Notes Indenture Trustee may request to evidence the Secured Parties' security interest in any Copyright, Patent, Trademark or other Intellectual Property included in the Collateral and the goodwill and general intangibles of such Grantor relating thereto or represented thereby.

(h) Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor will take all reasonable and necessary steps, including, without limitation, in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of its material Intellectual Property, including, without limitation, the payment of required fees and taxes, the filing of responses to office actions issued by the United States Patent and Trademark Office and the United States Copyright Office, the filing of applications for renewal or extension, the filing of affidavits of use and affidavits of incontestability, the filing of divisional, continuation, continuation-in-part, reissue, and renewal applications or extensions, the payment of maintenance fees, and the participation in interference, reexamination, opposition, cancellation, infringement and misappropriation proceedings.

(i) Such Grantor (either itself or through licensees) will not, without the prior written consent of the Mortgage Notes Indenture Trustee, discontinue use of or otherwise abandon any of its Intellectual Property, or abandon any application or any right to file an application for letters patent, trademark, or copyright, unless such Grantor shall have previously determined that such use or the pursuit or maintenance of such Intellectual Property is no longer desirable in the conduct of such Grantor's business and that the loss thereof could not reasonably be expected to have a Material Adverse Effect and, in

which case, such Grantor shall give prompt notice of any such abandonment of any material Intellectual Property to the Mortgage Notes Indenture Trustee in accordance herewith.

(j) In the event that any of its material Intellectual Property is infringed, misappropriated or diluted by a third party, such Grantor shall (i) take such actions as such Grantor shall reasonably deem appropriate under the circumstances to protect such Intellectual Property and (ii) if such Intellectual Property is of material economic value, promptly notify the Mortgage Notes Indenture Trustee after it learns thereof and sue for infringement, misappropriation or dilution (as applicable), seek injunctive relief where appropriate and recover any and all damages awarded for any such infringement, misappropriation or dilution (or take other action as such Grantor deems appropriate in the exercise of its prudent business judgment).

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(k) Such Grantor agrees that, should it obtain an ownership interest in any item of Intellectual Property which is not now a part of the Intellectual Property Collateral (the "After-Acquired Intellectual Property"), (i) the provisions of Section 3 shall automatically apply thereto, (ii) any such After-Acquired Intellectual Property, and in the case of trademarks, the goodwill of the business connected therewith or symbolized thereby, shall automatically become part of the Intellectual Property Collateral, (iii) with respect to any material Intellectual Property, it shall give prompt (and, in any event within five business days after the last day of the fiscal quarter in which such Grantor acquires such ownership interest in any material Intellectual Property) written notice thereof to the Mortgage Notes Indenture Trustee in accordance herewith, and (iv) with respect to any material Intellectual Property, it shall provide the Mortgage Notes Indenture Trustee promptly (and, in any event within five business days after the last day of the fiscal quarter in which such Grantor acquires such ownership interest in any material Intellectual Property) with an amended *Schedule 6* hereto and take the actions specified in 5.9(m).

(l) Such Grantor agrees to execute an Intellectual Property Security Agreement with respect to its Intellectual Property in substantially the form of *Exhibit B-1* in order to record the security interest granted herein to the Mortgage Notes Indenture Trustee for the ratable benefit of the Secured Parties with the United States Patent and Trademark Office, the United States Copyright Office, and any other applicable Governmental Authority.

(m) Promptly after filing an application for the registration of any After-Acquired Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office, or any similar office or agency in any other county or any political subdivision thereof, such Grantor agrees to execute an After-Acquired Intellectual Property Security Agreement with respect to such After-Acquired Intellectual Property in substantially the form of *Exhibit B-2* in order to record the security interest granted herein to the Mortgage Notes Indenture Trustee for the ratable benefit of the Secured Parties with the United States Patent and Trademark Office, the United States Copyright Office, or other Governmental Authority (as applicable).

5.10. *Vehicles.* (a) No Vehicle shall be removed from the state which has issued the certificate of title or ownership therefor for a period in excess of the period after which such vehicle would be required to be retitled under applicable state law.

(b) With respect to any Vehicles acquired by such Grantor subsequent to the date hereof, within 30 days after the date of acquisition thereof, all applications for certificates of title or ownership indicating the Mortgage Notes Indenture Trustee's security interest in the Vehicle covered by such certificate, and any other necessary documentation, shall be filed in each office in each jurisdiction which the Mortgage Notes Indenture Trustee shall deem advisable to perfect its security interests in the Vehicles.

5.11. *Leases.* Wynn Las Vegas may (b) enter into any leases with respect to any space on or within the Project and any subleases with respect to any space in the Phase II Land Building; *provided*, that (a) no Default or Event of Default shall exist and be continuing at the time of such transaction, lease or sublease or would occur after as a result of entering into such transaction, lease or sublease (or immediately after any renewal or extension thereof at the option of Wynn Las Vegas), (b) such transaction, lease or sublease could not reasonably be expected to materially interfere with, impair or detract from the operation of the business of Wynn Las Vegas or Valvino Lamore, LLC, as the case may be, and will, in the case of leases associated with the casino, hotel and shopping operations, in the reasonable good faith judgment of Wynn Las Vegas enhance the value and operations of the Project, (c) except with respect to the Dealership Lease Agreement and subleases of space in the Phase II Land Building by Wynn Las Vegas, such transaction, lease or sublease is at a fair market rent or value (in light of other similar or comparable prevailing commercial transactions) and contains such other terms such that the lease, taken as a whole, is commercially reasonable and fair to Wynn Las Vegas in light

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of prevailing or comparable transactions in other casinos, hotels, hotel attractions, shopping venues or similarly situated buildings, as applicable (*provided*, that each sublease of the Phase II Land Building by Wynn Las Vegas and the Dealership Lease Agreement shall contain such terms such that the transaction, taken as a whole, does not expose Wynn Las Vegas to undue liabilities or obligations in light prevailing or comparable transactions), (d) no gaming, hotel or casino operations (other than the operation of arcades and games for minors) may be conducted on any space that is subject to such transaction, lease or sublease other than by Wynn Las Vegas, and (e) no lease or sublease may provide that the Wynn Las Vegas or Valvino Lamore, LLC, as the case may be, may subordinate its fee, condominium or leasehold interest to any lessee or any party financing any lessee; *provided*, that (x) in the event the the Mortgage Notes Indenture Trustee on behalf of the Holders shall agree to provide the tenant under any such lease or sublease with a subordination, non-disturbance and attornment agreement and (y) with respect to any such lease having a term of two years or more or aggregate annual rents in excess of \$500,000 (other than leases solely between Grantors), Wynn Las Vegas shall enter into, and cause the tenant under any such lease or sublease to enter into with the Mortgage Notes Indenture Trustee for the benefit of the Holders, a subordination, non-disturbance and attornment agreement, in each case with terms and conditions that, taken as a whole, are no less favorable than those set forth in any similar agreement entered into between such tenant and Deutsche Bank Trust Company Americas, as administrative agent under the Credit Agreement, or otherwise in form and substance satisfactory to the Mortgage Notes Indenture Trustee.

5.12. *Non-Deliverable Collateral.* At no time shall any item of Non-Deliverable Collateral be delivered to or held by any Person (other than the Mortgage Notes Indenture Trustee) as collateral security for any obligation of any Grantor.

SECTION 6. REMEDIAL PROVISIONS

6.1. *Gaming Laws and Intercreditor Agreements.* Each of the provisions of this Section 6 shall be subject to compliance with (i) applicable Gaming Laws and (ii) applicable provisions of the Intercreditor Agreements.

6.2. *Certain Matters Relating to Receivables.* (a) The Mortgage Notes Indenture Trustee shall have the right to make test verifications of the Receivables in any manner and through any medium that it reasonably considers advisable, and each Grantor shall furnish all such assistance and information as the Mortgage Notes Indenture Trustee may require in connection with such test verifications.

(b) The Mortgage Notes Indenture Trustee hereby authorizes each Grantor to collect such Grantor's Receivables; provided that the Mortgage Notes Indenture Trustee may curtail or terminate said authority at any time after the occurrence and during the continuance of an Event of Default. If required by the Mortgage Notes Indenture Trustee at any time after the occurrence and during the continuance of an Event of Default, any payments of Receivables, when collected by any Grantor, (i) shall be forthwith (and, in any event, within two business days) deposited by such Grantor in the exact form received, duly endorsed by such Grantor to the Mortgage Notes Indenture Trustee if required, in a Collateral Account maintained under the control of the Mortgage Notes Indenture Trustee, subject to withdrawal by the Mortgage Notes Indenture Trustee for the account of the Secured Parties only as provided in Section 6.4, and (ii) until so turned over, shall be held by such Grantor in trust for the Secured Parties, segregated from other funds of such Grantor. Each such deposit of Proceeds of Receivables shall be accompanied by a report identifying in reasonable detail the nature and source of the payments included in the deposit.

(c) At the Mortgage Notes Indenture Trustee's request, each Grantor shall deliver to the Mortgage Notes Indenture Trustee all original and other documents evidencing, and relating to,

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the agreements and transactions which gave rise to the Receivables, including, without limitation, all original orders, invoices and shipping receipts (other than Non-Deliverable Collateral).

6.3. *Communications with Obligors; Grantors Remain Liable.* (a) The Mortgage Notes Indenture Trustee in its own name or in the name of others may at any time after the occurrence and during the continuance of an Event of Default communicate with obligors under the Receivables and parties to the Contracts to verify with them to the Mortgage Notes Indenture Trustee's satisfaction the existence, amount and terms of any Receivables or Contracts.

(b) Upon the request of the Mortgage Notes Indenture Trustee at any time after the occurrence and during the continuance of an Event of Default, each Grantor shall notify obligors on the Receivables and parties to the Contracts that the Receivables and the Contracts have been assigned to the Mortgage Notes Indenture Trustee for the ratable benefit of the Secured Parties and that payments in respect thereof shall be made directly to the Mortgage Notes Indenture Trustee.

(c) Anything herein to the contrary notwithstanding, each Grantor shall remain liable under each of the Receivables and Contracts to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. No Secured Party shall have any obligation or liability under any Receivable (or any agreement giving rise thereto) or Contract by reason of or arising out of this Agreement or the receipt by any Secured Party of any payment relating thereto, nor shall any Secured Party be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Receivable (or any agreement giving rise thereto) or Contract, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

6.4. *Pledged Securities.* (a) Unless an Event of Default shall have occurred and be continuing, each Grantor shall be permitted to receive all cash dividends paid in respect of the Pledged Stock and all payments made in respect of the Pledged Notes, in each case paid in the normal course of business of the relevant Issuer, to the extent permitted in the Indenture, and to exercise all voting and corporate or other ownership rights with respect to the Pledged Securities; *provided, however*, that no vote shall be cast or corporate or other ownership right exercised or other action taken which would impair the Collateral or which would be inconsistent with or result in any violation of any provision of the Indenture, this Agreement or any other Collateral Document.

(b) Subject to applicable provisions of Gaming Laws, if an Event of Default shall occur and be continuing and the Mortgage Notes Indenture Trustee shall give notice of its intent to exercise such rights to the relevant Grantor or Grantors, (i) the Mortgage Notes Indenture Trustee shall have the right to receive any and all cash dividends, payments or other Proceeds paid in respect of the Pledged Securities and make application thereof to the Obligations in the order set forth in Section 6.6, and (ii) any or all of the Pledged Securities shall be registered in the name of the Mortgage Notes Indenture Trustee or its nominee, and the Mortgage Notes Indenture Trustee or its nominee may thereafter exercise (x) all voting, corporate or other ownership and other rights pertaining to such Pledged Securities at any meeting of shareholders or other equity holders of the relevant Issuer or Issuers or otherwise and (y) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Pledged Securities as if it were the absolute owner thereof (including, without limitation, the right to exchange at its discretion any and all of the Pledged Securities upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate or other structure of any Issuer, or upon the exercise by any Grantor or the Mortgage Notes Indenture Trustee of any right, privilege

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or option pertaining to such Pledged Securities, and in connection therewith, the right to deposit and deliver any and all of the Pledged Securities with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as the Mortgage Notes Indenture Trustee may determine), all without liability except to account for property actually received by it, but the Mortgage Notes Indenture Trustee shall have no duty to any Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(c) Each Grantor hereby authorizes and instructs each Issuer of any Pledged Securities pledged by such Grantor hereunder (i) to comply with any instruction received by it from the Mortgage Notes Indenture Trustee in writing that (x) states that an Event of Default has occurred and is continuing and (y) is otherwise in accordance with the terms of this Agreement, without any other or further instructions from such Grantor, and each Grantor agrees that each Issuer shall be fully protected in so complying, and (ii) unless otherwise expressly permitted hereby, to pay any dividends or other payments with respect to the Pledged Securities directly to the Mortgage Notes Indenture Trustee.

6.5. *Proceeds to be Turned Over To Mortgage Notes Indenture Trustee.* In addition to the rights of the Secured Parties specified in Section 6.2, and subject to applicable provisions of Gaming Laws, with respect to payments of Receivables, if an Event of Default shall occur and be continuing, all Proceeds

received by any Grantor consisting of cash, Cash Equivalents, checks and other near-cash items shall be held by such Grantor in trust for the Secured Parties, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, be turned over to the Mortgage Notes Indenture Trustee in the exact form received by such Grantor (duly endorsed by such Grantor to the Mortgage Notes Indenture Trustee, if required). All Proceeds received by the Mortgage Notes Indenture Trustee hereunder shall be held by the Mortgage Notes Indenture Trustee in a Collateral Account maintained under its control. All Proceeds while held by the Mortgage Notes Indenture Trustee in a Collateral Account (or by such Grantor in trust for the Secured Parties) shall continue to be held as collateral security for all the Obligations and shall not constitute payment thereof until applied as provided in Section 6.6.

6.6. *Application of Proceeds.* If an Event of Default shall have occurred and be continuing, at any time at the Mortgage Notes Indenture Trustee's election, the Mortgage Notes Indenture Trustee may, notwithstanding any provisions of the Indenture to the contrary, apply all or any part of Proceeds constituting Collateral realized through the exercise by the Mortgage Notes Indenture Trustee of its remedies hereunder, whether or not held in any Collateral Account, and any proceeds of the guarantee set forth in Section 2, in payment of the Obligations in the following order:

First, to the Mortgage Notes Indenture Trustee, to pay incurred and unpaid fees and expenses of the Secured Parties under the Indenture and the Collateral Documents;

Second, to the Mortgage Notes Indenture Trustee, for application by it towards payment of amounts then due and owing and remaining unpaid in respect of the Obligations, *pro rata* among the Holders according to the amounts of the Obligations then due and owing and remaining unpaid to the Holders;

Third, to the Mortgage Notes Indenture Trustee, for application by it towards prepayment of the Obligations, *pro rata* among the Holders according to the amounts of the Obligations then held by the Holders; and

Fourth, any balance of such Proceeds remaining after the Obligations (other than unmatured contingent reimbursement and indemnification Obligations) shall have been paid in full shall be paid over to the Note Issuers or to whomsoever may be lawfully entitled to receive the same.

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6.7. *Code and Other Remedies.* (a) If an Event of Default shall occur and be continuing, the Mortgage Notes Indenture Trustee, on behalf of the Secured Parties, may exercise (subject to obtaining any required approvals from any Governmental Authorities that may not be waived by the Grantors), in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the New York UCC (whether or not the New York UCC applies to the affected Collateral) or any other applicable law or in equity. Without limiting the generality of the foregoing, the Mortgage Notes Indenture Trustee, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, license, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of any Secured Party or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Each Secured Party shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor, which right or equity is hereby waived and released. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Each Grantor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Mortgage Notes Indenture Trustee shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Mortgage Notes Indenture Trustee may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. The Mortgage Notes Indenture Trustee may sell the Collateral without giving any warranties as to the Collateral. The Mortgage Notes Indenture Trustee may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely effect the commercial reasonableness of any sale of the Collateral. Each Grantor agrees that it would not be commercially unreasonable for the Mortgage Notes Indenture Trustee to dispose of the Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. Each Grantor hereby waives any claims against the Mortgage Notes Indenture Trustee arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Mortgage Notes Indenture Trustee accepts the first offer received and does not offer such Collateral to more than one offeree. Each Grantor further agrees, at the Mortgage Notes Indenture Trustee's request, to assemble the Collateral and make it available to the Mortgage Notes Indenture Trustee at places which the Mortgage Notes Indenture Trustee shall reasonably select, whether at such Grantor's premises or elsewhere. The Mortgage Notes Indenture Trustee shall apply the net proceeds of any action taken by it pursuant to this Section 6.7, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Secured Parties hereunder, including, without limitation, reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Obligations, in such order as the Mortgage Notes Indenture Trustee may elect, and only after such application and after the payment by the Mortgage Notes Indenture Trustee of any other amount required by any provision of law, including,

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without limitation, Section 9-615(a) of the New York UCC, need the Mortgage Notes Indenture Trustee account for the surplus, if any, to any Grantor. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against any Secured Party arising out of the exercise by them of any rights hereunder.

(b) In the event of any sale or transfer of any of the Intellectual Property, the goodwill of the business connected with and symbolized by any Trademarks subject to such sale or transfer shall be included, and the applicable Grantor shall supply the Mortgage Notes Indenture Trustee or its designee with such Grantor's know-how and expertise, and with documents and things embodying the same, relating to the manufacture, distribution, advertising and sale of products or the provision of services relating to any Intellectual Property subject to such sale or transfer, and such Grantor's customer lists and other records and documents relating to such Intellectual Property and to the manufacture, distribution, advertising and sale of such products and services.

6.8. *Registration Rights.* (a) If the Mortgage Notes Indenture Trustee shall determine to exercise its right to sell any or all of the Pledged Stock pursuant to Section 6.7, and if in the opinion of the Mortgage Notes Indenture Trustee it is necessary or advisable to have the Pledged Stock, or that portion thereof to be sold, registered under the provisions of the Securities Act, the relevant Grantor will cause, or with respect to any Issuer that is not an Affiliate of any Grantor, use commercially reasonable efforts to cause, the Issuer thereof to (i) execute and deliver, and cause the directors and officers of such Issuer to execute and deliver, all such instruments and documents, and do or cause to be done all such other acts as may be, in the opinion of the Mortgage Notes Indenture Trustee, necessary or advisable to register the Pledged Stock, or that portion thereof to be sold, under the provisions of the Securities Act, (ii) use its best efforts to cause the registration statement relating thereto to become effective and to remain effective for a period of one year from the date of the first public offering of the Pledged Stock, or that portion thereof to be sold, and (iii) make all amendments thereto and/or to the related prospectus which, in the opinion of the Mortgage Notes Indenture Trustee, are necessary or advisable, all in conformity with the requirements of the Securities Act and the rules and regulations of the SEC applicable thereto. Each Grantor agrees to cause, or with respect to any Issuer that is not an Affiliate of any Grantor, use commercially reasonable efforts to cause, such Issuer to comply with the provisions of the securities or "Blue Sky" laws of any and all jurisdictions which the Mortgage Notes Indenture Trustee shall designate and to make available to its security holders, as soon as practicable, an earnings statement (which need not be audited) which will satisfy the provisions of Section 11(a) of the Securities Act.

(b) Each Grantor recognizes that the Mortgage Notes Indenture Trustee may be unable to effect a public sale of any or all the Pledged Stock or the Pledged Debt Securities, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. The Mortgage Notes Indenture Trustee shall be under no obligation to delay a sale of any of the Pledged Stock or the Pledged Debt Securities for the period of time necessary to permit the Issuer thereof to register such securities for public sale under the Securities Act, or under applicable state securities laws, even if such Issuer would agree to do so.

(c) Each Grantor agrees to use its best efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of all or any portion of the Pledged Stock pursuant to this Section 6.8 valid and binding and in compliance with any and all other applicable Requirements of Law. Each Grantor further agrees that a breach of any of the covenants

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contained in this Section 6.8 will cause irreparable injury to the Secured Parties, that the Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 6.8 shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is continuing under the Indenture or a defense of payment.

6.9. *Waiver; Deficiency.* Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay its Obligations and the fees and disbursements of any attorneys employed by any Secured Party to collect such deficiency.

SECTION 7. THE MORTGAGE NOTES INDENTURE TRUSTEE

7.1. *Mortgage Notes Indenture Trustee's Appointment as Attorney-in-Fact, etc.* (a) Subject to compliance with applicable Gaming Laws, each Grantor hereby irrevocably constitutes and appoints the Mortgage Notes Indenture Trustee and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each Grantor hereby gives the Mortgage Notes Indenture Trustee the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any or all of the following:

(i) in the name of such Grantor or its own name, or otherwise, take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Receivable or Contract or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Mortgage Notes Indenture Trustee for the purpose of collecting any and all such moneys due under any Receivable or Contract or with respect to any other Collateral whenever payable;

(ii) in the case of any Intellectual Property, execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as the Mortgage Notes Indenture Trustee may request to evidence the Secured Parties' security interest in such Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby;

(iii) pay or discharge taxes and Liens levied or placed on or threatened against the Collateral, effect any repairs or any insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;

(iv) execute, in connection with any sale provided for in Section 6.7 or 6.8, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(v) (1) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Mortgage Notes Indenture Trustee or as the Mortgage Notes Indenture Trustee shall direct; (2) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (3) sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (4) commence and prosecute any suits,

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actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (5) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (6) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Mortgage Notes Indenture Trustee may deem appropriate; (7) assign any Copyright, Patent or Trademark (along with the goodwill of the business to which any such Copyright, Patent or Trademark pertains), throughout the world for such term or terms, on such conditions, and in such manner, as the Mortgage Notes Indenture Trustee shall in its reasonable judgment determine; and (8) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Mortgage Notes Indenture Trustee were the absolute owner thereof for all purposes, and do, at the Mortgage Notes Indenture Trustee's option and such Grantor's expense, at any time, or from time to time, all acts and things which the Mortgage Notes Indenture Trustee deems necessary to protect, preserve or realize upon the Collateral and the Secured Parties' security interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

Anything in this Section 7.1(a) to the contrary notwithstanding, the Mortgage Notes Indenture Trustee agrees that, except as provided in Section 7.1(b), it will not exercise any rights under the power of attorney provided for in this Section 7.1(a) unless and until an Event of Default shall have occurred and be continuing.

(b) If any Grantor fails to perform or comply with any of its agreements contained herein, the Mortgage Notes Indenture Trustee, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement.

(c) The expenses of the Mortgage Notes Indenture Trustee incurred in connection with actions undertaken as provided in this Section 7.1, together with interest thereon at a rate per annum equal to the rate per annum at which interest would then be payable on past due interest pursuant to Section 2.12 of the Indenture, from the date of payment by the Mortgage Notes Indenture Trustee to the date reimbursed by the relevant Grantor, shall be payable by such Grantor to the Mortgage Notes Indenture Trustee on demand.

(d) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

7.2. Duty of Mortgage Notes Indenture Trustee. The Mortgage Notes Indenture Trustee's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 or 9-208 of the New York UCC or otherwise, shall be to deal with it in the same manner as the Mortgage Notes Indenture Trustee deals with similar property for its own account. Neither the Mortgage Notes Indenture Trustee, nor any other Secured Party nor any of their respective officers, directors, partners, employees, agents, attorneys and other advisors, attorneys-in-fact or affiliates shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Secured Parties hereunder are solely to protect the Secured Parties' interests in the Collateral and shall not impose any duty upon any Secured Party to exercise any such powers. The Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, partners, employees, agents, attorneys and other advisors, attorneys-in-fact or affiliates shall be responsible to any Grantor for any act or failure to act hereunder, except to the extent that any

such act or failure to act is found by a final and nonappealable decision of a court of competent jurisdiction to have resulted solely and proximately from their own gross negligence or willful misconduct in breach of a duty owed to such Grantor.

7.3. Filing of Financing Statements. Each Grantor acknowledges that pursuant to Section 9-509(b) of the New York UCC and any other applicable law, each Grantor authorizes the Mortgage Notes Indenture Trustee to file or record financing or continuation statements, and amendments thereto, and other filing or recording documents or instruments with respect to the Collateral in such form and in such offices as the Mortgage Notes Indenture Trustee reasonably determines appropriate to perfect or maintain the perfection of the security interests of the Mortgage Notes Indenture Trustee under this Agreement. Each Grantor hereby agrees that such financing statements may describe the collateral in the same manner as described in the Collateral Documents or as "all assets" or "all personal property" of the undersigned, whether now owned or hereafter existing or acquired by the undersigned. If and to the extent permitted by applicable law, a photographic or other reproduction of this Agreement shall be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction.

7.4. Authority of Mortgage Notes Indenture Trustee. Each Grantor acknowledges that the rights and responsibilities of the Mortgage Notes Indenture Trustee under this Agreement with respect to any action taken by the Mortgage Notes Indenture Trustee or the exercise or non-exercise by the Mortgage Notes Indenture Trustee of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Mortgage Notes Indenture Trustee and the other Secured Parties, be governed by the Indenture and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Mortgage Notes Indenture Trustee and the Grantors, the Mortgage Notes Indenture Trustee shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

7.5. Appointment of Co-Collateral Agents. At any time or from time to time, in order to comply with any Requirement of Law or otherwise, the Mortgage Notes Indenture Trustee may appoint another bank or trust company or one of more other persons, either to act as bailee, co-agent or agents on behalf of the Secured Parties with such power and authority as may be necessary for the effectual operation of the provisions hereof and which may be specified in the instrument of appointment (which may, in the discretion of the Mortgage Notes Indenture Trustee, include provisions for indemnification and similar protections of such co-agent or separate agent); provided that the Mortgage Notes Indenture Trustee shall give prompt notice of such appointment to all Grantors pursuant to Section 8.2 hereof.

SECTION 8. MISCELLANEOUS

8.1. Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with the terms of the Indenture.

8.2. Notices. All notices, requests and demands to or upon the Mortgage Notes Indenture Trustee or any Grantor hereunder shall be effected in the manner provided for in Section 13.02 of the Indenture; *provided* that any such notice, request or demand to or upon any Guarantor shall be addressed to such Guarantor at its notice address set forth on *Schedule 1*.

8.3. *No Waiver by Course of Conduct; Cumulative Remedies.* No Secured Party shall by any act (except by a written instrument pursuant to Section 8.1), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of

any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which such Secured Party would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

8.4. *Enforcement Expenses; Indemnification.* (a) Each Grantor agrees to pay or reimburse each Secured Party for all its costs and expenses incurred in collecting against such Grantor under the guarantee contained in Section 2 or otherwise enforcing or preserving any rights under this Agreement, the Indenture and the other Collateral Documents to which such Grantor is a party, including, without limitation, the fees and disbursements of counsel to each Secured Party and of counsel to the Mortgage Notes Indenture Trustee.

(b) Each Grantor agrees to pay, and to save the Secured Parties harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement.

(c) Each Grantor agrees to pay, and to save the Secured Parties harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement to the extent the Issuers would be required to indemnify the Trustee under Section 7.07 of the Indenture.

(d) The agreements in this Section 8.4 shall survive repayment of the Obligations and all other amounts payable under the Indenture, the Notes and the Collateral Documents.

8.5. *Successors and Assigns.* This Agreement shall be binding upon the successors and assigns of each Grantor and shall inure to the benefit of the Secured Parties and their successors and assigns; *provided* that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Mortgage Notes Indenture Trustee.

8.6. *Set-Off.* Each Grantor hereby irrevocably authorizes each Secured Party at any time and from time to time while an Event of Default shall have occurred and be continuing, without notice to such Grantor or any other Grantor, any such notice being expressly waived by each Grantor, to set-off and appropriate and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Secured Party to or for the credit or the account of such Grantor, or any part thereof in such amounts as such Secured Party may elect, against and on account of the obligations and liabilities of such Grantor to such Secured Party hereunder and claims of every nature and description of such Secured Party against such Grantor, in any currency, whether arising hereunder, under the Indenture, any Collateral Document or otherwise, as such Secured Party may elect, whether or not any Secured Party has made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured. Each Secured Party shall notify such Grantor promptly of any such set-off and the application made by such Secured Party of the proceeds thereof, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Secured Party under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which such Secured Party may have.

8.7. *Counterparts.* This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

8.8. *Severability.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction (including by reason of the application of Gaming Laws or non-approval of the Gaming Authorities as set forth in Section 8.17) shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.9. *Section Headings.* The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

8.10. *Integration.* This Agreement, the Indenture and the Collateral Documents represent the agreement of the Grantors, the Mortgage Notes Indenture Trustee and the other Secured Parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by any Secured Party relative to subject matter hereof and thereof not expressly set forth or referred to herein, in the Indenture or in the Collateral Documents.

8.11. **GOVERNING LAW. SUBJECT TO COMPLIANCE WITH APPLICABLE GAMING LAWS AND MANDATORY PROVISIONS OF NEW YORK LAW WHICH MAY REQUIRE APPLICATION OF NEVADA OR DELAWARE LAW AS TO CERTAIN ISSUES OF PERFECTION, THE EFFECT OF PERFECTION OR NON-PERFECTION, AND THE PRIORITY OF SECURITY INTERESTS, THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

8.12. *Submission to Jurisdiction; Waivers.* Each Grantor hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement, the Indenture and the Collateral Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Grantor at its address referred to in Section 8.2 or at such other address of which the Mortgage Notes Indenture Trustee shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

8.13. *Acknowledgments.* Each Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement, the Indenture and the Collateral Documents to which it is a party;

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(b) no Secured Party has any fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement, the Indenture or the Collateral Documents, and the relationship between the Grantors, on the one hand, and the Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the the Indenture or the Collateral Documents or otherwise exists by virtue of the transactions contemplated hereby among the Secured Parties or among the Grantors and the Secured Parties.

8.14. *Additional Grantors.* Each Subsidiary of Valvino Lamore, LLC that is required to become a party to this Agreement pursuant to Section 4.31 of the Indenture shall become a Grantor for all purposes of this Agreement upon execution and delivery by such Subsidiary of an Assumption Agreement in the form of Annex 1 hereto.

8.15. *Releases.* (a) At such time as the Notes and the other Obligations (other than unmatured contingent reimbursement and indemnification Obligations) shall have been paid in full, the Collateral shall be released from the Liens created hereby, and this Agreement and all obligations (other than those expressly stated to survive such termination) of the Mortgage Notes Indenture Trustee and each Grantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to the Grantors. At the request and sole expense of any Grantor following any such termination, the Mortgage Notes Indenture Trustee shall deliver to such Grantor any of such Grantor's Collateral held by the Mortgage Notes Indenture Trustee hereunder, and execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence such termination.

(b) If any of the Collateral shall be transferred or sold by any Grantor in a transaction not prohibited by the Indenture, then the Mortgage Notes Indenture Trustee, at the request and sole expense of such Grantor, shall execute and deliver to such Grantor all releases or other documents reasonably necessary or desirable for the release of the Liens created hereby on such Collateral. At the request and sole expense of either Note Issuer, a Guarantor shall be released from its obligations hereunder in the event that all the Capital Stock of such Guarantor shall be transferred or sold in a transaction not prohibited by the Indenture; provided that the Note Issuers shall have delivered to the Mortgage Notes Indenture Trustee, at least ten business days prior to the date of the proposed release, a written request for release identifying the relevant Guarantor and the terms of such sale or transfer in reasonable detail, including the price thereof and any expenses in connection therewith, together with a certification by each Note Issuer stating that such transaction is in compliance with the Indenture and the Collateral Documents and that the Proceeds of such sale or transfer will be applied in accordance therewith.

(c) Each Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement originally filed in connection herewith without the prior written consent of the Mortgage Notes Indenture Trustee subject to such Grantor's rights under Section 9-509(d)(2) of the New York UCC.

8.16. **WAIVER OF JURY TRIAL. EACH GRANTOR AND THE MORTGAGE NOTES INDENTURE TRUSTEE HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT, THE INDENTURE OR ANY COLLATERAL DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.**

8.17. *Regulatory Matters.* The Mortgage Notes Indenture Trustee, on behalf of the Lenders, acknowledges and agrees that:

(a) At such time as any Grantor becomes subject to the jurisdiction of the Gaming Authorities as a licensee or registered company under the Gaming Laws (or prior to such time in furtherance of any Grantor's application to become a licensee or registered company under the

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Gaming Laws), the pledge of any Pledged Stock or other equity securities issued by such Grantor ("*Pledged Gaming Stock*") under this Agreement will require the approval of the Gaming Authorities in order to remain effective.

(b) In the event that a Secured Party exercises a remedy set forth in this Agreement with respect to any Pledged Gaming Stock, that is a foreclosure, transfer of a possessory security interest in such Collateral, the exercise of voting and consensual rights with respect thereto afforded hereunder and/or re-registration of such Collateral, such exercise of remedies would be deemed a separate transfer of such Collateral and would require the separate and prior approval of the Gaming Authorities pursuant to applicable Gaming Laws as in effect on the date hereof and the licensing of such Secured Party or other transferee, unless such licensing requirement is waived by the Gaming Authorities.

(c) In the event that after a Secured Party exercises a remedy set forth in this Agreement with respect to Collateral consisting of gaming devices, cashless wagering systems and associated equipment (as those terms are defined in the Gaming Laws) a transfer, sale, distribution, or other disposition of

such Collateral occurs (separate from any foreclosure action by a Secured Party unless such Secured Party utilizes such Collateral for gaming purposes), such transfer, sale, distribution, or other disposition of such Collateral would require the separate and prior approval of the Gaming Authorities pursuant to applicable Gaming Laws as in effect on the date hereof or the licensing of such Secured Party or other transferee.

(d) The approval by the applicable Gaming Authorities of this Agreement shall not act or be construed as the approval, either express or implied, for a Secured Party to take any actions or steps provided for in this Agreement for which prior approval of the Gaming Authorities is required, without first obtaining such prior and separate approval of the applicable Gaming Authorities to the extent then required applicable Gaming Laws.

(e) The physical location of all certificates evidencing Pledged Gaming Stock shall at all times remain within the territory of the State of Nevada at a location designated to the Gaming Authorities, and each of such certificates shall be made available for inspection by agents of the Gaming Authorities immediately upon request during normal business hours. Neither the Mortgage Notes Indenture Trustee nor any agent of the Mortgage Notes Indenture Trustee shall surrender possession of the Pledged Gaming Stock to any Person other than the Grantor pledging such Pledged Gaming Stock without the prior approval of the Gaming Authorities or as otherwise permitted by applicable Gaming Laws.

(f) It shall cooperate with the Gaming Authorities in connection with the administration of their regulatory jurisdiction over certain of the Grantors, including, without limitation, through the provision of such documents or other information as may be requested by the Gaming Authorities relating to the Mortgage Notes Indenture Trustee, the Holders or such Grantors.

(g) The Mortgage Notes Indenture Trustee, the Holders and their respective assignees are subject to being called forward by the Gaming Authorities, in their discretion, for licensing or a finding of suitability in order to remain entitled to the benefits of this Agreement as it relates to Pledged Gaming Stock.

8.18. *Intercreditor Agreement.* Notwithstanding anything to the contrary in this Agreement, the parties acknowledge that the Grantors have entered into that certain Guarantee and Collateral Agreement (the "*Bank Guarantee and Collateral Agreement*"), dated as of October 30, 2002, among the Grantors, Deutsche Bank Trust Company Americas, as administrative agent (the "*Administrative Agent*") and that the Administrative Agent and the Mortgage Notes Indenture Trustee have entered into that certain Intercreditor Agreement, dated as of October 30, 2002, by and between the Administrative Agent, the Mortgage Note Indenture Trustee and Wells Fargo Bank Nevada, National

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Association, as collateral agent (the "*Intercreditor Agreement*") pursuant to which, among other things, the Administrative Agent and the Mortgage Notes Indenture Trustee have agreed to certain priorities with respect to the Collateral covered hereby. In accordance with the Intercreditor Agreement and in furtherance of the Administrative Agent's senior rights with respect to the Collateral covered hereby, any provisions hereof that require the delivery of any Collateral under this Agreement shall be deemed satisfied so long as such Collateral has been delivered to the Administrative Agent under the Bank Guarantee and Collateral Agreement.

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IN WITNESS WHEREOF, each of the undersigned has caused this Guarantee and Collateral Agreement to be duly executed and delivered as of the date first above written.

WYNN LAS VEGAS, LLC,
a Nevada limited liability company,

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

VALVINO LAMORE, LLC,
a Nevada limited liability company,

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

WYNN LAS VEGAS CAPITAL CORP.,
a Nevada corporation,

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: President

PALO, LLC,
a Delaware limited liability company,

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

DESERT INN WATER COMPANY, LLC,
a Nevada limited liability company,

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

WYNN RESORTS HOLDINGS, LLC,
a Nevada limited liability company,

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

WYNN DESIGN & DEVELOPMENT, LLC,
a Nevada limited liability company,

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

WORLD TRAVEL, LLC,
a Nevada limited liability company,

By: Wynn Las Vegas LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

LAS VEGAS JET, LLC,
a Nevada limited liability company,

By: Wynn Las Vegas LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Mortgage Notes Indenture Trustee

By: /s/ MICHAEL G. SLADE

Name: Michael G. Slade

Title: Corporate Trust Officer

Schedule 1

NOTICE ADDRESSES OF GUARANTORS

Schedule 2

DESCRIPTION OF PLEDGED INVESTMENT PROPERTY

Pledged Stock:

| Issuer | Issuer's Jurisdiction Under New York UCC Section 9-305(a)(2) | Class of Stock or other equity interest | Stock or Membership Interest Certificate No. | Percentage of Shares | No. of Shares | Owner of Record |
|---------------|---|--|---|-----------------------------|----------------------|------------------------|
|---------------|---|--|---|-----------------------------|----------------------|------------------------|

Pledged Notes:

| Issuer | Payee | Principal Amount |
|---------------|--------------|-------------------------|
|---------------|--------------|-------------------------|

Pledged Debt Securities:

| Issuer | Issuer's Jurisdiction Under New York UCC Section 9-305(a)(2) | Payee | Principal Amount |
|---------------|---|--------------|-------------------------|
|---------------|---|--------------|-------------------------|

Pledged Security Entitlements:

| Issuer of Financial Asset | Description of Financial Asset | Securities Intermediary (Name and Address) | Securities Account (Number and Location) | Securities Intermediary's Jurisdiction Under New York UCC Section 9-305(a)(3) |
|----------------------------------|---------------------------------------|---|---|--|
|----------------------------------|---------------------------------------|---|---|--|

Pledged Commodity Contracts:

| Description of Commodity Contract | Commodity Intermediary (Name and Address) | Commodity Account (Number and Location) | Commodity Intermediary's Jurisdiction Under New York UCC Section 9-305(a)(4) |
|-----------------------------------|---|---|--|
|-----------------------------------|---|---|--|

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Schedule 3

**FILINGS AND OTHER ACTIONS
REQUIRED TO PERFECT SECURITY INTERESTS**

Uniform Commercial Code Filings

[List each office where a financing statement is to be filed]

Copyright, Patent and Trademark Filings

[List all filings]

Actions with respect to Investment Property

[Describe all actions required to obtain "control" of Investment Property]

Other Actions

[Describe other actions to be taken]

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Schedule 4

**EXACT LEGAL NAME, LOCATION OF JURISDICTION OF ORGANIZATION AND
CHIEF EXECUTIVE OFFICE**

Grantor

Location

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Schedule 5

LOCATION OF INVENTORY AND EQUIPMENT

Grantor

Locations

5-1

Schedule 6

COPYRIGHTS

PATENTS

TRADEMARKS

TRADE SECRETS

INTELLECTUAL PROPERTY LICENSES

OTHER INTELLECTUAL PROPERTY

6-1

Schedule 7

CONTRACTS

7-1

Schedule 8

VEHICLES

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Exhibit A to
Guarantee and Collateral Agreement

FORM OF ACKNOWLEDGMENT AND CONSENT

The undersigned hereby acknowledges receipt of a copy of the Guarantee and Collateral Agreement dated as of October 30, 2002 (the "Agreement"), made by the Grantors parties thereto for the benefit of WELLS FARGO BANK, NATIONAL ASSOCIATION, as Mortgage Notes Indenture Trustee (in such capacity the "Mortgage Notes Indenture Trustee"); capitalized terms used but not defined herein have the meanings given such terms therein. The undersigned agrees for the benefit of the Mortgage Notes Indenture Trustee and the Secured Parties as follows:

1. The undersigned will be bound by the terms of the Agreement and will comply with such terms insofar as such terms are applicable to the undersigned.
2. The undersigned confirms the statements made in the Agreement with respect to the undersigned including, without limitation, in Section 4.6 and Schedule 2.
3. The undersigned will notify the Mortgage Notes Indenture Trustee promptly in writing of the occurrence of any of the events described in Section 5.6(a) of the Agreement.
4. The terms of Sections 6.4(c) and 6.8 of the Agreement shall apply to it, *mutatis mutandis*, with respect to all actions that may be required of it pursuant to Section 6.4(c) or 6.8 of the Agreement.

[NAME OF ISSUER]

By _____

Name:

Title:

Address for Notices:

Fax: _____

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Exhibit B-1 to
Guarantee and Collateral Agreement

FORM OF INTELLECTUAL PROPERTY SECURITY AGREEMENT

This INTELLECTUAL PROPERTY SECURITY AGREEMENT, dated as of _____, 2002 (as amended, supplemented or otherwise modified from time to time, the "*Intellectual Property Security Agreement*"), is made by each of the signatories hereto (collectively, the "*Grantors*") in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, as Mortgage Notes Indenture Trustee (in such capacity, the "*Mortgage Notes Indenture Trustee*") for the Secured Parties (as defined in the Guarantee and Collateral Agreement referred to below).

WHEREAS, Wynn Las Vegas, LLC, a Nevada limited liability company, and Wynn Las Vegas Capital Corp., a Nevada corporation (together with Wynn Las Vegas, LLC, the "*Note Issuers*"), have entered into an Indenture, dated as of October 30, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "*Indenture*"), with the Mortgage Notes Indenture Trustee and the Restricted Entities (as defined in the Indenture).

WHEREAS, it is a condition precedent to the obligation of the Holders to purchase the 12.0% Mortgage Notes due 2010 issued by the Note Issuers, in the aggregate principal amount of \$370,000,000 under the Indenture that the Grantors shall have executed and delivered that certain Guarantee and Collateral Agreement, dated as of October 30, 2002, in favor of the Mortgage Notes Indenture Trustee (as amended, supplemented, replaced or otherwise modified from time to time, the "*Guarantee and Collateral Agreement*"). Capitalized terms used and not defined herein have the meanings given such terms in the Guarantee and Collateral Agreement or the Indenture, as the case may be.

WHEREAS, under the terms of the Guarantee and Collateral Agreement, the Grantors have granted a security interest in certain Property, including, without limitation, certain Intellectual Property of the Grantors, to the Mortgage Notes Indenture Trustee for the ratable benefit of the Secured Parties, and have agreed as a condition thereof to execute Intellectual Property Security Agreements for recording with the United States Patent and Trademark Office, the United States Copyright Office, and other applicable Governmental Authorities.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantors agree as follows:

SECTION 1. *Grant of Security.* Subject to compliance with applicable Gaming Laws, each Grantor hereby grants to the Mortgage Notes Indenture Trustee for the ratable benefit of the Holders a security interest in and to all of such Grantor's right, title and interest in and to the following (the "*Intellectual Property Collateral*"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of such Grantor's Obligations:

(a) (i) all trademarks, service marks, trade names, corporate names, company names, business names, trade dress, trade styles, logos, or other indicia of origin or source identification, internet domain names, trademark and service mark registrations, and applications for trademark or service mark registrations and any new renewals thereof, including, without limitation, each registration and application identified in Schedule 1, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto, together

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in each case with the goodwill of the business connected with the use of, and symbolized by, each of the above (collectively, the "*Trademarks*");

(b) (i) all patents, patent applications and patentable inventions, including, without limitation, each issued patent and patent application identified in Schedule 1, and all certificates of invention or similar industrial property rights, (ii) all inventions and improvements described and claimed therein, (iii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iv) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (v) all reissues, divisions, continuations, continuations-in-part, substitutes, renewals, and extensions thereof, all improvements thereon and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto (collectively, the "*Patents*");

(c) (i) all copyrights, whether or not the underlying works of authorship have been published, including but not limited to copyrights in software and databases, all Mask Works (as defined in 17 U.S.C. 901 of the U.S. Copyright Act) and all such underlying works of authorship and other intellectual property rights therein, all copyrights of works based on, incorporated in, derived from or relating to works covered by such copyrights, all right, title and interest to make and exploit all derivative works based on or adopted from works covered by such copyrights, and all copyright registrations and copyright applications, and any renewals or extensions thereof, including, without limitation, each registration and application identified in Schedule 1, (ii) the rights to print, publish and distribute any of the foregoing, (iv) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iv) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (v) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto ("*Copyrights*");

(d) (i) all trade secrets and all confidential and proprietary information, including know-how, manufacturing and production processes and techniques, inventions, research and development information, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, and customer and supplier lists and information, including, without limitation, any of the foregoing identified in Schedule 1, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto (collectively, the "*Trade Secrets*");

(e) (i) all licenses or agreements, whether written or oral, providing for the grant by or to any Grantor of: (A) any right to use any Trademark or Trade Secret, (B) any right to manufacture, use or sell any invention covered in whole or in part by a Patent, and (C) any right under any Copyright including, without limitation, the grant of rights to manufacture, distribute, exploit and sell materials derived from any Copyright including, without limitation, any of the foregoing identified in Schedule 1, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations of any of the foregoing, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto; and

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(f) any and all proceeds of the foregoing.

SECTION 2. *Recordation.* Each Grantor authorizes and requests that the Register of Copyrights, the Commissioner of Patents and Trademarks and any other applicable government officer record this Intellectual Property Security Agreement.

SECTION 3. *Execution in Counterparts.* This Agreement may be executed in any number of counterparts (including by telecopy), each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SECTION 4. *Governing Law.* Subject to compliance with applicable Gaming Laws, this Intellectual Property Security Agreement shall be governed by, and construed and interpreted in accordance with, the law of the State of New York.

SECTION 5. *Conflict Provision.* This Intellectual Property Security Agreement has been entered into in conjunction with the provisions of the Guarantee and Collateral Agreement and the Indenture. The rights and remedies of each party hereto with respect to the security interest granted herein are without prejudice to, and are in addition to those set forth in the Guarantee and Collateral Agreement and the Indenture, all terms and provisions of which are incorporated herein by reference. In the event that any provisions of this Intellectual Property Security Agreement are in conflict with the Guarantee and Collateral Agreement or the Indenture, the provisions of the Guarantee and Collateral Agreement or the Indenture shall govern.

IN WITNESS WHEREOF, each of the undersigned has caused this Intellectual Property Security Agreement to be duly executed and delivered as of the date first above written.

[NAME OF GRANTOR]

By:

Name:
Title:

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Schedule 1

COPYRIGHTS

PATENTS

TRADEMARKS

TRADE SECRETS

INTELLECTUAL PROPERTY LICENSES

Exhibit B-2 to
Guarantee and Collateral Agreement

FORM OF AFTER-ACQUIRED INTELLECTUAL PROPERTY SECURITY AGREEMENT

(FIRST SUPPLEMENTAL FILING)

This INTELLECTUAL PROPERTY SECURITY AGREEMENT (FIRST SUPPLEMENTAL FILING), dated as of _____, 200 (as amended, supplemented or otherwise modified from time to time, the "*First Supplemental Intellectual Property Security Agreement*"), is made by each of the signatories hereto (collectively, the "*Grantors*") in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, as Mortgage Notes Indenture Trustee (in such capacity, the "*Mortgage Notes Indenture Trustee*") for the Secured Parties (as defined in the Guarantee and Collateral Agreement referred to below).

WHEREAS, Wynn Las Vegas, LLC, a Nevada limited liability company, and Wynn Las Vegas Capital Corp., a Nevada corporation (together with Wynn Las Vegas, LLC, the "*Note Issuers*"), have entered into an Indenture, dated as of October 30, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "*Indenture*"), with the Mortgage Notes Indenture Trustee and the Restricted Entities (as defined in the Indenture).

WHEREAS, it is a condition precedent to the obligation of the Holders to purchase the 12.0% Mortgage Notes due 2010 issued by the Note Issuers, in the aggregate principal amount of \$370,000,000 under the Indenture that the Grantors shall have executed and delivered that certain Guarantee and Collateral Agreement, dated as of October 30, 2002, in favor of the Mortgage Notes Indenture Trustee (as amended, supplemented, replaced or otherwise modified from time to time, the "*Guarantee and Collateral Agreement*"). Capitalized terms used and not defined herein have the meanings given such terms in the Guarantee and Collateral Agreement or the Indenture, as the case may be.

WHEREAS, under the terms of the Guarantee and Collateral Agreement, the Grantors have granted a security interest in certain Property, including, without limitation, certain Intellectual Property of the Grantors, to the Mortgage Notes Indenture Trustee for the ratable benefit of the Secured Parties, and have agreed as a condition thereof to execute an Intellectual Property Security Agreement for recording with the United States Patent and Trademark Office, the United States Copyright Office, and other applicable Governmental Authorities.

WHEREAS, the Intellectual Property Security Agreement was recorded against certain United States Intellectual Property at [INSERT REEL/FRAME NUMBER] [IF SECOND OR LATER SUPPLEMENTAL, ADD PRIOR REEL/FRAME NUMBERS].

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantors agree as follows:

SECTION 1. *Grant of Security.* Subject to compliance with applicable Gaming Laws, each Grantor hereby grants to the Mortgage Notes Indenture Trustee for the ratable benefit of the Secured Parties a security interest in and to all of such Grantor's right, title and interest in and to the following (the "*Intellectual Property Collateral*"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of such Grantor's Obligations:

(a) (i) all trademarks, service marks, trade names, corporate names, company names, business names, trade dress, trade styles, logos, or other indicia of origin or source identification, internet domain names, trademark and service mark registrations, and applications for trademark or service mark registrations and any new renewals thereof, including, without limitation, each registration and application identified in Schedule 1, (ii) the right to sue or otherwise recover for any and all

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past, present and future infringements and misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto, together in each case with the goodwill of the business connected with the use of, and symbolized by, each of the above (collectively, the "*Trademarks*");

(b) (i) all patents, patent applications and patentable inventions, including, without limitation, each issued patent and patent application identified in Schedule 1, and all certificates of invention or similar industrial property rights, (ii) all inventions and improvements described and claimed therein, (iii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iv) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (v) all reissues, divisions, continuations, continuations-in-part, substitutes, renewals, and extensions thereof, all improvements thereon and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto (collectively, the "*Patents*");

(c) (i) all copyrights, whether or not the underlying works of authorship have been published, including, but not limited to, copyrights in software and databases, all Mask Works (as defined in 17 U.S.C. 901 of the U.S. Copyright Act) and all such underlying works of authorship and other intellectual property rights therein, all copyrights of works based on, incorporated in, derived from or relating to works covered by such copyrights, all right, title and interest to make and exploit all derivative works based on or adopted from works covered by such copyrights, and all copyright registrations and copyright applications, and any renewals or extensions thereof, including, without limitation, each registration and application identified in Schedule 1, (ii) the rights to print, publish and distribute any of the foregoing, (iii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iv) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (v) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto ("*Copyrights*");

(d) (i) all trade secrets and all confidential and proprietary information, including know-how, manufacturing and production processes and techniques, inventions, research and development information, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, and customer and supplier lists and information, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto (collectively, the "*Trade Secrets*");

(e) (i) all licenses or agreements, whether written or oral, providing for the grant by or to any Grantor of: (A) any right to use any Trademark or Trade Secret, (B) any right under any Patent, and (C) any right under any Copyright, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations of any of the foregoing, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements

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thereof), and (iv) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto; and

(f) any and all proceeds of the foregoing.

SECTION 2. *Recordation.* Each Grantor authorizes and requests that the Register of Copyrights, the Commissioner of Patents and Trademarks and any other applicable government officer record this First Supplemental Intellectual Property Security Agreement.

SECTION 3. *Execution in Counterparts.* This Agreement may be executed in any number of counterparts (including by telecopy), each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SECTION 4. *Governing Law.* Subject to compliance with applicable Nevada Gaming Laws, this First Supplemental Intellectual Property Security Agreement shall be governed by, and construed and interpreted in accordance with, the law of the State of New York.

SECTION 5. *Conflict Provision.* This First Supplemental Intellectual Property Security Agreement has been entered into in conjunction with the provisions of the Guarantee and Collateral Agreement and the Indenture. The rights and remedies of each party hereto with respect to the security interest granted

herein are without prejudice to, and are in addition to those set forth in the Guarantee and Collateral Agreement and the Indenture, all terms and provisions of which are incorporated herein by reference. In the event that any provisions of this First Supplemental Intellectual Property Security Agreement are in conflict with the Guarantee and Collateral Agreement or the Indenture, the provisions of the Guarantee and Collateral Agreement or the Indenture shall govern.

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IN WITNESS WHEREOF, each of the undersigned has caused this Intellectual Property Security Agreement to be duly executed and delivered as of the date first above written.

[NAME OF GRANTOR]

By:

Name:

Title:

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Schedule 1

COPYRIGHTS

PATENTS

TRADEMARKS

TRADE SECRETS

INTELLECTUAL PROPERTY LICENSES

Exhibit C to
Guarantee and Collateral Agreement

FORM OF CONTROL AGREEMENT

This CONTROL AGREEMENT (as amended, supplemented or otherwise modified from time to time, the "Control Agreement") dated as of _____, 200____, is made by and among _____, a _____ (the "Grantor"), WELLS FARGO BANK, NATIONAL ASSOCIATION, as Mortgage Notes Indenture Trustee (in such capacity, the "Mortgage Notes Indenture Trustee") for the Secured Parties (as defined in the Guarantee and Collateral Agreement referred to below), and _____, a _____ (the "Issuer").

WHEREAS, the Grantor has granted to the Mortgage Notes Indenture Trustee for the benefit of the Secured Parties a security interest in the uncertificated securities of the Issuer owned by the Grantor from time to time (collectively, the "Pledged Securities"), and all additions thereto and substitutions and proceeds thereof (collectively, with the Pledged Securities, the "Collateral") pursuant to a Guarantee and Collateral Agreement, dated as of October 30, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "Guarantee and Collateral Agreement"), among the Grantor and the other persons party thereto as grantors in favor of the Mortgage Notes Indenture Trustee.

WHEREAS, the following terms which are defined in Articles 8 and 9 of the Uniform Commercial Code in effect in the State of New York on the date hereof (the "UCC") are used herein as so defined: Adverse Claim, Control, Instruction, Proceeds and Uncertificated Security. Capitalized terms used but not defined herein shall have the meanings given such terms in the Guarantee and Collateral Agreement or that certain Indenture (as amended, supplemented, replaced or otherwise modified from time to time, the "Indenture") dated as of October 30, 2002 among Wynn Las Vegas, LLC, a Nevada limited liability company, Wynn Las Vegas Capital Corp., a Nevada corporation, the Mortgage Notes Indenture Trustee and the Restricted Entities (as defined in the Indenture), as the case may be.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. *Notice of Security Interest.* The Grantor, the Mortgage Notes Indenture Trustee and the Issuer are entering into this Control Agreement to perfect, and to confirm the priority of, the Mortgage Notes Indenture Trustee's security interest in the Collateral. The Issuer acknowledges that this Control Agreement constitutes written notification to the Issuer of the Mortgage Notes Indenture Trustee's security interest in the Collateral. The Issuer agrees to promptly make all necessary entries or notations in its books and records to reflect the Mortgage Notes Indenture Trustee's security interest in the Collateral and, upon request by the Mortgage Notes Indenture Trustee, to register the Mortgage Notes Indenture Trustee as the registered owner of any or all of the Pledged Securities. The Issuer acknowledges that the Mortgage Notes Indenture Trustee has control over the Collateral.

SECTION 2. *Collateral.* The Issuer hereby represents and warrants to, and agrees with the Grantor and the Mortgage Notes Indenture Trustee that (i) the terms of any limited liability company interests or partnership interests included in the Collateral from time to time shall expressly provide that they are securities governed by Article 8 of the Uniform Commercial Code in effect from time to time in the State of Nevada and any other applicable jurisdiction, (ii) the Pledged Securities are uncertificated securities, (iii) the issuer's jurisdiction is, and during the term of this Control Agreement shall remain, the State of _____, (iv) Schedule 1 contains a true and complete description of the Pledged Securities as of the date hereof and (v) except for the claims and interests of the Mortgage Notes Indenture Trustee and the Grantor in the Collateral, the Issuer does not know of any claim to or security interest or other interest in the Collateral.

SECTION 3. *Control.*

(a) Subject to Section 3(b) below, the Issuer hereby agrees, upon written direction from the Mortgage Notes Indenture Trustee and without further consent from the Grantor, (a) to comply with all instructions and directions of any kind originated by the Mortgage Notes Indenture Trustee concerning the Collateral, to liquidate or otherwise dispose of the Collateral as and to the extent directed by the Mortgage Notes Indenture Trustee and to pay over to the Mortgage Notes Indenture Trustee all proceeds without any setoff or deduction, and (b) except as otherwise directed by the Mortgage Notes Indenture Trustee, not to comply with the instructions or directions of any kind originated by the Grantor or any other person at any time after the Issuer has received notice from the Mortgage Notes Indenture Trustee that an Event of Default exists and is continuing (and thereafter not until such time as the Mortgage Notes Indenture Trustee sends written notice to the Issuer that such Event of Default has been cured or waived). Until such time as the Issuer has received notice from the Mortgage Notes Indenture Trustee of the occurrence and continuation of an Event of Default (and after such time as the Issuer has received notice from the Mortgage Notes Indenture Trustee that such Event of Default has been cured or waived), the Issuer shall comply with all instructions and directions of any kind originated by the Grantor to the extent they do not conflict with any instructions or directions of the Mortgage Notes Indenture Trustee, except that the Issuer shall not deliver the Collateral to the Grantor.

(b) Notwithstanding any other provision of this Control Agreement to the contrary, the Issuer and the Mortgage Notes Indenture Trustee agree that until such time as they have been notified in writing by the Administrative Agent that the Control Agreement, dated as of _____, 200____, among _____ [the Grantor], the Administrative Agent and _____ [the Issuer] (the "*Bank Control Agreement*") has been terminated, the Mortgage Notes Indenture Trustee shall not originate, and Issuer shall not comply with, any instructions or directions originated by the Mortgage Notes Indenture Trustee in respect of the Pledged Securities covered by the Bank Control Agreement or take any of the actions specified in Section 3(a) above in respect of such Pledged Securities at the direction of the Mortgage Notes Indenture Trustee, except with the consent of the Administrative Agent. It is understood and agreed that the Administrative Agent is a third party beneficiary of this Section 3(b) and that the provisions of this Section 3(b) may not be amended, modified, supplemented or repealed without the express written consent of the Administrative Agent.

SECTION 4. *Other Agreements.* The Issuer shall notify promptly the Mortgage Notes Indenture Trustee and the Grantor if any other person asserts any lien, encumbrance, claim (including any adverse claim) or security interest in or against any of the Collateral upon becoming aware of such assertion. In the event of any conflict between the provisions of this Control Agreement and any other agreement governing the Pledged Securities or the Collateral, the provisions of this Control Agreement shall control.

SECTION 5. *Protection of Issuer.* The Issuer may rely and shall be protected in acting upon any notice, instruction or other communication that it reasonably believes to be genuine and authorized.

SECTION 6. *Termination.* This Control Agreement shall terminate automatically upon receipt by the Issuer of written notice executed by the Mortgage Notes Indenture Trustee that (i) all of the Obligations (excluding unmatured contingent reimbursement and indemnification obligations) secured by the Collateral have been paid in full in immediately available funds, or (ii) all of the Collateral has been released, whichever is sooner, and the Issuer shall thereafter be relieved of all duties and obligations hereunder.

SECTION 7. *Notices.* All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three days after

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being deposited in the mail and sent by first-class mail, postage prepaid, or, in the case of telecopy notice, when received, to the Grantor's and the Mortgage Notes Indenture Trustee's addresses as set forth in the Guarantee and Collateral Agreement, and to the Issuer's address as set forth below, or to such other address as any party may give to the others in writing for such purpose:

[Name of Issuer]
[Address of Issuer]
 Attention:
 Telephone: () -
 Telecopy: () -

SECTION 8. *Amendments in Writing.* None of the terms or provisions of this Control Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the parties hereto.

SECTION 9. *Entire Agreement.* This Control Agreement and the Guarantee and Collateral Agreement constitute the entire agreement and supersede all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

SECTION 10. *Execution in Counterparts.* This Control Agreement may be executed in any number of counterparts (including by telecopy), each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SECTION 11. *Successors and Assigns.* This Control Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Grantor may not assign, transfer or delegate any of its rights or obligations under this Control Agreement without the prior written consent of the Mortgage Notes Indenture Trustee.

SECTION 12. *Governing Law and Jurisdiction.* This Control Agreement has been delivered to and accepted by the Mortgage Notes Indenture Trustee and will be deemed to be made in the State of New York. **SUBJECT TO COMPLIANCE WITH APPLICABLE NEVADA GAMING LAWS, THIS CONTROL AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.** Each of the parties hereto submits for itself and its property in any legal action or proceeding relating to this Control Agreement, or

for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof.

SECTION 13. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS CONTROL AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.

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IN WITNESS WHEREOF, each of the undersigned has caused this Control Agreement to be duly executed and delivered as of the date first above written.

[NAME OF GRANTOR]

By:

Name:
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Mortgage Notes Indenture Trustee

By:

Name:
Title:

[NAME OF ISSUER]

By:

Name:
Title:

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Exhibit D to
Guarantee and Collateral Agreement

FORM OF CONTROL AGREEMENT

This CONTROL AGREEMENT (as amended, supplemented or otherwise modified from time to time, the "*Control Agreement*") dated as of _____, 200____, among _____ (the "*Grantor*"), WELLS FARGO BANK, NATIONAL ASSOCIATION, as Mortgage Notes Indenture Trustee (the "*Secured Party*") for the secured parties under the Guarantee and Collateral Agreement (as defined below) and _____ in its capacity as a "securities intermediary" (as defined in Section 8-102 of the UCC and a "bank" as defined in Section 9-102 of the UCC (in such capacities, the "*Financial Institution*"). Capitalized terms used but not defined herein shall have the meanings given such terms in the Guarantee and Collateral Agreement (as defined below) or that certain Indenture (as amended, supplemented, replaced or otherwise modified from time to time, the "*Indenture*") dated as of October 30, 2002 among Wynn Las Vegas, LLC, a Nevada limited liability company, Wynn Las Vegas Capital Corp., a Nevada corporation, the Mortgage Notes Indenture Trustee and the Restricted Entities (as defined in the Indenture), as the case may be. All references herein to the "UCC" shall mean the Uniform Commercial Code as from time to time in effect in the State of New York.

WHEREAS, the Grantor has granted to the Secured Party a security interest in the Pledged Accounts (as hereinafter defined) pursuant to the Guarantee and Collateral Agreement, dated as of October 30, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "*Guarantee and Collateral Agreement*"), among the Grantor and the other persons party thereto as grantors in favor of the Mortgage Notes Indenture Trustee;

WHEREAS, the parties hereto are entering into this agreement to perfect and ensure the priority of such security interest;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. *Establishment and Maintenance of Collateral Accounts.*

(a) The Financial Institution hereby represents and warrants that it has established and currently maintains the accounts listed on *Schedule 1* hereto and that the Secured Party is its sole customer or entitlement holder with respect to each such account. Each such account and any successor account and all other accounts which the Grantor now or hereafter maintains with the Financial Institution, being referred to herein individually as a "Pledged Account" and collectively as the "Pledged Accounts." The Financial Institution covenants and agrees that it shall not change the name or account number of any Pledged Account without the prior written consent of the Secured Party.

(b) [Each of the parties hereto acknowledges and agrees that the accounts listed on Part A of *Schedule 1* hereto are intended to be deposit accounts (as defined in Section 9-102(a)(29) of the UCC) and the accounts listed on Part B of *Schedule 1* hereto are intended to be securities accounts (as defined in

Section 8-501 of the UCC.)] or [Each of the parties hereto acknowledges and agrees that all of the Pledged Accounts are intended to be [deposit accounts/securities accounts] (as defined in the UCC)] Notwithstanding such intention, as used herein "Deposit Account" shall mean any Pledged Account (or any part thereof) which is determined to be a "deposit account" (within the meaning of Section 9-102(a)(29) of the UCC) and "Securities Account" shall mean any Pledged Account (or any part thereof) which is determined to be a "securities account" (within the meaning of Section 8-501 of the UCC).

(c) The Financial Institution covenants and agrees that: (i) all securities or other property underlying any financial assets credited to any Securities Account shall be registered in the name of the Financial Institution, indorsed to the Financial Institution or indorsed in blank or credited to another securities account maintained in the name of the Financial Institution and in no case will any financial asset credited to any Securities Account be registered in the name of the

Grantor, payable to the order of the Grantor or specially indorsed to the Grantor except to the extent the foregoing have been specially indorsed to the Financial Institution or in blank; and (ii) all property delivered to the Financial Institution pursuant to the Guarantee and Collateral Agreement will be promptly credited to one of the Pledged Accounts.

SECTION 2. *"Financial Assets" Election.* The Financial Institution hereby agrees that each item of property (including, without limitation, all Permitted Investments and any investment property, financial asset, security, instrument or cash) credited to any Pledged Account that is a Securities Account shall be treated as a "financial asset" within the meaning of Section 8-102(a)(9) of the UCC.

SECTION 3. *Secured Party's Control of the Pledged Accounts.*

(a) Subject to Section 3(b) below, if at any time the Financial Institution shall receive from the Secured Party an entitlement order (i.e. an order directing transfer or redemption of any financial asset relating to a Pledged Account) or any instruction (within the meaning of Section 9-104 of the UCC) originated by the Secured Party (i.e., an instruction directing the disposition of funds in a Pledged Account), the Financial Institution shall comply with such entitlement order or instruction without further consent by the Grantor or any other person. The Grantor is entitled to give entitlement orders and instructions with respect to the Pledged Accounts, subject to Section 4 hereof, provided that if such entitlement orders or instructions conflict with instructions of the Secured Party, the Financial Institution shall comply with the entitlement orders and instructions issued by the Secured Party.

(b) Notwithstanding any other provision of this Control Agreement to the contrary, the Financial Institution and the Secured Party agree that until such time as they have been notified in writing by the Administrative Agent that the Control Agreement, dated as of _____, 200____, among the Administrative Agent and _____ [the Financial Institution] (the "*Bank Control Agreement*") has been terminated, the Secured Party shall not issue, and Financial Institution shall not comply with, any entitlement order or instruction originated by the Secured Party in respect of the Pledged Accounts covered by the Bank Control Agreement or take any of the actions specified in Section 3(a) above in respect of such Pledged Accounts at the direction of the Secured Party, except with the consent of the Administrative Agent. It is understood and agreed that the Administrative Agent is a third party beneficiary of this Section 3(b) and that the provisions of this Section 3(b) may not be amended, modified, supplemented or repealed without the express written consent of the Administrative Agent.

SECTION 4. *Grantor's Access to the Account.* If at any time the Secured Party delivers to the Financial Institution a Notice of Sole Control in substantially the form set forth in *Exhibit A* hereto, the Financial Institution agrees that after receipt of such notice, it will take all directions with respect to the Pledged Accounts solely from the Secured Party and shall not comply with instructions or entitlement orders of the Grantor or any other person (unless and until the Secured Party instructs otherwise).

SECTION 5. *Subordination of Lien; Waiver of Set-Off.* In the event that the Financial Institution has or subsequently obtains by agreement, by operation of law or otherwise a security interest in any Pledged Account or any financial assets, cash or other property credited thereto, the Financial Institution hereby agrees that such security interest shall be subordinate to the security interest of the Secured Party. The financial assets, money and other items credited to any Pledged Account will not be subject to deduction, set-off, banker's lien, or any other right in favor of any person other than the Secured Party (except that the Financial Institution may set off (i) all amounts due to the Financial Institution in respect of customary fees and expenses for the routine maintenance and operation of the respective Pledged Account and (ii) the face amount of any checks which have been credited to such Pledged Account but are subsequently returned unpaid because of uncollected or insufficient funds).

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SECTION 6. *Choice of Law.* **SUBJECT TO COMPLIANCE WITH APPLICABLE NEVADA GAMING LAWS, THIS CONTROL AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.** Regardless of any provision in any other agreement, for purposes of the UCC, with respect to each Pledged Account New York shall be deemed to be the bank's jurisdiction (within the meaning of Section 9-304 of the UCC) and the securities intermediary's jurisdiction (within the meaning of Section 8-110 of the UCC). The Pledged Accounts shall be governed by the laws of the State of New York.

SECTION 7. *Conflict with Other Agreements.* The Financial Institution hereby represents, warrants, covenants and agrees that:

(a) There are no other agreements entered into between the Financial Institution and the Grantor with respect to any Pledged Account [except for [identify other agreements]] (the "*Account Agreements*").

(b) It has not entered into, and until the termination of this agreement will not enter into, any agreement with any other person relating the Pledged Accounts and/or any financial assets credited thereto pursuant to which it has agreed to comply with entitlement orders (as defined in Section 8-102(a)(8) of the UCC) or instructions (within the meaning of Section 9-104 of the UCC) of such other person (except any such other agreement with the Grantor under which the obligations of the Financial Institution are subordinated to the Financial Institution's obligations hereunder).

(c) It has not entered into, and until the termination of this agreement will not enter into, any agreement with the Grantor purporting to limit or condition the obligation of the Financial Institution to comply with entitlement orders or instructions from the Secured Party.

(d) In the event of any conflict between this Control Agreement (or any portion thereof) and any other agreement now existing or hereafter entered into, the terms of this Control Agreement shall prevail.

SECTION 8. *Adverse Claims.* The Financial Institution represents and warrants that, except for the claims and interest of the Secured Party and of the Grantor in the Pledged Accounts, it does not know of any lien on or claim to, or interest in, any Pledged Account or in any "financial asset" (as defined in Section 8-102(a) of the UCC) credited thereto. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Pledged Accounts or in any financial asset carried therein, the Financial Institution will promptly notify the Secured Party and the Grantor thereof upon becoming aware of such assertion.

SECTION 9. *Additional Provisions Regarding Maintenance of Accounts.* The Financial Institution covenants and agrees:

(a) *Statements and Confirmations.* The Financial Institution will promptly send copies of all statements, confirmations and other correspondence concerning (i) any Securities Account and/or any financial assets credited thereto and (ii) any Deposit Account, simultaneously to each of the Grantor and the Secured Party at the address for each set forth in Section 13 of this Agreement.

(b) *Tax Reporting.* All items of income, gain, expense and loss recognized in any Securities Account and all interest, if any, relating to any Deposit Account, shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of the Grantor.

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(c) *Voting Rights.* At any time during which the Grantor is entitled to give entitlement orders pursuant to Section 3 hereof, the Grantor shall direct the Financial Institution with respect to the voting of any financial assets credited to the Pledged Accounts.

(d) *Permitted Investments.* At any time during which the Grantor is entitled to give entitlement orders pursuant to Section 3 hereof, the Grantor shall direct the Financial Institution with respect to the selection of investments to be made for any Pledged Account that is a Securities Account; provided, however, that the Financial Institution shall not honor any instruction to purchase any investments other than investments (i) prior to the Completion Date (as defined below), of a type described as "Permitted Securities" on *Exhibit B* hereto and (ii) on or after the Completion Date, of a type described as "Cash Equivalents" on *Exhibit B* hereto. For purposes of the foregoing, "Completion Date" shall be the date upon which the Secured Party notifies the Financial Institution that "Completion" has occurred pursuant to and in accordance with the Disbursement Agreement.

SECTION 10. *Additional Representation and Warranty of the Financial Institution.* The Financial Institution represents and warrants that this Control Agreement is the legal, valid, binding and enforceable obligation of the Financial Institution.

SECTION 11. *Indemnification of Financial Institution.* The Grantor and the Secured Party hereby agree that (a) the Financial Institution is released from any and all liabilities to the Grantor and the Secured Party arising from the terms of this Control Agreement and the compliance of the Financial Institution with the terms hereof, except to the extent that such liabilities arise from the Financial Institution's gross negligence or willful misconduct and (b) the Grantor, its successors and assigns shall at all times indemnify and save harmless the Financial Institution from and against any and all claims, actions and suits of others arising out of the terms of this Control Agreement or the compliance of the Financial Institution with the terms hereof, except to the extent that such arises from the Financial Institution's negligence, and from and against any and all liabilities, losses, damages, costs, charges, counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this Control Agreement.

SECTION 12. *Successors; Assignment.* The terms of this Control Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective corporate successors and assigns, except that the neither the Grantor nor the Financial Institution may delegate their obligations hereunder without the prior written consent of the Secured Party. Additionally, in the event that the Secured Party is replaced as Mortgage Notes Indenture Trustee under the Guarantee and Collateral Agreement any entity that succeeds to such role shall be entitled to the benefits of this Control Agreement. The Secured Party agrees to send written notice to the Financial Institution of any such replacement.

SECTION 13. *Notices.* All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three days after being deposited in the mail and sent by first class mail, postage prepaid, or, in the case of telecopy notice, when received, to the address as set forth below, or to such other address as any party may give to the others in writing for such purpose:

[Name of Bank]
[Address of Bank]
Attention:
Telephone: ()
Telecopy: ()

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Wells Fargo Bank, National Association
MAC N9303-110
Sixth & Marquette
Minneapolis, MN 55479
Attn.: Michael Slade
Telephone: ()
Telecopy: ()

[Name of Grantor]
[Address]
Attention:

Telephone: ()
Telecopy: ()

SECTION 14. *Amendment.* No amendment or modification of this Control Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto.

SECTION 15. *Termination.* The obligations of the Financial Institution to the Secured Party pursuant to this Control Agreement shall continue in effect until the security interests of the Secured Party in each of the Pledged Accounts have been terminated pursuant to the terms of the Guarantee and Collateral Agreement and the Secured Party has notified the Financial Institution of such termination in writing. The Secured Party agrees to provide Notice of Termination in substantially the form of *Exhibit C* hereto to the Financial Institution upon the request of the Grantor on or after the termination of the Secured Party's security interest in the Pledged Accounts pursuant to the terms of the Guarantee and Collateral Agreement. The termination of this Control Agreement shall not terminate the Pledged Accounts or alter the obligations of the Financial Institution to the Grantor pursuant to any other agreement with respect to the Pledged Accounts.

SECTION 16. *Counterparts.* This Control Agreement may be executed in any number of counterparts (including by telecopy), all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

[NAME OF GRANTOR]

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Mortgage Notes Indenture Trustee

By: _____

Name:
Title:

NAME OF INSTITUTION SERVING AS
FINANCIAL INSTITUTION

By: _____

Name:
Title:

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SCHEDULE 1

Part A List of Existing Deposit Accounts Subject to this Control Agreement:

Exact Name of Account

Account Number

Part B List of Existing Securities Accounts Subject to this Control Agreement:

Exact Name of Account

Account Number

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Exhibit A

WELLS FARGO BANK, NATIONAL ASSOCIATION
MAC N9303-110
Sixth & Marquette
Minneapolis, MN 55479

[Date]

[Name and Address of Financial Institution]

Attention:

Re: *Notice of Sole Control*

Ladies and Gentlemen:

As referenced in the Deposit Account Control Agreement, dated _____, 200____, among [insert name of the Grantor], you and the undersigned (a copy of which is attached) we hereby give you notice of our sole control over each of the Pledged Accounts and all financial assets or funds credited thereto. You are hereby instructed not to accept any directions or instructions with respect to the Pledged Accounts or funds credited thereto from any person other than the undersigned, unless otherwise ordered by a court of competent jurisdiction or otherwise directed by us in writing.

You are instructed to deliver a copy of this notice by facsimile transmission to [insert name of the Grantor].

Very truly yours,

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Mortgage Notes Indenture Trustee

By: _____

Title

cc: [Name of Grantor]

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Exhibit B

Permitted Investments

"Cash Equivalents": (a) United States dollars; (b) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (as long as the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than six months from the date of acquisition; (c) interest-bearing demand or time deposits (which may be represented by certificates of deposit) issued by banks having general obligations rated (on the date of acquisition thereof) at least "A" or the equivalent by Standard & Poor's Ratings Group ("S&P") or Moody's Investors Service, Inc. ("Moody's") or, if not so rated, secured at all times, in the manner and to the extent provided by law, by collateral security of the type specified in clause (a) or (b) of this definition, with a market value of no less than the amount of monies so invested; (d) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (b) and (c) above entered into with any financial institution meeting the qualifications specified in clause (c) above; (e) commercial paper having the highest rating obtainable from Moody's or S&P and in each case maturing within six months after the date of acquisition; (f) money market funds or mutual funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (d) of this definition; and (g) to the extent not permitted in clauses (a) through (f) of this definition, Permitted Securities.

"Permitted Securities": (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within 18 months from the date of acquisition, or (b) shares of money market, mutual or similar funds which invest exclusively in assets satisfying the requirements of clause (a) of this definition.

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Exhibit C

WELLS FARGO BANK, NATIONAL ASSOCIATION
MAC N9303-110
Sixth & Marquette
Minneapolis, MN 55479

[Date]

[Name and Address of Financial Institution]

Attention:

Re: *Termination of Control Agreement*

You are hereby notified that the Control Agreement between you, the Grantor and the undersigned (a copy of which is attached) is terminated and you have no further obligations to the undersigned pursuant to such Control Agreement. Notwithstanding any previous instructions to you, you are hereby instructed to accept all future directions with respect to account number(s) _____ from the Grantor. This notice terminates any obligations you may have to the undersigned with respect to such account, however nothing contained in this notice shall alter any obligations which you may otherwise owe to the Grantor pursuant to any other agreement.

You are instructed to deliver a copy of this notice by facsimile transmission to [insert name of Grantor].

Very truly yours,

By: _____

Name:
Title:

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Exhibit E to
Guarantee and Collateral Agreement

FORM OF CONTROL AGREEMENT

This CONTROL AGREEMENT (as amended, supplemented or otherwise modified from time to time, the "*Control Agreement*") dated as of _____, 2002, is made by and among _____, a _____ (the "*Grantor*"), WELLS FARGO BANK, NATIONAL ASSOCIATION, as Mortgage Notes Indenture Trustee (in such capacity, the "*Mortgage Notes Indenture Trustee*") for the Secured Parties (as defined in the Guarantee and Collateral Agreement referred to below), and _____, a _____ (the "*Broker*").

WHEREAS, the Broker maintains for the Grantor a commodity account, Account No. _____ (the "*Pledged Account*"), in the name of the Grantor.

WHEREAS, the Grantor has granted to the Mortgage Notes Indenture Trustee for the benefit of the Secured Parties a security interest in the Pledged Account, the commodity contracts and any free credit balance carried therein, and all additions thereto and substitutions and proceeds thereof (collectively, the "*Collateral*") pursuant to a Guarantee and Collateral Agreement, dated as of October 30, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "*Guarantee and Collateral Agreement*"), among the Grantor and the other persons party thereto as grantors in favor of the Mortgage Notes Indenture Trustee.

WHEREAS, the following terms which are defined in Articles 8 and 9 of the Uniform Commercial Code in effect in the State of New York on the date hereof (the "*UCC*") are used herein as so defined: Commodity Account, Commodity Contract, Commodity Intermediary's Jurisdiction, Control and Proceeds. Capitalized terms used and not defined herein have the meanings given such terms in the Guarantee and Collateral Agreement or that certain Indenture (as amended, supplemented, replaced or otherwise modified from time to time, the "*Indenture*") dated as of October 30, 2002 among Wynn Las Vegas, LLC, a Nevada limited liability company, Wynn Las Vegas Capital Corp., a Nevada corporation, the Mortgage Notes Indenture Trustee and the Restricted Entities (as defined in the Indenture), as the case may be.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. *Notice of Security Interest.* The Grantor, the Mortgage Notes Indenture Trustee and the Broker are entering into this Control Agreement to perfect, and to confirm the priority of, the Mortgage Notes Indenture Trustee's security interest in the Collateral. The Broker acknowledges that this Control Agreement constitutes written notification to the Broker of the Mortgage Notes Indenture Trustee's security interest in the Collateral. The Broker agrees to promptly make all necessary entries or notations in its books and records to reflect the Mortgage Notes Indenture Trustee's security interest in the Collateral. The Broker acknowledges that the Mortgage Notes Indenture Trustee has control over the Pledged Account and all commodity contracts and any free credit balance carried therein from time to time.

SECTION 2. *Collateral; Pledged Account.* (a) The Grantor hereby represents and warrants to, and agrees with the Mortgage Notes Indenture Trustee and the Broker that, all commodity contracts carried by the Broker on its books for the Grantor are and shall be credited to the Pledged Account.

(b) The Broker hereby represents and warrants to, and agrees with the Grantor and the Mortgage Notes Indenture Trustee that (i) the Broker is a commodity intermediary with respect to the Grantor and the Pledged Account is a commodity account, (ii) the commodity intermediary's jurisdiction (within the meaning of Section 9305(b) of the UCC) is, and during the term of this Control Agreement shall for all purposes of this Control Agreement remain, the State of New

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York, (iii) *Schedule 1* contains a true and complete statement of the Pledged Account and the commodity contracts and any free credit balance carried therein as of the date hereof, and (iv) the Pledged Account is and shall remain a cash account, and the Broker will not extend, directly or indirectly, any "purpose credit" (within the meaning of such term under Regulation T of the Board of Governors of the Federal Reserve System of the United States) to the Grantor in respect of the Pledged Account.

(c) The Mortgage Notes Indenture Trustee hereby instructs the Broker, and the Broker hereby confirms and agrees that, unless the Mortgage Notes Indenture Trustee shall otherwise direct the Broker in writing, all commodity contracts carried by the Broker on its books for the Grantor shall be credited only to, and carried only in, the Pledged Account.

SECTION 3. *Control.*

(a) Subject to Section 3(b) below, the Broker hereby agrees, upon written direction from the Mortgage Notes Indenture Trustee and without further consent from the Grantor, (a) to apply any value distributed on account of the commodity contracts carried in the Pledged Account as directed by the Mortgage Notes Indenture Trustee, to liquidate or otherwise dispose of the Collateral as and to the extent directed by the Mortgage Notes Indenture Trustee and to pay over to the Mortgage Notes Indenture Trustee all proceeds and other value therefrom or otherwise distributed with respect thereto without any setoff or deduction, and (b) except as otherwise directed by the Mortgage Notes Indenture Trustee, not to apply any value distributed on account of any commodity contract carried in the Pledged Account as directed by the Grantor or any other person at any time after the Broker has received notice from the Mortgage Notes Indenture Trustee that an Event of Default exists and is continuing (and thereafter not until such time as the Mortgage

Notes Indenture Trustee sends written notice to the Broker that such Event of Default has been cured or waived). Subject to all other terms of this Control Agreement, and subject to the terms of the Guarantee and Collateral Agreement, until such time as the Broker has received notice from the Mortgage Notes Indenture Trustee of the occurrence and continuation of an Event of Default (and after such time as the Issuer has received notice from the Mortgage Notes Indenture Trustee that such Event of Default has been cured or waived), the Grantor shall be entitled to issue directions concerning the application of any value distributed on account of any commodity contract carried in the Pledge Account, and the Broker shall comply with such directions; provided, however, that if and when the Broker receives conflicting directions from the Grantor and the Mortgage Notes Indenture Trustee, the Bank shall only follow the directions of the Mortgage Notes Indenture Trustee.

(b) Notwithstanding any other provision of this Control Agreement to the contrary, the Broker and the Mortgage Notes Indenture Trustee agree that until such time as they have been notified in writing by the Administrative Agent that the Control Agreement, dated as of _____, 200____, among [the Grantor], the Administrative Agent and [the Broker] (the "*Bank Control Agreement*") has been terminated, the Mortgage Notes Indenture Trustee shall not apply any value distributed on account of the commodity contract carried in the Pledged Accounts, and Broker shall not comply with, any such request to apply such value directed by the Mortgage Notes Indenture Trustee in respect of the Pledged Accounts covered by the Bank Control Agreement or take any of the actions specified in Section 3(a) above in respect of such Pledged Accounts at the direction of the Mortgage Notes Indenture Trustee, except with the consent of the Administrative Agent. It is understood and agreed that the Administrative Agent is a third party beneficiary of this Section 3(b) and that the provisions of this Section 3(b) may not be amended, modified, supplemented or repealed without the express written consent of the Administrative Agent.

SECTION 4. *Other Agreements; Termination; Successor Brokers.* The Broker shall simultaneously send to the Mortgage Notes Indenture Trustee copies of all notices given and statements rendered

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pursuant to the Pledged Account. The Broker shall notify promptly the Mortgage Notes Indenture Trustee and the Grantor if any other person asserts any lien, encumbrance, claim or security interest in or against any of the Collateral. As long as the Guarantee and Collateral Agreement remains in effect, neither the Grantor nor the Broker shall terminate the Pledged Account without thirty (30) days' prior written notice to the other party and the Mortgage Notes Indenture Trustee. In the event of any conflict between the provisions of this Control Agreement and any other agreement governing the Pledged Account or the Collateral, the provisions of this Control Agreement shall control. In the event the Broker no longer serves as Broker for the Collateral, the Pledged Account, the commodity contracts and any free credit balance carried therein shall be transferred to a successor broker, custodian or futures commission merchant satisfactory to the Mortgage Notes Indenture Trustee, provided, that prior to such transfer, such successor broker, custodian or futures commission merchant shall execute an agreement that is substantially in the form of this Control Agreement or is otherwise in form and substance satisfactory to the Mortgage Notes Indenture Trustee.

SECTION 5. *Protection of Broker.* The Broker may rely and shall be protected in acting upon any notice, instruction or other communication that it reasonably believes to be genuine and authorized.

SECTION 6. *Termination.* This Control Agreement shall terminate automatically upon receipt by the Broker of written notice executed by the Mortgage Notes Indenture Trustee that (i) all of the Obligations (excluding unmatured contingent reimbursement and indemnification obligations) secured by the Collateral have been paid in full in immediately available funds, or (ii) all of the Collateral has been released, whichever is sooner, and the Broker shall thereafter be relieved of all duties and obligations hereunder.

SECTION 7. *Waiver; Priority of Mortgage Notes Indenture Trustee's Interests.* Other than with respect to its fees and customary commissions with respect to the Pledged Account, the Broker hereby waives its right to set off any obligations of the Grantor to the Broker against any or all of the Collateral, and hereby agrees that any and all liens, encumbrances, claims or security interests which the Broker may have against the Collateral, either now or in the future in connection with the Pledged Account are and shall be subordinate and junior to the prior payment in full in immediately available funds of all obligations of the Grantor now or hereafter existing under the Indenture, the Guarantee and Collateral Agreement and the other Collateral Agreements, and all other documents related thereto, whether for principal, interest (including, without limitation, interest as provided in the Indenture, whether or not such interest accrues after the filing of such petition for purposes of the federal Bankruptcy Code or is an allowed claim in such proceeding), indemnities, fees, premiums, expenses or otherwise. Except for the foregoing and claims and interests of the Mortgage Notes Indenture Trustee and the Grantor in the Collateral, the Broker does not know of any claim to or security interest or other interest in the Collateral.

SECTION 8. *Notices.* All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three days after being deposited in the mail and sent by first-class mail, postage prepaid, or, in the case of telecopy notice, when received, to the Grantor's and the Mortgage Notes Indenture Trustee's addresses as set forth in the Guarantee and Collateral Agreement, and to the Broker's address as set forth below, or to such other address as any party may give to the others in writing for such purpose:

[Name of Broker]
[Address of Broker]
Attention:
Telephone: () -
Telecopy: () -

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SECTION 9. *Amendments in Writing.* None of the terms or provisions of this Control Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the parties hereto.

SECTION 10. *Entire Agreement.* This Control Agreement and the Guarantee and Collateral Agreement constitute the entire agreement and supersede all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

SECTION 11. *Execution in Counterparts.* This Control Agreement may be executed in any number of counterparts (including by telecopy), each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SECTION 12. *Successors and Assigns.* This Control Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Grantor may not assign, transfer or delegate any of its rights or obligations under this Control Agreement without the prior written consent of the Mortgage Notes Indenture Trustee.

SECTION 13. *Governing Law and Jurisdiction.* This Control Agreement has been delivered to and accepted by the Mortgage Notes Indenture Trustee and will be deemed to be made in the State of New York. **SUBJECT TO COMPLIANCE WITH APPLICABLE NEVADA GAMING LAWS, THIS CONTROL AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.** Each of the parties hereto submits for itself and its property in any legal action or proceeding relating to this Control Agreement, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof.

SECTION 14. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS CONTROL AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.

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IN WITNESS WHEREOF, each of the undersigned has caused this Control Agreement to be duly executed and delivered as of the date first above written.

[NAME OF GRANTOR]

By: _____
Name:
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Mortgage Notes Indenture Trustee

By: _____
Name:
Title:

[NAME OF BROKER]

By: _____
Name:
Title:

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Annex 1 to
Guarantee and Collateral Agreement

ASSUMPTION AGREEMENT, dated as of _____, 200____, made by _____, a _____ (the "Additional Grantor"), in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, as Mortgage Notes Indenture Trustee (in such capacity, the "Mortgage Notes Indenture Trustee") for (i) the registered holders of the 12.0% Mortgage Notes due 2010 issued by Wynn Las Vegas, LLC, a Nevada limited liability company, and Wynn Las Vegas Capital Corp., a Nevada corporation (together with Wynn Las Vegas, LLC, the "Note Issuers"), in the aggregate principal amount of \$370,000,000 under that certain Indenture, dated as of even date herewith (as amended, supplemented or otherwise modified from time to time, the "Indenture"), among the Note Issuers, the other Grantors and the Mortgage Notes Indenture Trustee, and (ii) the other Secured Parties (as defined in the Guarantee and Collateral Agreement (as hereinafter defined)). All capitalized terms not defined herein shall have the meaning ascribed to them in the Indenture and the Guarantee and Collateral Agreement, as the case may be.

RECITALS:

WHEREAS, in connection with the Indenture, the Note Issuers and certain of their Affiliates (other than the Additional Grantor) have entered into the Guarantee and Collateral Agreement, dated as of October 30, 2002 (as amended, supplemented or otherwise modified from time to time, the "Guarantee and Collateral Agreement") in favor of the Mortgage Notes Indenture Trustee for the benefit of the Secured Parties;

WHEREAS, the Indenture requires the Additional Grantor to become a party to the Guarantee and Collateral Agreement; and

WHEREAS, the Additional Grantor has agreed to execute and deliver this Assumption Agreement in order to become a party to the Guarantee and Collateral Agreement;

NOW, THEREFORE, IT IS AGREED:

1. *Guarantee and Collateral Agreement.* By executing and delivering this Assumption Agreement, the Additional Grantor, as provided in Section 8.14 of the Guarantee and Collateral Agreement, hereby becomes a party to the Guarantee and Collateral Agreement as a Grantor thereunder with the same force and effect as if originally named therein as a Grantor and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Grantor thereunder. The information set forth in Annex 1-A hereto is hereby added to the information set forth in Schedules _____ to the Guarantee and Collateral Agreement. The Additional Grantor hereby represents and warrants that each of the representations and warranties contained in Section 4 of the Guarantee and Collateral Agreement is true and correct on and as the date hereof (after giving effect to this Assumption Agreement) as if made by such Additional Grantor on and as of such date.

2. GOVERNING LAW. SUBJECT TO COMPLIANCE WITH APPLICABLE NEVADA GAMING LAWS, THIS ASSUMPTION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, the undersigned has caused this Assumption Agreement to be duly executed and delivered as of the date first above written.

[ADDITIONAL GRANTOR]

By:

Name:

Title:

QuickLinks

[Exhibit 4.4](#)

APNs: 162-16-511-009,
162-16-510-007 through 018, inclusive, 162-16-510-021 through 022, inclusive,
162-16-510-024 through 025, inclusive, 162-16-510-028 through 031, inclusive,
162-16-610-028 through 030, inclusive, 162-16-610-021 through 022, inclusive,
162-16-610-017 through 019, inclusive, 162-16-610-008 through 015, inclusive,
162-16-611-001 through 014, inclusive,
162-16-511-002 and 162-16-511-003

Recording requested by and recorded counterparts should be returned to:

Sony Ben-Moshe, Esq.
Latham & Watkins
701 B Street, Suite 2100
San Diego, California 92101

Mail Property Tax Statements to:

Wynn Resorts Holdings, LLC
Legal Department
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

MADE BY

**WYNN RESORTS HOLDINGS, LLC,
a Nevada limited liability company,
as Trustor,**

to

**Nevada Title Company,
a Nevada corporation,
as Trustee,
for the benefit of**

**WELLS FARGO BANK, NATIONAL ASSOCIATION,
in its capacity as the Mortgage Notes Indenture Trustee,
as Beneficiary**

THIS INSTRUMENT IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS OF CLARK COUNTY, NEVADA UNDER THE NAMES OF WYNN RESORTS HOLDINGS, LLC AS "DEBTOR" AND WELLS FARGO BANK, NATIONAL ASSOCIATION AS "SECURED PARTY." TRUSTOR'S ORGANIZATIONAL NUMBER IS NEVADA FILE NUMBER LLC4390-2000.

THIS INSTRUMENT IS A "CONSTRUCTION MORTGAGE" AS THAT TERM IS DEFINED IN SECTION 104.9334(8) OF THE NEVADA REVISED STATUTES AND SECURES AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT UPON LAND.

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**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (hereinafter called "**Deed of Trust**") is made and effective as of October 30, 2002, by WYNN RESORTS HOLDINGS, LLC, a Nevada limited liability company (together with all successors and assigns of the Trust Estate (as hereinafter defined), "**Trustor**"), whose address is 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109, to Nevada Title Company, a Nevada corporation, whose address is 2500 North Buffalo, Suite 150, Las Vegas, Nevada 89128, as Trustee ("**Trustee**"), for the benefit of WELLS FARGO BANK, NATIONAL ASSOCIATION ("**Beneficiary**"), in its capacity as the Mortgage Notes Indenture Trustee under that certain Indenture, dated as of even date herewith, among Trustor, Wynn Las Vegas, LLC, a Nevada limited liability company, Wynn Las Vegas Capital Corp., a Nevada corporation (Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp. being hereinafter referred to as the "**Issuers**"), Beneficiary and the other parties signatory thereto (as the same may be amended or modified from time to time, the "**Mortgage Notes Indenture**") pertaining to the 12% Mortgage Notes due 2010, issued by the Issuers in the aggregate principal amount of \$370,000,000 and pursuant to which Trustor, among other things, guarantees the payment and performance of the obligations of the Issuers under the Notes and the Mortgage Notes Indenture.

THIS INSTRUMENT SECURES FUTURE ADVANCES. THE MAXIMUM AMOUNT OF PRINCIPAL TO BE SECURED HEREBY IS \$370,000,000. THIS INSTRUMENT IS TO BE GOVERNED BY THE PROVISIONS OF NRS 106.300 THROUGH NRS 106.400 INCLUSIVE.

DEFINITIONS—As used in this Deed of Trust, the following terms have the meanings hereinafter set forth:

"**Accounts Receivable**" shall have the meaning set forth in Section 9-102 (NRS 104.9102) of the UCC for the term "account."

"**Appurtenant Rights**" means all and singular tenements, hereditaments, rights, reversions, remainders, development rights, privileges, benefits, easements (in gross or appurtenant), rights-of-way, licenses, gores or strips of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, and all appurtenances whatsoever and claims or demands of Trustor at law or in equity in any way belonging, benefiting, relating or appertaining to the Land, the Trustor, the Project, the airspace over the Land, the Improvements or any of the Trust Estate encumbered by this Deed of Trust, or which hereinafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Trustor, including, without limitation, the Appurtenant Rights more specifically described in *Schedule B* attached hereto and incorporated herein.

"**Bankruptcy**" means, with respect to any Person, that (i) a court having jurisdiction in the Trust Estate shall have entered a decree or order for relief in respect of such Person in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order has not been stayed; or any other similar relief shall have been granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against such Person, under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the Trust Estate for the appointment of a receiver, liquidator, sequester, trustee, custodian or other officer having similar powers over such Person, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of such Person, for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of such Person, and any such event described in this clause (ii) shall continue for 60 days unless dismissed, bonded or discharged; or (iii) such Person shall have an order for relief entered with respect to it or

shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or such Person shall make any assignment for the benefit of creditors, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable or if the fair market value of its assets does not exceed its aggregate liabilities; or (iv) such Person shall, or the Board of Directors of such Person (or any committee thereof) shall, adopt any resolution or otherwise authorize any action to approve any of the actions referred to in clause (iii) above.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute thereto.

"**Business Day**" means any day that is not a Saturday, a Sunday or a day on which banking institutions in the State of Nevada or the City of New York are not required to be open.

"**Deed of Trust**" means this Deed of Trust as it may be amended, increased or modified from time to time.

"**Disbursement Agreement**" means that certain Master Disbursement Agreement dated as of even date herewith, among the Issuers, Beneficiary, Deutsche Bank Trust Company Americas, as the administrative agent for the lenders under a credit agreement entered into in connection with the financing of the Project and as disbursement agent, and the other parties signatory thereto, as the same may hereafter be amended or modified in accordance with its terms and the terms of the Mortgage Notes Indenture.

"**Event of Default**" has the meaning set forth in *Section 3.1* hereof.

"**FF&E**" means all furniture, fixtures, equipment, appurtenances and personal property now or in the future contained in, used in connection with, attached to, or otherwise useful or convenient to the use, operation, or occupancy of, or placed on, but unattached to, any part of the Site or Improvements whether or not the same constitutes real property or fixtures in the State of Nevada, including all removable window and floor coverings, all furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator and escalator plants, cooking facilities, vacuum cleaning systems, public address and communications systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings, fixtures, and building materials, all gaming and financial equipment, computer equipment, calculators, adding machines, gaming tables, video game and slot machines, and any other electronic equipment of every nature used or located on any part of the Site or Improvements, together with all Venetian blinds, shades, draperies, drapery and curtain rods, brackets, bulbs, cleaning apparatus, mirrors, lamps, ornaments, cooling apparatus and equipment, ranges and ovens, garbage disposals, dishwashers, mantels, and any and all such property which is at any time installed in, affixed to or placed upon the Site or Improvements.

"**FF&E Financing Agreement**" means any financing agreement entered into by Trustor (i) the proceeds of which are used by Trustor for the acquisition or lease of FF&E, (ii) pursuant to which Trustor grants to the lender or lessor thereunder a security interest in the FF&E so acquired or leased and (iii) which is permitted by the Mortgage Notes Indenture.

"**Governmental Authority**" means any agency, authority, board, bureau, commission, department, office, public entity, or instrumentality of any nature whatsoever of the United States federal or foreign government, any state, province or any city or other political subdivision or otherwise, whether now or hereafter in existence, or any officer or official thereof, including, without limitation, any Nevada Gaming Authority.

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"**Guaranty**" means that certain Guarantee and Collateral Agreement dated as of even date herewith by Trustor and the other parties thereto for the benefit of Beneficiary on behalf of the Second Mortgage Note Holders.

"**Imposition**" means any taxes, assessments, water rates, sewer rates, maintenance charges, other governmental impositions and other charges now or hereafter levied or assessed or imposed against the Trust Estate or any part thereof.

"**Improvements**" means (1) all the buildings, structures, facilities and improvements of every nature whatsoever now or hereafter situated on the Site or any real property encumbered hereby, and (2) all fixtures, machinery, appliances, goods, building or other materials, equipment, including without limitation all gaming equipment and devices, and all machinery, equipment, engines, appliances and fixtures for generating or distributing air, water, heat, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse or garbage; all wall-beds, wall-safes, built-in furniture and installations, shelving, lockers, partitions, doorstops, vaults, motors, elevators, dumb-waiters, awnings, window shades, Venetian blinds, light fixtures, fire hoses and brackets and boxes for the same, fire sprinklers, alarm, surveillance and security systems, computers, drapes, drapery rods and brackets, mirrors, mantels, screens, linoleum, carpets and carpeting, plumbing, bathtubs, sinks, basins, pipes, faucets, water closets, laundry equipment, washers, dryers, ice-boxes and heating units; all kitchen and restaurant equipment, including but not limited to silverware, dishes, menus, cooking utensils, stoves, refrigerators, ovens, ranges, dishwashers, disposals, water heaters, incinerators, furniture, fixtures and furnishings, communication systems, and equipment; all cocktail lounge supplies, including but not limited to bars, glassware, bottles and tables used in connection with the Site; all chaise lounges, hot tubs, swimming pool heaters and equipment and all other recreational equipment (computerized and otherwise), beauty and barber equipment, and maintenance supplies used in connection with the Site; all amusement rides and attractions attached to the Site, all specifically designed installations and furnishings, and all furniture, furnishings and personal property of every nature whatsoever now or hereafter owned or leased by Trustor or in which Trustor has any rights or interest and located in or on, or attached to, or used or intended to be used or which are now or may hereafter be appropriated for use on or in connection with the operation of the Site or any real or personal property encumbered hereby or any other Improvements, or in connection with any construction being conducted or which may be conducted thereon, and all extensions, additions, accessions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing, and all of the right, title and interest of Trustor in and to any such property, which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and improvements and a part of the real property hereby encumbered.

"**Indemnity Agreement**" means that certain Indemnity Agreement dated as of even date herewith by Trustor for the benefit of Beneficiary and certain other indemnified parties named therein.

"**Indenture Documents**" means, collectively, the Mortgage Notes Indenture, the Notes, the Indemnity Agreement, the Second Mortgage Notes Security Documents, the Guaranty and the Collateral Documents.

"**Insolvent**" means with respect to any person or entity, that such person or entity shall be deemed to be insolvent if it shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable and/or if the fair market value of its assets does not exceed its aggregate liabilities.

"**Intangible Collateral**" means (a) the rights to use all names and all derivations thereof now or hereafter used by Trustor in connection with the Site or Improvements, including, without limitation, the name "Le Reve", including any variations thereon, together with the goodwill associated therewith, and all names, logos, and designs used by Trustor, or in connection with the Site or in which Trustor has rights, with the exclusive right to use such names, logos and designs wherever they are now or

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hereafter used in connection with the Project (or in connection with the marketing of the Project), and any and all other trade names, trademarks or service marks, whether or not registered, now or hereafter used in the operation of the Project, including, without limitation, any interest as a lessee, licensee or franchisee, and, in each case, together with the goodwill associated therewith; (b) subject to the absolute assignment contained herein, the Rents; (c) any and all books, records, customer lists, concession agreements, supply or service contracts, licenses, permits, governmental approvals (to the extent such licenses, permits and approvals may be pledged under applicable law), signs, goodwill, casino and hotel credit and charge records, supplier lists, checking accounts, safe deposit boxes (excluding the contents of such deposit boxes owned by persons other than Trustor and its subsidiaries), cash, instruments, chattel papers, including inter-company notes and pledges, documents, unearned premiums, deposits, refunds, including but not limited to income tax refunds, prepaid expenses, rebates, tax and insurance escrow and impound accounts, if any, actions and rights in action, and all other claims, including without limitation condemnation awards and insurance proceeds, and all other contract rights and general intangibles resulting from or used in connection with the operation and occupancy of the Trust Estate and the Improvements and in which Trustor now or hereafter has rights; and (d) general intangibles, vacation license resort agreements or other time share license or right to use agreements, including without limitation all rents, issues, profits, income and maintenance fees resulting therefrom, whether any of the foregoing is now owned or hereafter acquired.

"**Land**" means the real property situated in the County of Clark, State of Nevada, more specifically described in *Schedule A* attached hereto and incorporated herein by reference, including any after acquired title thereto.

"**Legal Requirements**" means all applicable restrictive covenants, applicable zoning and subdivision ordinances and building codes, all applicable health and Environmental Laws and regulations, all applicable gaming laws and regulations, and all other applicable laws, ordinances, rules, regulations, judicial decisions, administrative orders, and other requirements of any Governmental Authority having jurisdiction over Trustor, the Trust Estate and/or any Affiliate of Trustor, in effect either at the time of execution of this Deed of Trust or at any time during the term hereof, including, without limitation, all Environmental Laws and Nevada Gaming Laws.

"**Nevada Gaming License**" means any gaming license necessary for the ownership, construction, maintenance, financing or operation of the Project, whether issued and/or required by Nevada Gaming Authorities, Nevada Gaming Laws or otherwise.

"**Notes**" means, collectively, those certain mortgage note(s) issued pursuant to the Mortgage Notes Indenture, as the same may be amended or replaced from time to time in accordance with its terms.

"**NRS**" means the Nevada Revised Statutes as in effect from time to time.

"**Obligations**" means (i) the payment and performance by the Issuers of each covenant and agreement of the Issuers contained in the Mortgage Notes Indenture, the Notes and the other Indenture Documents and (ii) the payment and performance by Trustor of each covenant and agreement of Trustor contained in this Deed of Trust, the Mortgage Notes Indenture, the Indemnity Agreement, the Guaranty and the other Indenture Documents.

"**Permitted Dispositions**" means (a) the sale, transfer, lease or other disposition of assets in the Trust Estate, in the ordinary course of business, of inventory held in the ordinary course of business (b) the dispositions set forth in *Section 1.10* hereof and (c) other sales, transfers, leases or other dispositions of assets in the Trust Estate, including entering into Space Leases; *provided* that, in each case, all applicable provisions of the Indenture Documents are complied with.

"**Personal Property**" has the meaning set forth in *Section 1.12* hereof.

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"**Proceeds**" has the meaning assigned to it under the UCC and, in any event, shall include but not be limited to (i) any and all proceeds of any insurance (including without limitation property casualty and title insurance), indemnity, warranty or guaranty payable from time to time with respect to any of the Trust Estate; (ii) any and all proceeds in the form of accounts, security deposits, tax escrows (if any), down payments (to the extent the same may be pledged under applicable law), collections, contract rights, documents, instruments, chattel paper, liens and security instruments, guarantees or general intangibles relating in whole or in part to the Project and all rights and remedies of whatever kind or nature Trustor may hold or acquire for the purpose of securing or enforcing any obligation due Trustor thereunder; (iii) any and all payments in any form whatsoever made or due and payable from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Trust Estate by any Governmental Authority; (iv) subject to the absolute assignment contained herein, the Rents or other benefits arising out of, in connection with or pursuant to any Space Lease of the Trust Estate; and (v) any and all other amounts from time to time paid or payable in connection with any of the Trust Estate; *provided, however*, that the Trustor is not authorized to dispose of any of the Trust Estate unless such disposition is a Permitted Disposition.

"**Project**" means the resort-hotel-casino-mall complex proposed to be constructed in Clark County, Nevada as described in the Plans and Specifications and as applicable to the Site and the Improvements, as such Plans and Specifications may be amended pursuant to the Disbursement Agreement.

"**Rents**" means all rents, room revenues, income, receipts, issues, profits, revenues and maintenance fees, room, food and beverage revenues, license and concession fees, income, proceeds and other benefits to which Trustor may now or hereafter be entitled from the Site, the Improvements, the Space Leases or any property encumbered hereby or any business or other activity conducted by Trustor at the Site or the Improvements.

"**Site**" means the Land and the Appurtenant Rights.

"**Space Leases**" means any and all leases, subleases, lettings, licenses, concessions, operating agreements, management agreements, and all other agreements affecting the Trust Estate that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, that give any person the right to conduct its business on, or otherwise use, operate or occupy, all or any portion of the Site or Improvements and any leases, agreements or arrangements permitting anyone to enter upon or use any of the Trust Estate to extract or remove natural resources of any kind, together with all amendments, extensions, and renewals of the foregoing entered into in compliance with this Deed of Trust, together with all rental, occupancy, service, maintenance or any other similar agreements pertaining to use or occupation of, or the rendering of services at the Site, the Improvements or any part thereof.

"**Space Lessee(s)**" means any and all tenants, licensees, or other grantees of the Space Leases and any and all guarantors, sureties, endorsers or others having primary or secondary liability with respect to such Space Leases.

"Tangible Collateral" means all personal property, goods, equipment, supplies, building and other materials of every nature whatsoever and all other tangible personal property constituting a part or portion of the Project and/or used in the operation of the hotel, casino, restaurants, stores, parking facilities, observation tower and all other commercial operations on the Site or Improvements, including but not limited to communication systems, visual and electronic surveillance systems and transportation systems and not constituting a part of the real property subject to the real property lien of this Deed of Trust and including all property and materials stored therein in which Trustor has an interest and all tools, utensils, food and beverage, liquor, uniforms, linens, housekeeping and maintenance supplies, vehicles, fuel, advertising and promotional material, blueprints, surveys, plans and other documents relating to the Site or Improvements, and all construction materials and all

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furnishings, fixtures and equipment, including, but not limited to, all FF&E and all equipment and devices which are or are to be installed and used in connection with the operation of the Project, those items of furniture, fixtures and equipment which are to be purchased or leased by Trustor, machinery and any other item of personal property in which Trustor now or hereafter own or acquire an interest or right, and which are used or useful in the construction, operation, use and occupancy of the Project and all present and future right and interest of Trustor in and to any casino operator's agreement, license agreement or sublease agreement used in connection with the Site or the Improvements.

"Title Insurer" means Chicago Title Insurance Company.

"Trust Estate" means all of the property described in Granting Clauses (A) through (O) below, inclusive, and each item of property therein described, provided, however, that such term shall not include the property described in Granting Clause (P) below.

"UCC" means the Uniform Commercial Code in effect in the State of Nevada from time to time, NRS chapters 104 and 104A.

The following terms shall have the meaning assigned to such terms in the Disbursement Agreement:

**Bank Golf Course Deed of Trust
Disbursement Agent
Environmental Laws
Financing Agreements
Nevada Gaming Authorities
Nevada Gaming Laws
Permitted Encumbrance
Plans and Specifications
Project Lenders Intercreditor Agreement
Second Mortgage Note Holders
Second Mortgage Notes Security Documents**

The following terms shall have the meaning assigned to such terms in the Mortgage Notes Indenture:

**Affiliate
Collateral Documents
Lien
Permitted Liens
Person**

In addition, any capitalized terms used in this Deed of Trust which are not otherwise defined herein shall have the meaning ascribed to such terms in the Disbursement Agreement and, if not defined therein, the meaning ascribed to such terms in the Mortgage Notes Indenture; *provided*, that upon termination of the Disbursement Agreement, any defined terms used herein having meanings given to such terms in the Disbursement Agreement shall continue to have the meanings given to such terms in the Disbursement Agreement immediately prior to such termination.

W I T N E S E T H:

IN CONSIDERATION OF TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION; THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, AND FOR THE PURPOSE OF SECURING in favor of Beneficiary (1) the Obligations; (2) the payment of such additional loans or advances as hereafter may be made to Trustor (individually or jointly and severally with any other Person) or its successors or assigns, when evidenced

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by a promissory note or notes reciting that they are secured by this Deed of Trust; *provided, however*, that any and all future advances by Beneficiary to Trustor made for the improvement, protection or preservation of the Trust Estate, together with interest at the rate applicable to overdue principal set forth in the Mortgage Notes Indenture, shall be automatically secured hereby unless such a note or instrument evidencing such advances specifically recites that it is not intended to be secured hereby and (3) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof or to protect the security hereof (including Protective Advances as such term is defined in *Section 4.2* hereof), together with interest thereon as herein provided (without limiting the generality of the protections afforded by NRS Chapter 106, funds disbursed that, in the reasonable exercise of Beneficiary's judgment, are needed to complete Improvements to the Land or to protect Beneficiary's security in the Trust Estate are to be deemed obligatory advances hereunder and will be added to the total indebtedness secured by this Deed of Trust and such indebtedness shall be increased accordingly), Trustor, in consideration of the premises, and for the purposes aforesaid, does hereby ASSIGN, BARGAIN, CONVEY, PLEDGE, RELEASE, HYPOTHECATE, WARRANT, AND TRANSFER WITH POWER OF SALE UNTO TRUSTEE IN TRUST FOR THE BENEFIT OF BENEFICIARY AND THE SECOND MORTGAGE NOTE HOLDERS each of the following:

(A) The Land;

(B) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Improvements;

(C) TOGETHER WITH all Appurtenant Rights;

(D) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Tangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(E) TOGETHER WITH the Intangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(F) TOGETHER WITH (i) all the estate, right, title and interest of Trustor of, in and to all judgments and decrees, insurance proceeds, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of any of the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof, or to any Appurtenant Rights thereto, and Beneficiary is (subject to the terms hereof) hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittance therefor, and (subject to the terms hereof) to apply the same toward the payment of the indebtedness and other sums secured hereby, notwithstanding the fact that the amount owing thereon may not then be due and payable; (ii) all proceeds of any sales or other dispositions of the property or rights described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof whether voluntary or involuntary, provided, however, that the foregoing shall not be deemed to permit such sales, transfers, or other dispositions except as specifically permitted herein; and (iii) whether arising from any voluntary or involuntary disposition of the property described in Granting Clauses (A), (B), (C), (D) and (E), all Proceeds, products, replacements, additions, substitutions, renewals and accessions, remainders, reversions and after-acquired interest in, of and to such property;

(G) TOGETHER WITH the absolute assignment of any Space Leases or any part thereof that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, together with all of the following (including all "Cash Collateral" within the meaning of the Bankruptcy Law) arising from the Space Leases: (a) Rents (subject, however, to the aforesaid absolute assignment to Trustee for the benefit of Beneficiary and the conditional

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permission hereinbelow given to Trustor to collect the Rents), (b) all guarantees, letters of credit, security deposits, collateral, cash deposits, and other credit enhancement documents, arrangements and other measures with respect to the Space Leases, (c) all of Trustor's right, title, and interest under the Space Leases, including the following: (i) the right to receive and collect the Rents from the lessee, sublessee or licensee, or their successor(s), under any Space Lease(s) and (ii) the right to enforce against any tenants thereunder and otherwise any and all remedies under the Space Leases, including Trustor's right to evict from possession any tenant thereunder or to retain, apply, use, draw upon, pursue, enforce or realize upon any guaranty of any Space Lease; to terminate, modify, or amend the Space Leases; to obtain possession of, use, or occupy, any of the real or personal property subject to the Space Leases; and to enforce or exercise, whether at law or in equity or by any other means, all provisions of the Space Leases and all obligations of the tenants thereunder based upon (A) any breach by such tenant under the applicable Space Lease (including any claim that Trustor may have by reason of a termination, rejection, or disaffirmance of such Space Lease pursuant to any Bankruptcy Law) and (B) the use and occupancy of the premises demised, whether or not pursuant to the applicable Space Lease (including any claim for use and occupancy arising under landlord-tenant law of the State of Nevada or any Bankruptcy Law). Permission is hereby given to Trustor, so long as no Event of Default has occurred and is continuing hereunder, to collect and use the Rents, as they become due and payable, but not more than one (1) month in advance thereof. Upon the occurrence of an Event of Default, the permission hereby given to Trustor to collect the Rents shall automatically terminate, but such permission shall be reinstated upon a cure or waiver of such Event of Default. Beneficiary shall have the right, at any time and from time to time, to notify any Space Lessee of the rights of Beneficiary as provided by this section;

Notwithstanding anything to the contrary contained herein, the foregoing provisions of this Paragraph (G) shall not constitute an assignment for purposes of security but shall constitute an absolute and present assignment of the Rents to Beneficiary, subject, however, to the conditional license given to Trustor to collect and use the Rents as hereinabove provided; and the existence or exercise of such right of Trustor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Trustor;

(H) TOGETHER WITH all of Trustor's right, title and interest in and to any and all Plans and Specifications and all maps, plans, specifications, surveys, studies, tests, reports, data and drawings relating to the development of the Site or the Project and the construction of the Improvements, including, without limitation, all marketing plans, feasibility studies, soils tests, design contracts and all contracts and agreements of Trustor relating thereto including, without limitation, architectural, structural, mechanical and engineering plans and specifications, studies, data and drawings prepared for or relating to the development of the Site or the Project or the construction, renovation or restoration of any of the Improvements or the extraction of minerals, sand, gravel or other valuable substances from the Site and purchase contracts or any agreement granting Trustor a right to acquire any land situated within Clark County, Nevada;

(I) TOGETHER WITH, to the extent permitted by applicable law, all of Trustor's right, title, and interest in and to any and all licenses, permits, variances, special permits, franchises, certificates, rulings, certifications, validations, exemptions, filings, registrations, authorizations, consents, approvals, waivers, orders, rights and agreements (including, without limitation, options, option rights, contract rights now or hereafter obtained by Trustor from any Governmental Authority having or claiming jurisdiction over the Land, the FF&E, the Project, or any other element of the Trust Estate or providing access thereto, or the operation of any business on, at, or from the Site including, without limitation, any liquor or Nevada Gaming Licenses (except for any registrations, licenses, findings of suitability or approvals issued by the Nevada Gaming Authorities or any other liquor or gaming licenses which are non-assignable); *provided*, that upon an Event of Default hereunder or under the Mortgage Notes Indenture, if Beneficiary is not qualified under the Nevada Gaming Laws to hold such Nevada

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Gaming Licenses, then Beneficiary may designate an appropriately qualified third party to which an assignment of such Nevada Gaming Licenses can be made in compliance with the Nevada Gaming Laws;

(J) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to all water stock, water permits and other water rights relating to the Site;

(K) TOGETHER WITH all oil and gas and other mineral rights, if any, in or pertaining to the Site and all royalty, leasehold and other rights of Trustor pertaining thereto;

(L) TOGETHER WITH any and all monies and other property, real or personal, which may from time to time be subjected to the lien hereof by Trustor or by anyone on its behalf or with its consent, or which may come into the possession or be subject to the control of Trustee or Beneficiary pursuant to this Deed of Trust, the Mortgage Notes Indenture or any other Indenture Document, including, without limitation, any Protective Advances (as defined in Section 4.2 hereof) under this Deed of Trust; and all of Trustor's right, title, and interest in and to all extensions, improvements, betterments, renewals, substitutes for and replacements of, and all additions, accessions, and appurtenances to, any of the foregoing that Trustor may subsequently acquire or obtain by any means, or construct, assemble, or otherwise place on any of the Trust Estate, and all conversions of any of the foregoing; it being the intention of Trustor that all property hereafter acquired by Trustor and required by the Mortgage Notes Indenture, this Deed of Trust or any other Indenture Document to be subject to the lien of this Deed of Trust or intended so to be shall forthwith upon the acquisition thereof by Trustor be subject to the lien of this Deed of Trust as if such property were now owned by Trustor and were specifically described in this Deed of Trust and granted hereby or pursuant hereto, and Trustee and Beneficiary are hereby authorized, subject to Nevada Gaming Laws and other applicable laws, to receive any and all such property as and for additional security for the obligations secured or intended to be secured hereby. Trustor agrees to take any action as may reasonably be necessary to evidence and perfect such liens or security interests, including, without limitation, the execution of any documents necessary to evidence and perfect such liens or security interests;

(M) TOGETHER WITH, to the extent permitted by applicable laws, any and all Accounts Receivable and all royalties, earnings, income, proceeds, products, rents, revenues, reversions, remainders, issues, profits, avails, production payments, and other benefits directly or indirectly derived or otherwise arising from any of the foregoing, all of which are hereby assigned to Beneficiary, who, except as otherwise expressly provided in this Deed of Trust (including the provisions of Section 1.13 hereof), is authorized to collect and receive the same, to give receipts and acquittances therefor and to apply the same to the Obligations secured hereunder, whether or not then due and payable;

(N) TOGETHER WITH Proceeds of the foregoing property described in Granting Clauses (A) through (M);

(O) TOGETHER WITH Trustor's rights further to assign, sell, lease, encumber or otherwise transfer or dispose of the property described in Granting Clauses (A) through (N) inclusive, above, for debt or otherwise; and

(P) EXPRESSLY EXCLUDING, HOWEVER, any assets expressly excluded from the definition of "Collateral" in the Mortgage Notes Indenture.

Trustor, for itself and its successors and assigns, covenants and agrees to and with Trustee that, at the time or times of the execution of and delivery of these presents or any instrument of further assurance with respect thereto, Trustor has good right, full power and lawful authority to assign, grant, convey, warrant, transfer, bargain or sell its interests in the Trust Estate in the manner and form as aforesaid, and that the Trust Estate is free and clear of all liens and encumbrances whatsoever, except Permitted Liens, and Trustor shall warrant and forever defend the above-bargained property in the quiet and peaceable possession of Trustee and its successors and assigns against all and every person or

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persons lawfully or otherwise claiming or to claim the whole or any part thereof, except for Permitted Liens. Trustor agrees that any greater title to the Trust Estate hereafter acquired by Trustor during the term hereof shall be automatically subject hereto.

ARTICLE ONE COVENANTS OF TRUSTOR

The Beneficiary and the Second Mortgage Note Holders have been induced to enter into the Indenture Documents and to purchase the Notes, as the case may be, on the basis of the following material covenants, all agreed to by Trustor:

1.1 Performance of Indenture Documents. Trustor shall perform, observe and comply with each and every provision hereof, and with each and every provision contained in the Mortgage Notes Indenture and the other Indenture Documents and shall promptly pay to the Beneficiary or the Disbursement Agent, as applicable, when payment shall become due, the principal with interest thereon and all other sums required to be paid by Trustor under this Deed of Trust, the Mortgage Notes Indenture and the other Indenture Documents.

1.2 General Representations, Covenants and Warranties. Trustor represents, covenants and warrants that: (a) Trustor has good and marketable title to an indefeasible fee estate in the Site, free and clear of all encumbrances except Permitted Encumbrances, and that it has the right to hold, occupy and enjoy its interest in the Trust Estate, and has good right, full power and lawful authority to subject the Trust Estate to the Lien of this Deed of Trust and pledge the same as provided herein and Beneficiary may at all times peaceably and quietly enter upon, hold, occupy and enjoy the entire Trust Estate in accordance with the terms hereof; (b) Trustor is not Insolvent and no bankruptcy or insolvency proceedings are pending or contemplated by or, to the best of Trustor's knowledge, threatened against Trustor; (c) all costs arising from construction of any Improvements, the performance of any labor and the purchase of all Tangible Collateral and Improvements have been or shall be paid when due (subject to the provisions of the Disbursement Agreement, the Mortgage Notes Indenture and this Deed of Trust); (d) the Land has direct access for ingress and egress to dedicated street(s); (e) Trustor shall at all times conduct and operate the Trust Estate in a manner so as not to lose, or permit its affiliate to lose, the right to conduct gaming activities at the Project; (f) no material part of the Trust Estate has been damaged, destroyed, condemned or abandoned, other than those portions of the Trust Estate that (i) have been the subject of condemnation proceedings that have resulted in the conveyance of such portion of the Trust Estate to the Trustor or (ii) have been demolished in furtherance of the development of the Project as contemplated under the Disbursement Agreement; (g) as of the date hereof, no part of the Trust Estate is the subject of condemnation proceedings and Trustor has no knowledge of any contemplated or pending condemnation proceeding with respect to any portion of the Trust Estate; and (h) Trustor acknowledges and agrees that it presently may use, and in the past may have used, one or more of the trade or fictitious names, "Le Reve", "Wynn Collection", "Wynn Resorts" and "Desert Inn" and in each case variations thereof (collectively, the "**Enumerated Names**") in connection with the operation of the business at the Trust Estate, and Trustor further represents and warrants that the Enumerated Names are the only such trade or fictitious names Trustor has so used. For all purposes under this Deed of Trust it shall be deemed that the term "Trustor" includes all trade or fictitious names that Wynn Resorts Holdings, LLC (or any successor or assign thereof) now or hereafter uses, or has in the past used, including, without limitation, the Enumerated Names, with the same force and effect as if this Deed of Trust had been executed in all such names (in addition to "Wynn Resorts Holdings, LLC").

1.3 Compliance with Legal Requirements. Except as provided in the Mortgage Notes Indenture, Trustor shall promptly, fully, and faithfully comply in all material respects with all Legal Requirements and shall cause all portions of the Trust Estate and its use and occupancy to fully comply in all material respects

remedial measures that are ordinary or extraordinary, foreseen or unforeseen, structural or nonstructural, or that interfere with the use or enjoyment of the Trust Estate.

1.4 Taxes. Except as otherwise permitted by the Mortgage Notes Indenture, (a) Trustor shall pay all Impositions as they become due and payable and shall deliver to Beneficiary promptly upon Beneficiary's request, evidence satisfactory to Beneficiary that the Impositions have been paid or are not delinquent; (b) Trustor shall not suffer to exist, permit or initiate the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Land as a single lien, except as may be required by law; and (c) in the event of the passage of any law deducting from the value of real property for the purposes of taxation any lien thereon, or changing in any way the taxation of deeds of trust or obligations secured thereby for state or local purposes, or the manner of collecting such taxes and imposing a tax, either directly or indirectly, on this Deed of Trust or the other Indenture Documents to which Trustor is a party, Trustor shall pay all such taxes.

1.5 Insurance.

(a) Hazard Insurance Requirements and Proceeds.

(1) *Hazard Insurance.* Trustor shall at its sole expense obtain for, deliver to, assign and maintain for the benefit of Beneficiary, during the term of this Deed of Trust, insurance policies insuring the Trust Estate and liability insurance policies, all in accordance with the requirements of the Mortgage Notes Indenture. Trustor shall pay promptly when due any premiums on such insurance policies and on any renewals thereof. In the event of the foreclosure of this Deed of Trust or any other transfer of title to the Trust Estate in partial or complete extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of Beneficiary in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

(2) *Handling of Proceeds.* All Proceeds from any insurance policies shall be collected, held, handled and disbursed in accordance with the provisions of the Mortgage Notes Indenture and the Disbursement Agreement (while in effect). All proceeds of insurance allocable to Trustor, as owner of the Site, and attributable to business interruption insurance shall be collected, held, handled and disbursed in accordance with the provisions of the Mortgage Notes Indenture and the Disbursement Agreement. Any such proceeds disbursed to Beneficiary shall be applied to pay amounts then due and payable under this Deed of Trust. The balance shall be retained by Beneficiary or its designee in an interest bearing or other investment account approved by Beneficiary, which account Trustor hereby pledges to Beneficiary to secure the Obligations. Disbursements shall be permitted from such account to pay expenses reasonably incurred by Trustor in owning and operating the Trust Estate, as reasonably approved by Beneficiary.

(b) Compliance with Insurance Policies. Trustor shall not violate or permit to be violated any of the conditions or provisions of any policy of insurance required by the Mortgage Notes Indenture or this Deed of Trust and Trustor shall so perform and satisfy the requirements of the companies writing such policies that, at all times, companies of good standing shall be willing to write and/or continue such insurance. Trustor further covenants to promptly send to Beneficiary all notices relating to any violation of such policies or otherwise affecting Trustor's insurance coverage or ability to obtain and maintain such insurance coverage.

1.6 Condemnation. Beneficiary is hereby authorized, at its option, to commence, appear in and prosecute in its own or Trustor's name any action or proceeding relating to any condemnation and to settle or compromise any claim in connection therewith, and Trustor hereby appoints Beneficiary as its attorney-in-fact to take any action in Trustor's name pursuant to Beneficiary's rights hereunder. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Trust Estate or any portion thereof, Trustor shall notify the Trustee and Beneficiary of the pendency of such proceedings. Trustor from time to time shall execute and deliver to Beneficiary all instruments requested by it to permit such participation; provided, however, that such instruments shall be deemed as supplemental to the foregoing grant of permission to Trustee and Beneficiary, and unless otherwise required, the foregoing permission shall, without more, be deemed sufficient to permit Trustee and/or Beneficiary to participate in such proceedings on behalf of Trustor. All such compensation awards, damages, claims, rights of action and Proceeds, and any other payments or relief, and the right thereto, are, whether paid to Beneficiary or Trustor or a third party trustee, included in the Trust Estate. Beneficiary, after deducting therefrom all its expenses, including reasonable attorneys fees, shall apply all Proceeds paid directly to it in accordance with the provisions of the Mortgage Notes Indenture. All Proceeds paid directly to the Trustor shall be applied, if received by Trustor prior to the Final Completion Date, in accordance with the Disbursement Agreement and, if received on or after the Final Completion Date, in accordance with the Mortgage Notes Indenture. To the extent that any condemnation proceeds are not required to be applied towards restoration of the improvements upon the Site, then Beneficiary shall have the right to apply said condemnation proceeds towards repayment of the Obligations. Trustor hereby waives any rights it may have under NRS 37.115, as amended or recodified from time to time.

1.7 Care of Trust Estate.

(a) Trustor shall preserve and maintain the Trust Estate in good condition and repair. Trustor shall not permit, commit or suffer to exist any waste, impairment or deterioration of the Trust Estate or of any part thereof that in any manner materially impairs Beneficiary's security hereunder and shall not take any action which will increase the risk of fire or other hazard to the Trust Estate or to any part thereof.

(b) Except for Permitted Dispositions, no material part of the Improvements or Tangible Collateral that are part of the Trust Estate shall be removed, demolished or materially altered, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld or delayed. Trustor shall have the right, without such consent, to remove and dispose of free from the lien of this Deed of Trust any part of the Improvements or Tangible Collateral that are part of the Trust Estate as from time to time may become worn out or obsolete or otherwise not useful in connection with the operation of the Trust Estate, provided that either (i) such removal or disposition does not materially affect the value of the Trust Estate or (ii) prior to or promptly following such removal, any such property shall be replaced with other property of substantially equal utility and of a value at least substantially equal to that of the replaced property when first acquired and free from any security interest of any other person (subject only to Permitted Liens), and by such removal and replacement Trustor shall be deemed to have subjected such replacement property to the lien of this Deed of Trust.

(c) Notwithstanding the foregoing provisions of this *Section 1.7*, the Trustor may develop the Project in the manner contemplated by the Disbursement Agreement, the Mortgage Notes Indenture and the other Indenture Documents.

1.8 *Leases.*

(a) Trustor represents, warrants and covenants that:

(i) except for the assignment effected hereby and in the other Financing Agreements, Trustor has not executed any assignment or pledge of any of the Space Leases, the Rents, or of Trustor's right, title and interest in the same; and

(ii) this Deed of Trust does not and will not constitute a violation or default under any Space Lease, and is and shall at all times constitute a valid lien on Trustor's interests in the Space Leases.

(b) Trustor shall not enter into any Space Lease or any modifications or amendments to any Space Lease, either orally or in writing, unless such Space Lease complies with the requirements of the Mortgage Notes Indenture and the Second Mortgage Notes Security Documents.

(c) After an Event of Default, upon the request of Beneficiary Trustor shall deliver to Beneficiary executed copies of all Space Leases.

1.9 *Further Encumbrance.*

(a) Trustor covenants that at all times prior to the discharge of the Obligations, except for Permitted Liens and Permitted Dispositions, Trustor shall neither make nor suffer to exist, nor enter into any agreement for, any sale, assignment, exchange, mortgage, transfer, Lien, hypothecation or encumbrance of all or any part of the Trust Estate, including, without limitation, the Rents. As used herein, "transfer" includes the actual transfer or other disposition, whether voluntary or involuntary, by law, or otherwise, except those transfers specifically permitted herein, provided, however, that "transfer" shall not include the granting of utility or other beneficial easements with respect to the Trust Estate which have been or are granted by Trustor and are reasonably necessary to the construction, maintenance or operation of the Project.

(b) Any Permitted Lien consisting of the lien of a deed of trust which is junior to the lien of the Indenture Documents (a "Subordinate Deed of Trust") shall be permitted hereunder so long as there shall have been delivered to Beneficiary, not less than thirty (30) days prior to the date thereof, a copy thereof which shall contain express covenants in form and substance satisfactory to Beneficiary to the effect that: (i) the Subordinate Deed of Trust is in all respects subject and subordinate to this Deed of Trust; (ii) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Trust Estate shall be named as a party defendant nor shall any action be taken with respect to the Trust Estate which would terminate any occupancy or tenancy of the Trust Estate, or any portion thereof, without the consent of Beneficiary; (iii) any Rents, if collected through a receiver or by the holder of the Subordinate Deed of Trust, shall be applied first to the obligations secured by this Deed of Trust, including principal and interest due and owing on or to become due and owing on the Notes or the other Indenture Documents, and then to the payment of maintenance expenses, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operation, and maintenance of the Trust Estate; and (iv) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust, prompt notice of the commencement thereof shall be given to Beneficiary.

(c) Trustor agrees that in the event the ownership of the Trust Estate or any part thereof becomes vested in a person other than Trustor, Beneficiary may, without notice to Trustor, deal in

any way with such successor or successors in interest with reference to this Deed of Trust, the Notes, the other Indenture Documents and other Obligations hereby secured without in any way vitiating or discharging Trustor's or any guarantor's, surety's or endorser's liability hereunder or upon the obligations hereby secured. No sale of the Trust Estate and no forbearance to any person with respect to this Deed of Trust and no extension to any person of the time for payment of the Obligations, and other sums hereby secured given by Beneficiary shall operate to release, discharge, modify, change or affect the original liability of Trustor, or such guarantor, surety or endorser either in whole or in part.

(d) If Trustor shall fail to make any payment required to be made by it under any FF&E Financing Agreement, except where Trustor is contesting such payment in good faith, then the Beneficiary shall be entitled to make such payment on Trustor's behalf and any and all sums so expended by the Beneficiary shall be secured by this Deed of Trust and shall be repaid by Trustor upon demand, together with interest thereon at the interest at the rate applicable to overdue principal set forth in the Mortgage Notes Indenture from the date of advance.

1.10 *Partial Releases of Trust Estate.*

(a) Trustor may from time to time make a Permitted Disposition including, but not limited to, (i) transferring a portion of the Trust Estate (including any temporary taking) to any person legally empowered to exercise the power of eminent domain, or pursuant to dedication agreements that are now in effect or entered into in the future in connection with the development of the Project, (ii) granting utility easements reasonably necessary or desirable for the construction and/or operation of the Project, which grant or transfer is for the benefit of the Trust Estate, or (iii) transferring all or a portion of the Trust Estate as permitted pursuant to the Disbursement Agreement or the other Indenture Documents. In each such case, Beneficiary shall execute and deliver any instruments necessary or appropriate to effectuate or confirm any such transfer or grant, free from the lien of this Deed of Trust, *provided, however*, that Beneficiary shall execute a lien release or subordination agreement, as appropriate, for matters described in clauses (i) and (iii) above only if:

(A) Such transfer, grant or release is not prohibited by the Mortgage Notes Indenture and all conditions precedent contained in the Mortgage Notes Indenture for such transfer, grant or release, if any, shall have been satisfied;

(B) Beneficiary and Trustee shall have received a counterpart of the instrument pursuant to which such transfer, grant or release is to be made, and each instrument which Beneficiary or Trustee is requested to execute in order to effectuate or confirm such transfer, grant or release; and

(C) Beneficiary and Trustee shall have received an Officer's Certificate if required pursuant to the Mortgage Notes Indenture.

(b) Any consideration received for a transfer to any person empowered to exercise the right of eminent domain shall be subject to *Section 1.6* hereof.

1.11 **Further Assurances.**

(a) At its sole cost and without expense to Trustee or Beneficiary, and subject in all events to compliance with the Nevada Gaming Laws and other applicable Legal Requirements, Trustor shall do, execute, acknowledge and deliver any and all such further acts, deeds, conveyances, notices, requests for notices, financing statements, continuation statements, certificates, assignments, notices of assignments, agreements, instruments and further assurances, and shall mark any chattel paper, deliver any chattel paper or instruments to Beneficiary and take any other actions that are necessary, prudent, or reasonably requested by Beneficiary or Trustee to perfect or continue the

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perfection and first priority of Beneficiary's security interest in the Trust Estate, to protect the Trust Estate against the rights, claims, or interests of third persons other than holders of Permitted Liens or to effect the purposes of this Deed of Trust, including the security agreement and the absolute assignment of Rents contained herein, or for the filing, registering or recording thereof.

(b) Trustor shall forthwith upon the execution and delivery of this Deed of Trust, and thereafter from time to time, cause this Deed of Trust and each instrument of further assurance to be filed, indexed, registered, recorded, given or delivered in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the title of Trustee and/or Beneficiary to, the Trust Estate.

1.12 **Security Agreement and Financing Statements.** Trustor (as debtor) hereby grants to Beneficiary (as creditor and secured party) a present and future security interest in all Tangible Collateral, Intangible Collateral, FF&E, Improvements, all other personal property now or hereafter owned or leased by Trustor or in which Trustor has or will have any interest, to the extent that such property constitutes a part of the Trust Estate (whether or not such items are stored on the premises or elsewhere), Proceeds of the foregoing comprising a portion of the Trust Estate and all products, substitutions, and accessions therefor and thereto, subject to Beneficiary's rights to treat such property as real property as herein provided (collectively, the "**Personal Property**"). Trustor shall execute and/or deliver any and all documents and writings, including without limitation financing statements pursuant to the UCC, as may be necessary or prudent to preserve and maintain the priority of the security interest granted hereby on property which may be deemed subject to the foregoing security agreement or as Beneficiary may reasonably request, and shall pay to Beneficiary on demand any reasonable expenses incurred by Beneficiary in connection with the preparation, execution and filing of any such documents. Trustor hereby authorizes and empowers Beneficiary to file, on Trustor's behalf, all financing statements and refiling and continuations thereof as advisable to create, preserve and protect said security interest. Trustor acknowledges and agrees that it is not authorized to, and will not, authenticate or file, or authorize the filing of, any financing statements or other record with respect to the Personal Property (including any amendments thereto, or continuation or termination statements thereof), except as permitted by the Indenture Documents. Trustor approves and ratifies any filing or recording of records made by or on behalf of Beneficiary in connection with the perfection of the security interest in favor of Beneficiary hereunder. This Deed of Trust constitutes both a real property deed of trust and a "security agreement," within the meaning of the UCC, and the Trust Estate includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Trust Estate. Trustor by executing and delivering this Deed of Trust has granted to Beneficiary, as security of the Obligations, a security interest in the Trust Estate.

(a) **Fixture Filing.** Without in any way limiting the generality of the immediately preceding paragraph or of the definition of the Trust Estate, this Deed of Trust constitutes a fixture filing under Sections 9-334 and 9-502 of the UCC (NRS 104.9334 and 104.9502). For such purposes, (i) the "debtor" is Trustor and its address is the address given for it in the initial paragraph of this Deed of Trust; (ii) the "secured party" is Beneficiary, and its address for the purpose of obtaining information is the address given for it in the initial paragraph of this Deed of Trust; (iii) the real estate to which the fixtures are or are to become attached is Trustor's interest in the Site; and (iv) the record owner of such real estate is Trustor.

(b) **Remedies.** This Deed of Trust shall be deemed a security agreement as defined in the UCC and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall include any or all of (i) those prescribed herein, and (ii) those available under applicable law, and (iii) those available under the UCC, all at Beneficiary's sole election. In addition, a photographic or other reproduction of this Deed of Trust shall be sufficient as a financing statement for filing wherever filing may be necessary to perfect or continue the security interest granted herein.

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(c) **Derogation of Real Property.** It is the intention of the parties that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in anyway derogating from or impairing the express declaration and intention of the parties hereto as hereinabove stated that everything used in connection with the production of income from the Trust Estate and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real property encumbered by this Deed of Trust irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. It is the intention of the parties that the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Trustor's interest as lessors in any present or future Space Lease or rights to Rents, shall never be construed as in anyway altering any of the rights of Beneficiary as determined by this Deed of Trust or impugning the priority of Beneficiary's real property lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of Beneficiary in the event any court or judge shall at any time hold with respect to the matters set forth in the foregoing clauses (1), (2) and (3) that notice of Beneficiary's priority of interest to be effective against a particular class of persons, including but not limited to, the federal government and any subdivisions or entity of the federal government, must be filed in the UCC records.

(d) **Priority; Permitted Financing of Tangible Collateral.** All Personal Property of any nature whatsoever which is subject to the provisions of this security agreement shall be purchased or obtained by Trustor in its name and free and clear of any lien or encumbrance, except for Permitted Liens and the lien hereof, for use only in connection with the business and operation of the Project, and shall be and at all times remain free and clear of any lease or similar arrangement, chattel financing, installment sale agreement, security agreement and any encumbrance of like kind, so that Beneficiary's security interest shall attach to and vest in Trustor for the benefit of Beneficiary, with the priority herein specified, immediately upon the installation or use of the Personal Property at the Site and Trustor warrants and represents that Beneficiary's security interest in the Personal Property is a validly attached and binding security interest, properly perfected and prior to all other security interests therein except as otherwise permitted in this Deed of Trust. The foregoing shall not be construed as limiting Trustor's rights to transfer Personal Property pursuant to Permitted Dispositions or to obtain releases of Personal Property from the Lien of this Deed of Trust pursuant to *Section 1.10* hereof.

(e) **Preservation of Contractual Rights of Collateral.** Trustor shall, prior to delinquency, default, or forfeiture, perform all obligations and satisfy all material conditions required on its part to be satisfied to preserve its rights and privileges under any contract, lease, license, permit, or other authorization (i) under which it holds any Tangible Collateral or (ii) which constitutes part of the Intangible Collateral, except where Trustor is contesting such obligations in good faith.

(f) **Removal of Collateral.** Except for damaged or obsolete Tangible Collateral which is either no longer usable or which is removed temporarily for repair or improvement or removed for replacement on the Trust Estate with Tangible Collateral of similar function or as otherwise permitted herein, none of the Tangible Collateral shall be removed from the Trust Estate without Beneficiary's prior written consent.

(g) **Change of Name.** Trustor shall not change its corporate (or other entity) or business name, or do business within the State of Nevada under any name other than such name, or any trade name(s) other than those as to which Trustor gives prior written notice to Beneficiary of its intent

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to use such trade names, or any other business names (if any) specified in the financing statements delivered to Beneficiary for filing in connection with the execution hereof, without, in each case, providing Beneficiary with the additional financing statement(s) and any other similar documents deemed reasonably necessary by Beneficiary to assure that its security interest remains perfected and of undiminished priority in all such Personal Property notwithstanding such name change.

1.13 **Assignment of Leases and Rents.** Subject to Nevada Gaming Laws and other applicable Legal Requirements, the assignment of Leases and Rents set out above in Granting Clause (G) shall constitute an absolute and present assignment to Beneficiary, subject to the license herein given to Trustor to collect the Rents, and shall be fully operative without any further action on the part of any party, and specifically Beneficiary shall be entitled upon the occurrence of an Event of Default hereunder to all Rents and to enter upon the Site and the Improvements to collect such Rents, provided, however, that Beneficiary shall not be obligated to take possession of the Trust Estate, or any portion thereof. The absolute assignment contained in Granting Clause (G) shall not be deemed to impose upon Beneficiary any of the obligations or duties of Trustor provided in any such Space Lease (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease in the event that any lessee shall have been joined as a party defendant in any action to foreclose this Deed of Trust and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Trust Estate or any part thereof).

1.14 **Expenses.**

(a) Trustor shall pay when due and payable all out-of-pocket costs, including without limitation, those reasonable appraisal fees, recording fees, taxes, abstract fees, title policy fees, escrow fees, attorneys' and paralegal fees, travel expenses, fees for inspecting architect(s) and engineer(s) and all other costs and expenses of every character which may hereafter be incurred by Beneficiary or any assignee of Beneficiary in connection with the preparation and execution of the Mortgage Notes Indenture and the other Indenture Documents to which Trustor is a party or instruments, agreements or documents of further assurance, the funding of the indebtedness secured hereby, and the enforcement of the Mortgage Notes Indenture or any other Indenture Document to which Trustor is a party. Other than costs associated with the enforcement of any Indenture Document, all such costs shall be itemized in reasonable detail; and

(b) Trustor shall, upon demand by Beneficiary, reimburse Beneficiary or any assignee of Beneficiary for all such reasonable expenses which have been incurred or which shall be incurred by it; and

(c) Trustor shall indemnify Beneficiary with respect to any transaction or matter in any way connected with any portion of the Trust Estate, this Deed of Trust, including any occurrence at, in, on, upon or about the Trust Estate (including any personal injury, loss of life, or property damage), or Trustor's use, occupancy, or operation of the Trust Estate, or the filing or enforcement of any mechanic's lien, or otherwise caused in whole or in part by any act, omission or negligence occurring on or at the Trust Estate, including failure to comply with any Legal Requirement or with any requirement of this Deed of Trust that applies to Trustor, except to the extent resulting from the gross negligence, fraud or willful misconduct of Trustee or Beneficiary. If Beneficiary is a party to any litigation as to which either Trustor is required to indemnify Beneficiary (or is made a defendant in any action of any kind against Trustor or relating directly or indirectly to any portion of the Trust Estate) then, at Beneficiary's option, Trustor shall undertake Beneficiary's defense, using counsel reasonably satisfactory to Beneficiary (and any settlement shall be subject to Beneficiary's consent, which consent shall not be unreasonably withheld), and in any case shall indemnify Beneficiary against such litigation. Trustor shall pay all reasonable costs and expenses, including reasonable legal costs, that Beneficiary pays or incurs in connection with any such litigation. Any amount payable under any indemnity in this Deed of Trust shall be a demand

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obligation, shall be added to, and become a part of, the secured obligations under this Deed of Trust, shall be secured by this Deed of Trust and shall bear interest at the interest rate specified in the Mortgage Notes Indenture. Such indemnity shall survive any release of this Deed of Trust and any foreclosure.

1.15 **Beneficiary's Cure of Trustor's Default.** If Trustor defaults hereunder in the payment of any tax, assessment, lien, encumbrance or other Imposition, in its obligation to furnish insurance hereunder, or in the performance or observance of any other covenant, condition or term of this Deed of Trust or any other

Financing Agreement or any FF&E Financing Agreement, Beneficiary may, but is not obligated to, to preserve its interest in the Trust Estate, perform or observe the same, and all payments made (whether such payments are regular or accelerated payments) and reasonable costs and expenses incurred or paid by Beneficiary in connection therewith shall become due and payable immediately. The amounts so incurred or paid by Beneficiary, together with interest thereon at the interest rate applicable to overdue principal set forth in the Mortgage Notes Indenture, from the date incurred until paid by Trustor, shall be added to the indebtedness and secured by the lien of this Deed of Trust. Beneficiary, is hereby empowered to enter and to authorize others to enter upon the Site or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Trustor or any person in possession holding under Trustor. No exercise of any rights under this Section 1.15 by Beneficiary shall cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

1.16 **Use of Land.** Trustor covenants that the Trust Estate shall be used and operated in a manner consistent with the requirements of the Indenture Documents.

1.17 **Compliance with Permitted Lien Agreements.** Trustor shall comply with each and every material obligation contained in any agreement pertaining to a Permitted Lien.

1.18 **Defense of Actions.** Trustor shall appear in and defend any action or proceeding affecting or purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and shall pay all costs and expenses, including cost of title search and insurance or other evidence of title, preparation of survey, and reasonable attorneys' fees in any such action or proceeding in which Beneficiary or Trustee may appear or may be joined as a party and in any suit brought by Beneficiary based upon or in connection with this Deed of Trust, the Mortgage Notes Indenture or any other Indenture Document to which Trustor is a party. Nothing contained in this section shall, however, limit the right of Beneficiary to appear in such action or proceeding with counsel of its own choice, either on its own behalf or on behalf of Trustor.

1.19 **Affiliates.**

(a) **Subject to Trust Deed.** Subject to compliance with the requirements of applicable Nevada Gaming Laws, Trustor shall cause all of its Affiliates in any way involved with the operation of the Trust Estate or the Project to observe the covenants and conditions of this Deed of Trust to the extent necessary to give the full intended effect to such covenants and conditions and to protect and preserve the security of Beneficiary hereunder.

(b) **Restriction on Use of Subsidiary or Affiliate.** Except as permitted under the Notes, the Mortgage Notes Indenture or the other Indenture Documents, Trustor shall not use any Affiliate in the operation of the Trust Estate or the Project if such use would in any way impair the security for the Obligations or circumvent any covenant or condition of this Deed of Trust, the Mortgage Notes Indenture or of any other Indenture Document.

1.20 **Title Insurance.** Promptly after the execution of this Deed of Trust, Trustor shall cause to be delivered to Trustee at Trustor's expense, one or more ALTA extended coverage Lender's Policies of Title Insurance showing fee title to the real property situated in the County of Clark, State of Nevada,

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more specifically described in Schedule A attached hereto, vested in Trustor and the lien of this Deed of Trust to be a perfected lien, prior to any and all encumbrances other than Permitted Encumbrances (excluding, however, any such non-Permitted Encumbrances for which the Title Insurer has agreed to provide an endorsement or affirmative coverage protecting the lien of this Deed of Trust against such non-Permitted Encumbrances).

ARTICLE TWO MORTGAGE NOTES INDENTURE PROVISIONS

2.1 **Interaction with Mortgage Notes Indenture**

(a) **Incorporation by Reference.** All terms, covenants, conditions, provisions and requirements of the Mortgage Notes Indenture are incorporated by reference in this Deed of Trust.

(b) **Conflicts.** In the event of any conflict or inconsistency between the provisions of this Deed of Trust and those of the Mortgage Notes Indenture or the Disbursement Agreement, the provisions of the Mortgage Notes Indenture or the Disbursement Agreement, as applicable, shall govern.

2.2 **Other Collateral.** This Deed of Trust is one of a number of security agreements delivered by or on behalf of Trustor and other Persons pursuant to the Mortgage Notes Indenture and the other Indenture Documents and securing the Obligations secured hereunder. All potential junior Lien claimants are placed on notice that, under any of the Indenture Documents (including a separate future unrecorded agreement between Trustor and Beneficiary), other collateral for the Obligations secured hereunder (*i.e.*, collateral other than the Trust Estate) may, under certain circumstances, be released without a corresponding reduction in the total principal amount secured by this Deed of Trust. Such a release would decrease the amount of collateral securing the same indebtedness, thereby increasing the burden on the remaining Trust Estate created and continued by this Deed of Trust. No such release shall impair the priority of the lien of this Deed of Trust. By accepting its interest in the Trust Estate, each and every junior Lien claimant shall be deemed to have acknowledged the possibility of, and consented to, any such release. Nothing in this paragraph shall impose any obligation upon Beneficiary.

2.3 **Subordination to Bank Deed of Trust.** Notwithstanding any other provision hereof, this Deed of Trust, including, without limitation, the security interest granted herein, the rights, power and remedies of the Trustee and the Beneficiary and the obligations of Trustor set forth herein, shall, to the extent provided in the Project Lenders Intercreditor Agreement, be subject and subordinate to the Bank Golf Course Deed of Trust.

ARTICLE THREE DEFAULTS

3.1 **Event of Default.** The term "Event of Default," wherever used in this Deed of Trust, shall mean any of (i) one or more of the events of default listed in the Mortgage Notes Indenture (ii) so long as the Disbursement Agreement is in effect, one or more of the events of default listed in the Disbursement Agreement (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) or (iii) if any "borrower" (as that term is defined in NRS 106.310) who may send a notice pursuant to NRS 106.380(1), (x) delivers, sends by mail or otherwise gives, or purports to deliver, send by mail or otherwise give, to a beneficiary under this Deeds of Trust (A) any notice of an election to terminate the operation of this Deed of Trust as security for any secured

NRS 106.380(3), or (z) causes this Deed of Trust, any secured obligation, or any Secured Party to be subject to NRS 106.380(2), 106.380(3) or 106.400.

ARTICLE FOUR REMEDIES

4.1 Acceleration of Maturity. If an Event of Default occurs, Beneficiary may (except that such acceleration shall be automatic if the Event of Default is caused by either Issuer's or Trustor's Bankruptcy), in accordance with the Indenture Documents, declare the Obligations to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become due and payable without demand, presentment, notice or other requirements of any kind (all of which Trustor waives) notwithstanding anything in this Deed of Trust or any Indenture Document or applicable law to the contrary.

4.2 Protective Advances. If either Issuer or Trustor fails to make any payment or perform any other obligation under the Notes, the Mortgage Notes Indenture or any other Financing Agreement, then without thereby limiting Beneficiary's other rights or remedies, waiving or releasing any of Trustor's obligations, or imposing any obligation on Beneficiary, Beneficiary may either advance any amount owing or perform any or all actions that Beneficiary considers necessary or appropriate to cure such default. All such advances shall constitute "Protective Advances" and shall bear interest thereon at the interest rate applicable to overdue principal set forth in the Mortgage Notes Indenture from the date incurred until paid by Trustor. No sums advanced or performance rendered by Beneficiary shall cure, or be deemed a waiver of any Event of Default.

4.3 Institution of Equity Proceedings. If an Event of Default occurs, Beneficiary may institute an action, suit or proceeding in equity for specific performance of this Deed of Trust, the Notes, the Mortgage Notes Indenture or any other Indenture Document, all of which shall be specifically enforceable by injunction or other equitable remedy. Trustor waives any defense based on laches or any applicable statute of limitations.

4.4 Beneficiary's Power of Enforcement.

(a) If an Event of Default occurs, Beneficiary shall be entitled, at its option and in its sole and absolute discretion, to prepare and record on its own behalf, or to deliver to Trustee for recording, if appropriate, written declaration of default and demand for sale and written Notice of Breach and Election to Sell (NRS 107.080(3)) (or other statutory notice) to cause the Trust Estate to be sold to satisfy the obligations hereof, and in the case of delivery to Trustee, Trustee shall cause said notice to be filed for record.

(b) After the lapse of such time as may then be required by law following the recordation of said Notice of Breach and Election to Sell, and notice of sale having been given as then required by law, including compliance with any applicable Nevada Gaming Laws, Trustee without demand on Trustor, shall sell the Trust Estate or any portion thereof at the time and place fixed by it in said notice, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder, of cash in lawful money of the United States payable at the time of sale. Trustee may, for any cause it deems expedient, postpone the sale of all or any portion of said property until it shall be completed and, in every case, notice of postponement shall be given by public announcement thereof at the time and place last appointed for the sale and from time to time thereafter Trustee may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall execute and deliver to the purchaser its Deed, Bill of Sale, or other instrument conveying said property so sold, but without any covenant or warranty, express or implied. The recitals in such instrument of conveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale.

(c) After deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including, without limitation, costs of evidence of title and reasonable attorneys' fees and other legal expenses of Trustee or Beneficiary in connection with a sale, Trustee shall apply the proceeds of such sale to payment of all sums expended under the terms hereof not then repaid, with accrued interest at the rate applicable to overdue principal set forth in the Mortgage Notes Indenture to the payment of all other sums then secured hereby and the remainder, if any, to the person or persons legally entitled thereto as provided in NRS 40.462.

(d) Subject to compliance with applicable Nevada Gaming Laws, if any Event of Default occurs, Beneficiary may, either with or without entry or taking possession of the Trust Estate, and without regard to whether or not the indebtedness and other sums secured hereby shall be due and without prejudice to the right of Beneficiary thereafter to bring an action or proceeding to foreclose or any other action for any default existing at the time such earlier action was commenced, proceed by any appropriate action or proceeding: (1) to enforce payment of the Obligations, to the extent permitted by law, or the performance of any term hereof or any other right; (2) to foreclose this Deed of Trust in any manner provided by law for the foreclosure of mortgages or deeds of trust on real property and to sell, as an entirety or in separate lots or parcels, the Trust Estate or any portion thereof pursuant to the laws of the State of Nevada or under the judgment or decree of a court or courts of competent jurisdiction, and Beneficiary shall be entitled to recover in any such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees in such amount as shall be awarded by the court; (3) to exercise any or all of the rights and remedies available to it under the Indenture Documents; and (4) to pursue any other remedy available to it. Beneficiary shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Beneficiary may determine.

(e) The remedies described in this Section 4.4 may be exercised with respect to all or any portion of the Personal Property, either simultaneously with the sale of any real property encumbered hereby or independent thereof. Beneficiary shall at any time be permitted to proceed with respect to all or any portion of the Personal Property in any manner permitted by the UCC. Trustor agrees that Beneficiary's inclusion of all or any portion of the Personal Property (and all personal property that is subject to a security interest in favor, or for the benefit, of Beneficiary) in a sale or other remedy exercised with respect to the real property encumbered hereby, as permitted by the UCC, is a commercially reasonable disposition of such property.

4.5 Beneficiary's Right to Enter and Take Possession, Operate and Apply Income.

(a) Subject to compliance with applicable Nevada Gaming Laws, if an Event of Default occurs, (i) Trustor, upon demand of Beneficiary, shall forthwith surrender to Beneficiary the actual possession and, if and to the extent permitted by law, Beneficiary itself, or by such officers or agents as it may appoint, may enter and take possession of all the Trust Estate including the Personal Property, without liability for trespass, damages or otherwise, and may exclude Trustor and its agents and employees wholly therefrom and may have joint access with Trustor to the books, papers and accounts of Trustor; and (ii) Trustor shall pay monthly in advance to Beneficiary on Beneficiary's entry into possession, or to any receiver appointed to collect the Rents, all Rents then due and payable.

(b) If Trustor shall for any reason fail to surrender or deliver the Trust Estate, the Personal Property or any part thereof after Beneficiary's demand, Beneficiary may obtain a judgment or decree conferring on Beneficiary or Trustee the right to immediate possession or requiring Trustor to deliver immediate possession of all or part of such property to Beneficiary or Trustee and Trustor hereby specifically consents to the entry of such judgment or decree. Trustor shall pay to Beneficiary or Trustee, upon demand, all reasonable costs and expenses of obtaining such judgment or decree and reasonable compensation to Beneficiary or Trustee, their attorneys and

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agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Deed of Trust.

(c) Subject to compliance with applicable Nevada Gaming Laws, upon every such entering upon or taking of possession, Beneficiary or Trustee may hold, store, use, operate, manage and control the Trust Estate and conduct the business thereof, and, from time to time in its sole and absolute discretion and without being under any duty to so act:

(1) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;

(2) insure or keep the Trust Estate insured;

(3) manage and operate the Trust Estate and exercise all the rights and powers of Trustor in their name or otherwise with respect to the same;

(4) enter into agreements with others to exercise the powers herein granted Beneficiary or Trustee, all as Beneficiary or Trustee from time to time may determine; and, subject to the absolute assignment of the Leases and Rents to Beneficiary, Beneficiary or Trustee may collect and receive all the Rents, including those past due as well as those accruing thereafter; and shall apply the monies so received by Beneficiary or Trustee in such priority as Beneficiary may determine to (1) the payment of interest and principal due and payable on the Notes or the other Indenture Documents, (2) the deposits for taxes and assessments and insurance premiums due, (3) the cost of insurance, taxes, assessments and other proper charges upon the Trust Estate or any part thereof; (4) the compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary or Trustee; and (5) any other charges or costs required to be paid by Trustor under the terms hereof; and

(5) rent or sublet the Trust Estate or any portion thereof for any purpose permitted by this Deed of Trust.

Beneficiary or Trustee shall surrender possession of the Trust Estate and the Personal Property to Trustor only when all that is due upon such interest and principal, tax and insurance deposits, and all amounts under any of the terms of the Mortgage Notes Indenture or this Deed of Trust, shall have been paid and all defaults made good. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.6 Leases. Beneficiary is authorized to foreclose this Deed of Trust subject to the rights of any tenants of the Trust Estate, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights shall not be, nor be asserted by Trustor to be, a defense to any proceedings instituted by Beneficiary to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Trust Estate, or any portion thereof. Unless otherwise agreed by Beneficiary in writing, all Space Leases executed subsequent to the date hereof, or any part thereof, shall be subordinate and inferior to the lien of this Deed of Trust; provided, however that (i) in accordance with the terms of the Indenture Documents, Beneficiary may be required to execute a non-disturbance and attornment agreement in connection with certain Space Leases; and (ii) from time to time Beneficiary may execute and record among the land records of the jurisdiction where this Deed of Trust is recorded, subordination statements with respect to such of said Space Leases as Beneficiary may designate in its sole discretion, whereby the Space Leases so designated by Beneficiary shall be made superior to the lien of this Deed of Trust for the term set forth in such subordination statement. From and after the recordation of such subordination statements, and for the respective periods as may be set forth therein, the Space Leases therein referred to shall be superior to the lien of this Deed of Trust and shall not be affected by any foreclosure hereof. All such Space Leases shall contain a provision to the effect that the Trustor and Space Lessee recognize the

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right of Beneficiary to elect and to effect such subordination of this Deed of Trust and consents thereto.

4.7 Purchase by Beneficiary. Upon any foreclosure sale (whether judicial or nonjudicial), Beneficiary may bid for and purchase the property subject to such sale and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

4.8 Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws. Trustor agrees to the full extent permitted by law that if an Event of Default occurs, neither Trustor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust or the absolute sale of the Trust Estate or any portion thereof or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof, and Trustor for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Trust Estate marshalled upon any foreclosure of the lien hereof and agrees that Trustee or any court having jurisdiction to foreclose such lien may sell the Trust Estate in part or as an entirety.

4.9 Receiver. If an Event of Default occurs, Beneficiary, to the extent permitted by law and subject to compliance with all applicable Nevada Gaming Laws, and without regard to the value, adequacy or occupancy of the security for the indebtedness and other sums secured hereby, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Trust Estate and to collect all Rents and apply the same as the court may direct, and such receiver may be appointed by any court of competent jurisdiction upon application by Beneficiary. Beneficiary may have a receiver appointed without notice to Trustor or any third party, and Beneficiary may waive any requirement that the receiver post a bond. Beneficiary shall have the power to designate and select the Person who shall serve as the receiver and to negotiate all terms and conditions under which such receiver shall serve. Any receiver appointed on Beneficiary's behalf may be an Affiliate of Beneficiary. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Deed of Trust. The right to enter and take possession of and to manage and operate the Trust Estate and to collect all Rents, whether by a receiver or otherwise, shall be cumulative to any other right or remedy available to Beneficiary under this Deed of Trust, the Mortgage Notes Indenture or the other Indenture Documents or otherwise available to Beneficiary and may be exercised concurrently therewith or independently thereof. Beneficiary shall be liable to account only for such Rents (including, without limitation, security deposits) actually received by Beneficiary, whether received pursuant to this section or any other provision hereof. Notwithstanding the appointment of any receiver or other custodian, Beneficiary shall be entitled as pledgee to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Deed of Trust to, Beneficiary.

4.10 Suits to Protect the Trust Estate. Beneficiary shall have the power and authority to institute and maintain any suits and proceedings as Beneficiary, in its sole and absolute discretion, may deem advisable (a) to prevent any impairment of the Trust Estate by any acts which may be unlawful or in violation of this Deed of Trust, (b) to preserve or protect its interest in the Trust Estate, or (c) to restrain the enforcement of or compliance with any legislation or other Legal Requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Beneficiary's interest.

4.11 Proofs of Claim. In the case of any receivership, Insolvency, Bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Trustor, or, to the extent the same would result in an Event of Default hereunder, any Subsidiary, or any guarantor, co-maker or endorser of any of Trustor's obligations, its creditors or its property, Beneficiary, to the extent

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permitted by law, shall be entitled to file such proofs of claim or other documents as it may deem to be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Trustor under the Indenture Documents, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Trustor after such date.

4.12 Trustor to Pay the Obligations on Any Default in Payment; Application of Monies by Beneficiary.

(a) In case of a foreclosure sale of all or any part of the Trust Estate and of the application of the proceeds of sale to the payment of the sums secured hereby, Beneficiary shall be entitled to enforce payment from Trustor of any additional amounts then remaining due and unpaid with respect to the Obligations and to recover judgment against Trustor for any portion thereof remaining unpaid, with interest at the rate applicable to overdue principal as set forth in the Mortgage Notes Indenture.

(b) Trustor hereby agrees to the extent permitted by law, that no recovery of any judgment by Beneficiary or other action by Beneficiary and no attachment or levy of any execution upon any Property of Trustor by Beneficiary (other than a foreclosure of the entire Trust Estate hereunder) shall in any way affect the Lien and security interest of this Deed of Trust upon the Trust Estate or any part thereof or any Lien, rights, powers or remedies of Beneficiary hereunder, but such Lien, rights, powers and remedies shall continue unimpaired as before.

(c) Any monies collected or received by Beneficiary under this *Section 4.12* shall be first applied to the payment of reasonable compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary, and the balance remaining shall be applied to the Obligations.

(d) The provisions of this section shall not be deemed to limit or otherwise modify the provisions of any guaranty of the indebtedness evidenced by the Notes or the other Indenture Documents.

4.13 Delay or Omission; No Waiver. No delay or omission of Beneficiary or any Second Mortgage Note Holder to exercise any right, power or remedy upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Beneficiary whether contained herein or in the other Indenture Documents or otherwise available to Beneficiary may be exercised from time to time and as often as may be deemed expedient by Beneficiary.

4.14 No Waiver of One Default to Affect Another. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If Beneficiary or the required percentage of the Second Mortgage Note Holders (as determined pursuant to the Mortgage Notes Indenture), to the extent applicable under the Mortgage Notes Indenture, (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Notes, the Mortgage Notes Indenture, this Deed of Trust, the Disbursement Agreement or any other Indenture Document; (d) releases any part of the Trust Estate from the lien or security interest of this Deed of Trust or any other instrument securing the Obligations; (e) consents to the filing of any map, plat or replat of the Site (to the extent such consent is required); (f) consents to the granting of any easement on the Site (to the extent such consent is required); or (g) makes or consents to any agreement changing the terms of this Deed of Trust or any other Indenture Document subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability of Trustor under the Mortgage Notes Indenture or any other Indenture Document or otherwise, or any subsequent purchaser of the Trust Estate or any part thereof or any maker, co-signer, surety or guarantor. No such act or omission shall preclude Beneficiary from exercising any right, power or privilege herein granted

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or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by Beneficiary, shall the lien or security interest of this Deed of Trust be altered thereby, except to the extent expressly

provided in any releases, maps, easements or subordinations described in clause (d), (e), (f) or (g) above of this Section 4.14. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Trust Estate, Beneficiary, without notice to any person, firm or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Trust Estate or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder, or waiving its right to declare such sale or transfer an Event of Default as provided herein. Notwithstanding anything to the contrary contained in this Deed of Trust or any other Indenture Document, (i) in the case of any non-monetary Event of Default, Beneficiary may continue to accept payments secured hereunder without thereby waiving the existence of such or any other Event of Default and (ii) in the case of any monetary Event of Default, Beneficiary may accept partial payments of any sums secured hereunder without thereby waiving the existence of such Event of Default if the partial payment is not sufficient to completely cure such Event of Default.

4.15 Discontinuance of Proceedings; Position of Parties Restored. If Beneficiary shall have proceeded to enforce any right or remedy under this Deed of Trust by foreclosure, entry of judgment or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Beneficiary, then and in every such case Trustor and Beneficiary shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Beneficiary shall continue as if no such proceedings had occurred or had been taken.

4.16 Remedies Cumulative. No right, power or remedy, including without limitation remedies with respect to any security for Obligations, conferred upon or reserved to Beneficiary by this Deed of Trust or any other Indenture Document is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or any other Indenture Document, now or hereafter existing at law, in equity or by statute, and Beneficiary shall be entitled to resort to such rights, powers, remedies or security as Beneficiary shall in its sole and absolute discretion deem advisable.

4.17 Interest After Event of Default. If an Event of Default shall have occurred and is continuing, all sums outstanding and unpaid under the Obligations shall, at Beneficiary's option, bear interest at the rate applicable to overdue principal set forth in the Mortgage Notes Indenture until such Event of Default has been cured. Trustor's obligation to pay such interest shall be secured by this Deed of Trust.

4.18 Foreclosure; Expenses of Litigation. If Trustee forecloses, reasonable attorneys' fees for services in the supervision of said foreclosure proceeding shall be allowed to the Trustee and Beneficiary as part of the foreclosure costs. In the event of foreclosure of the lien hereof, there shall be allowed and included as additional indebtedness all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after foreclosure sale or entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and guarantees, and similar data and assurances with respect to title as Beneficiary may deem reasonably advisable either to prosecute such suit or to evidence to a bidder at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Trust Estate or any portion thereof. All expenditures and expenses of the nature in this section mentioned, and such expenses and fees as may be incurred in the protection of the Trust Estate and the maintenance of the lien and security interest of this Deed of Trust, including the fees of any attorney employed by Beneficiary in any litigation or proceeding affecting this Deed of Trust, the Mortgage Notes Indenture or any other Indenture Document, the Trust Estate or

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any portion thereof, including, without limitation, civil, probate, appellate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Trustor, with interest thereon at the rate applicable to overdue principal set forth in the Mortgage Notes Indenture, and shall be secured by this Deed of Trust. Trustee waives its right to any statutory fee in connection with any judicial or nonjudicial foreclosure of the lien hereof and agrees to accept a reasonable fee for such services.

4.19 Deficiency Judgments. If after foreclosure of this Deed of Trust or Trustee's sale hereunder, there shall remain any deficiency with respect to any Obligations, and Beneficiary shall institute any proceedings to recover such deficiency or deficiencies, all such amounts shall continue to bear interest at the rate applicable to overdue principal set forth in the Mortgage Notes Indenture. Trustor waives any defense to Beneficiary's recovery against Trustor of any deficiency after any foreclosure sale of the Trust Estate. Trustor expressly waives any defense or benefits that may be derived from any statute granting Trustor any defense to any such recovery by Beneficiary. In addition, Beneficiary and Trustee shall be entitled to recovery of all of their reasonable costs and expenditures (including without limitation any court imposed costs) in connection with such proceedings, including their reasonable attorneys' fees, appraisal fees and the other costs, fees and expenditures referred to in Section 4.18 above. This provision shall survive any foreclosure or sale of the Trust Estate, any portion thereof and/or the extinguishment of the lien hereof.

4.20 Waiver of Jury Trial. Beneficiary and Trustor each waive any right to have a jury participate in resolving any dispute whether sounding in contract, tort or otherwise arising out of, connected with, related to or incidental to the relationship established between them in connection with the Obligations. Any such disputes shall be resolved in a bench trial without a jury.

4.21 Exculpation of Beneficiary. The acceptance by Beneficiary of the assignment contained herein with all of the rights, powers, privileges and authority created hereby shall not, prior to entry upon and taking possession of the Trust Estate by Beneficiary, be deemed or construed to make Beneficiary a "mortgagee in possession"; nor thereafter or at any time or in any event obligate Beneficiary to appear in or defend any action or proceeding relating to the Space Leases, the Rents or the Trust Estate, or to take any action hereunder or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under any Space Lease or to assume any obligation or responsibility for any security deposits or other deposits except to the extent such deposits are actually received by Beneficiary, nor shall Beneficiary, prior to such entry and taking, be liable in any way for any injury or damage to person or property sustained by any Person in or about the Trust Estate.

**ARTICLE FIVE
RIGHTS AND RESPONSIBILITIES OF TRUSTEE;
OTHER PROVISIONS RELATING TO TRUSTEE**

Notwithstanding anything to the contrary in this Deed of Trust, Trustor and Beneficiary agree as follows.

5.1 Exercise of Remedies by Trustee. To the extent that this Deed of Trust or applicable law, including all applicable Nevada Gaming Laws, authorizes or empowers, or does not require approval for, Beneficiary to exercise any remedies set forth in Article Four hereof or otherwise, or perform any acts in connection therewith, Trustee (but not to the exclusion of Beneficiary unless so required under the law of the State of Nevada) shall have the power to exercise any or all

such remedies, and to perform any acts provided for in this Deed of Trust in connection therewith, all for the benefit of Beneficiary and on Beneficiary's behalf in accordance with applicable law of the State of Nevada. In connection therewith, Trustee: (a) shall not exercise, or waive the exercise of, any of Beneficiary's remedies (other than any rights of Trustee to any indemnity or reimbursement), except at Beneficiary's request, and (b) shall exercise, or waive the exercise of, any or all of Beneficiary's remedies at Beneficiary's request, and in accordance with Beneficiary's directions as to the manner of such exercise

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or waiver. Trustee may, however, decline to follow Beneficiary's request or direction if Trustee shall be advised by counsel that the action or proceeding, or manner thereof, so directed may not lawfully be taken or waived.

5.2 Rights and Privileges of Trustee. To the extent that this Deed of Trust requires Trustor to indemnify Beneficiary or reimburse Beneficiary for any expenditures Beneficiary may incur, Trustee shall be entitled to the same indemnity and the same rights to reimbursement of expenses as Beneficiary, subject to such limitations and conditions as would apply in the case of Beneficiary. To the extent that this Deed of Trust negates or limits Beneficiary's liability as to any matter, Trustee shall be entitled to the same negation or limitation of liability. To the extent that Trustor, pursuant to this Deed of Trust, appoints Beneficiary as Trustor's attorney in fact for any purpose, Beneficiary or (when so instructed by Beneficiary) Trustee shall be entitled to act on Trustor's behalf without joinder or confirmation by the other.

5.3 Resignation or Replacement of Trustee. Trustee may resign by an instrument in writing addressed to Beneficiary, and Trustee may be removed at any time with or without cause (i.e., in Beneficiary's sole and absolute discretion) by an instrument in writing executed by Beneficiary. In case of the death, resignation, removal or disqualification of Trustee or if for any reason Beneficiary shall deem it desirable to appoint a substitute, successor or replacement Trustee to act instead of Trustee originally named (or in place of any substitute, successor or replacement Trustee), then Beneficiary shall have the right and is hereby authorized and empowered to appoint a successor, substitute or replacement Trustee, without any formality other than appointment and designation in writing executed by Beneficiary, which instrument shall be recorded in the Office of the Recorder of Clark County, Nevada. The law of the State of Nevada (including, without limitation, the Nevada Gaming Laws) shall govern the qualifications of any Trustee. The authority conferred upon Trustee by this Deed of Trust shall automatically extend to any and all other successor, substitute and replacement Trustee(s) successively until the obligations secured hereunder have been paid in full or the Trust Estate has been sold hereunder or released in accordance with the provisions of the Mortgage Notes Indenture and the other Indenture Documents. Beneficiary's written appointment and designation of any Trustee shall be full evidence of Beneficiary's right and authority to make the same and of all facts therein recited. No confirmation, authorization, approval or other action by Trustor shall be required in connection with any resignation or other replacement of Trustee.

5.4 Authority of Beneficiary. If Beneficiary is a banking corporation, state banking corporation or a national banking association and the instrument of appointment of any successor or replacement Trustee is executed on Beneficiary's behalf by an officer of such corporation, state banking corporation or national banking association, then such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of Beneficiary.

5.5 Effect of Appointment of Successor Trustee. Upon the appointment and designation of any successor, substitute or replacement Trustee, and subject to compliance with applicable Nevada Gaming Laws and other applicable laws, Trustee's entire estate and title in the Trust Estate shall vest in the designated successor, substitute or replacement Trustee. Such successor, substitute or replacement Trustee shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon Trustee. All references herein to Trustee shall be deemed to refer to Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder.

5.6 Confirmation of Transfer and Succession. Upon the written request of Beneficiary or of any successor, substitute or replacement Trustee, any former Trustee ceasing to act shall execute and deliver an instrument transferring to such successor, substitute or replacement Trustee all of the right, title, estate and interest in the Trust Estate of Trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon Trustee, and shall duly assign, transfer and

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deliver all properties and moneys held by said Trustee hereunder to said successor, substitute or replacement Trustee.

5.7 Exculpation. Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or otherwise be responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence, willful misconduct or knowing violation of law. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law). Trustee shall be under no liability for interest on any moneys received by it hereunder.

5.8 Endorsement and Execution of Documents. Upon Beneficiary's written request, Trustee shall, without liability or notice to Trustor, execute, consent to, or join in any instrument or agreement in connection with or necessary to effectuate the purposes of the Mortgage Notes Indenture and the other Indenture Documents. Trustor hereby irrevocably designates Trustee as its attorney in fact to execute, acknowledge and deliver, on Trustor's behalf and in Trustor's name, all instruments or agreements necessary to implement any provision(s) of this Deed of Trust or to further perfect the lien created by this Deed of Trust on the Trust Estate. This power of attorney shall be deemed to be coupled with an interest and shall survive any disability of Trustor.

5.9 Multiple Trustees. If Beneficiary appoints multiple trustees, then any Trustee, individually, may exercise all powers granted to Trustee under this instrument, without the need for action by any other Trustee(s).

5.10 Terms of Trustee's Acceptance. Trustee accepts the trust created by this Deed of Trust upon the following terms and conditions:

(a) **Delegation.** Trustee may exercise any of its powers through appointment of attorney(s) in fact or agents.

(b) **Counsel.** Trustee may select and employ legal counsel (including any law firm representing Beneficiary). Trustor shall reimburse all reasonable legal fees and expenses that Trustee may thereby incur.

(c) **Security.** Trustee shall be under no obligation to take any action upon any Event of Default unless furnished security or indemnity, in form satisfactory to Trustee, against costs, expenses, and liabilities that Trustee may incur.

(d) **Costs and Expenses.** Trustor shall reimburse Trustee, as part of the Obligations secured hereunder, for all reasonable disbursements and expenses (including reasonable legal fees and expenses) incurred by reason of and as provided for in this Deed of Trust, including any of the foregoing incurred in Trustee's administering and executing the trust created by this Deed of Trust, in complying with all applicable Nevada Gaming Laws and performing Trustee's duties and exercising Trustee's powers under this Deed of Trust.

(e) **Release.** Upon full and indefeasible payment and performance of the Obligations secured hereunder, Beneficiary shall request that Trustee release this Deed of Trust. Upon receipt of such request Trustee shall release this Deed of Trust to Trustor. Trustor shall pay all costs of recordation, if any.

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ARTICLE SIX MISCELLANEOUS PROVISIONS

6.1 **Heirs, Successors and Assigns Included in Parties.** Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included, and subject to the limitations set forth in Section 1.9, all covenants and agreements contained in this Deed of Trust, by or on behalf of Trustor or Beneficiary shall bind and inure to the benefit of its heirs, successors and assigns, whether so expressed or not.

6.2 **Addresses for Notices, Etc.** Any notice, report, demand or other instrument authorized or required to be given or furnished under this Deed of Trust to Trustor or Beneficiary shall be deemed given or furnished (i) when addressed to the party intended to receive the same, at the address of such party set forth below, and delivered by hand at such address or (ii) three (3) days after the same is deposited in the United States mail as first class certified mail, return receipt requested, postage paid, whether or not the same is actually received by such party:

Beneficiary: Wells Fargo Bank, National Association
MAC N9303-110
Sixth & Marquette
Minneapolis, MN 55479
Attn.: Michael Slade

Trustor: Wynn Resorts Holdings, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Legal Department

With a copy to: Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Attn: C. Kevin McGeehan

Trustee: Nevada Title Company
2500 North Buffalo, Suite 150
Las Vegas, Nevada 89128
Attn: Robbie Graham

6.3 **Change of Notice Address.** Any Person may change the address to which any such notice, report, demand or other instrument is to be delivered or mailed to that person, by furnishing written notice of such change to the other parties, but no such notice of change shall be effective unless and until received by such other parties.

6.4 **Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Deed of Trust are for convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

6.5 **Invalid Provisions to Affect No Others.** In the event that any of the covenants, agreements, terms or provisions contained herein or in the Notes, the Mortgage Notes Indenture or any other Indenture Document shall be invalid, illegal or unenforceable in any respect, the validity of the lien hereof and the remaining covenants, agreements, terms or provisions contained herein or in the Notes, the Mortgage Notes Indenture or any other Indenture Document shall be in no way affected, prejudiced or disturbed thereby. To the extent permitted by law, Trustor waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

6.6 **Changes and Priority Over Intervening Liens.** Neither this Deed of Trust nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an

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instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Trustor and Beneficiary relating to this Deed of Trust shall be superior to the rights of the holder of any intervening lien or encumbrance.

6.7 Estoppel Certificates. Within ten (10) Business Days after Beneficiary's written request, Trustor shall from time to time execute a certificate, in recordable form (an "Estoppel Certificate"), stating, except to the extent it would be inaccurate to so state: (a) the current amount of the Obligations secured hereunder and all elements thereof, including principal, interest, and all other elements; (b) that Trustor has no defense, offset, claim, counterclaim, right of recoupment, deduction, or reduction against any of the Obligations secured hereunder; (c) that neither the Mortgage Notes Indenture, this Deed of Trust nor any other Indenture Documents to which it is a party have been amended, whether orally or in writing; (d) that Trustor has no claims against Beneficiary of any kind; (e) that any power of attorney granted to Beneficiary is in full force and effect; and (f) such other matters relating to this Deed of Trust, the Mortgage Notes Indenture or any other Indenture Document to which it is a party and the relationship of Trustor and Beneficiary as Beneficiary shall request. In addition, the Estoppel Certificate shall set forth the reasons why it would be inaccurate to make any of the foregoing assurances.

6.8 Waiver of Setoff and Counterclaim. All Obligations shall be payable without setoff, counterclaim or any deduction whatsoever. Trustor hereby waives the right to assert a counterclaim (other than a compulsory counterclaim) in any action or proceeding brought against it by Beneficiary and/or any Second Mortgage Note Holder under the Indenture Documents, or arising out of or in any way connected with this Deed of Trust or the other Indenture Documents or the Obligations.

6.9 Governing Law. The Mortgage Notes Indenture and the Notes provide that they are governed by, and construed and enforced in accordance with, the laws of the State of New York. This Deed of Trust shall also be construed under and governed by the laws of the State of New York; provided, however, that (i) the terms and provisions of this Deed of Trust pertaining to the priority, perfection, enforcement or realization by Beneficiary of its respective rights and remedies under this Deed of Trust with respect to the Trust Estate shall be governed and construed and enforced in accordance with the internal laws of the State of Nevada (the "State") without giving effect to the conflicts-of-law rules and principles of the State; (ii) Trustor agrees that to the extent deficiency judgments are available under the laws of the State after a foreclosure (judicial or nonjudicial) of the Trust Estate, or any portion thereof, or any other realization thereon by Beneficiary or any Second Mortgage Note Holder under the Indenture Documents, Beneficiary or such Second Mortgage Note Holder, as the case may be, shall have the right to seek such a deficiency judgment against Trustor in the State; and (iii) Trustor agrees that if Beneficiary or any Second Mortgage Note Holder under the Indenture Documents obtains a deficiency judgment in another state against Trustor, then Beneficiary or such Second Mortgage Note Holder, as the case may be, shall have the right to enforce such judgment in the State to the extent permitted under the laws of the State, as well as in other states.

6.10 Required Notices. Trustor shall notify Beneficiary promptly of the occurrence of any of the following and shall immediately provide Beneficiary a copy of the notice or documents referred to: (i) receipt of notice from any Governmental Authority relating to all or any material part of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (ii) receipt of any notice from any tenant leasing all or any material portion of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iii) receipt of notice from the holder of any Permitted Lien relating to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iv) the commencement of any proceedings or the entry of any judgment, decree or order materially affecting all or any portion of the Trust Estate or which involve the potential liability of Trustor or its Affiliates in an amount in excess of \$25,000,000 (other than for personal injury actions and related property damage suits which are

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covered by such insurance); or (v) commencement of any judicial or administrative proceedings or the entry of any judgment, decree or order by or against or otherwise affecting Trustor or any Affiliate of Trustor, a material portion of the Trust Estate, or a material portion of the Personal Property, or any other action by any creditor or lessor thereof as a result of any default under the terms of any lease.

6.11 Reconveyance. Upon written request of Trustor when the Obligations secured hereby have been satisfied in full, Beneficiary shall cause Trustee to reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

6.12 Attorneys' Fees. Without limiting any other provision contained herein, Trustor agrees to pay all costs of Beneficiary or Trustee incurred in connection with the enforcement of this Deed of Trust, the Mortgage Notes Indenture or the other Indenture Documents to which it is a party, including without limitation all reasonable attorneys' fees whether or not suit is commenced, and including, without limitation, fees incurred in connection with any probate, appellate, bankruptcy, deficiency or any other litigation proceedings, all of which sums shall be secured hereby.

6.13 Late Charges. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to collect any late charge thereon or interest thereon at the interest rate on the Notes or as otherwise specified in the Mortgage Notes Indenture, if so provided, not then paid or its right either to require prompt payment when due of all other sums so secured or to declare default for failure to pay any amounts not so paid.

6.14 Cost of Accounting. Trustor shall pay to Beneficiary, for and on account of the preparation and rendition of any accounting, which Trustor may be entitled to require under any law or statute now or hereafter providing therefor, the reasonable costs thereof.

6.15 Right of Entry. Subject to compliance with applicable Nevada Gaming Laws, Beneficiary may at any reasonable time or times and on reasonable prior written notice to Trustor make or cause to be made entry upon and inspections of the Trust Estate or any part thereof in person or by agent.

6.16 Corrections. Trustor shall, upon request of Beneficiary or Trustee, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust (including, but not limited to, in the exhibits and schedules attached hereto) or in the execution or acknowledgement hereof, and shall execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Trustee to carry out more effectively the purposes of this Deed of Trust, to subject to the lien and security interest hereby created any of Trustor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.

6.17 Statute of Limitations. To the fullest extent allowed by the law, the right to plead, use or assert any statute of limitations as a plea or defense or bar of any kind, or for any purpose, to any debt, demand or obligation secured or to be secured hereby, or to any complaint or other pleading or proceeding filed, instituted or maintained for the purpose of enforcing this Deed of Trust or any rights hereunder, is hereby waived by Trustor.

6.18 **Subrogation.** Should the proceeds of any Note or advance made by Beneficiary or any Second Mortgage Note Holder under the Mortgage Notes Indenture, repayment of which is hereby secured, or any part thereof, or any amount paid out or advanced by Beneficiary or any Second Mortgage Note Holder under the Mortgage Notes Indenture, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior or superior lien or encumbrance upon the Trust Estate, or any part thereof, then, as additional security hereunder, Trustee, on behalf of Beneficiary, shall be subrogated to any and all rights, superior titles, liens, and equities owned or claimed by any owner or holder of said outstanding liens, charges, and indebtedness, however remote, regardless of whether said

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liens, charges, and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

6.19 **Joint and Several Liability.** All obligations of Trustor hereunder, if more than one, are joint and several. Recourse for deficiency after sale hereunder may be had against the property of Trustor, without, however, creating a present or other lien or charge thereon.

6.20 **Homestead.** Trustor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Trust Estate as against the collection of the Obligations, or any part hereof.

6.21 **Context.** In this Deed of Trust, whenever the context so requires, the neuter includes the masculine and feminine, and the singular including the plural, and vice versa.

6.22 **Time.** Time is of the essence of each and every term, covenant and condition hereof. Unless otherwise specified herein, any reference to "days" in this Deed of Trust shall be deemed to mean "calendar days."

6.23 **Interpretation.** As used in this Deed of Trust unless the context clearly requires otherwise: The terms "herein" or "hereunder" and similar terms without reference to a particular section shall refer to the entire Deed of Trust and not just to the section in which such terms appear; the term "lien" shall also mean a security interest, and the term "security interest" shall also mean a lien.

6.24 **Effect of NRS 107.030.** To the extent not inconsistent herewith, the provisions of NRS 107.030 (1), (2) (in amounts hereinabove provided for), (3), (4) (with interest at the default rate provided for under the Mortgage Notes Indenture), (5), (6), (7) (reasonable), (8) and (9) are included herein by reference and made part of this Deed of Trust.

6.25 **Amendments.** This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought and only as permitted by the provisions of the Mortgage Notes Indenture.

6.26 **No Conflicts.** In the event that any of the provisions contained here conflict with the Mortgage Notes Indenture, the provisions contained in the Mortgage Notes Indenture shall prevail.

ARTICLE SEVEN POWER OF ATTORNEY

7.1 **Grant of Power.** Subject to compliance with applicable Nevada Gaming Laws, Trustor irrevocably appoints Beneficiary and any successor thereto as its attorney-in-fact, with full power and authority, including the power of substitution, exercisable only during the continuance of an Event of Default to act for Trustor in its name, place and stead as hereinafter provided:

7.1.1 **Possession and Completion.** To take possession of the Site and the Project, remove all employees, contractors and Trustor therefrom, complete or attempt to complete the work of construction, and market, sell or lease the Site and the Project.

7.1.2 **Plans.** To make such additions, changes and corrections in the current Plans and Specifications as may be necessary, in Beneficiary's reasonable discretion, or as it deems proper to complete the Project.

7.1.3 **Employment of Others.** To employ such contractors, subcontractors, suppliers, architects, inspectors, consultants, property managers and other agents as Beneficiary, in its discretion, deems proper for the completion of the Project, for the protection or clearance of title to the Site or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

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7.1.4 **Security Guards.** To employ watchmen to protect the Site and the Project from injury.

7.1.5 **Compromise Claims.** To pay, settle or compromise all bills and claims then existing or thereafter arising against Trustor, which Beneficiary, in its discretion, deems proper for the protection or clearance of title to the Site or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.6 **Legal Proceedings.** To prosecute and defend all actions and proceedings in connection with the Site or the Project.

7.2 **Other Acts.** To execute, acknowledge and deliver all other instruments and documents in the name of Trustor that are necessary or desirable, to exercise Trustor's rights under all contracts concerning the Site or the Project, including, without limitation, under any Space Leases, and to do all other acts with respect to the Site or the Project that Trustor might do on its own behalf, as Beneficiary, in its reasonable discretion, deems proper.

ARTICLE EIGHT GUARANTOR PROVISIONS

8.1 Absolute and Unconditional Obligations. All rights of Beneficiary and all obligations of Trustor hereunder shall be absolute and unconditional irrespective of (i) any lack of validity, legality or enforceability of the Mortgage Notes Indenture, any Note, or any other Indenture Document, (ii) the failure of any Second Mortgage Note Holder or any holder of any of the Obligations to assert any claim or demand or to enforce any right or remedy against the Issuers, Trustor or any other Person (including any other guarantor of the Obligations) under the provisions of the Mortgage Notes Indenture, any Note, any other Indenture Document or otherwise or to exercise any right or remedy against any other guarantor of, or collateral securing, any of the Obligations, (iii) any change in the time, manner or place of payment of, or in any other term of, all of the Obligations, or any other extension or renewal of any Obligation, (iv) any reduction, limitation, impairment or termination of any of the Obligations for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to, and Trustor hereby waives any right to or claim of, any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, nongenuineness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, any Obligation, (v) any amendment to, rescission, waiver, or other modification of, or any consent to departure from, any of the terms of the Mortgage Notes Indenture, any Note or any other Indenture Document, (vi) any sale, exchange, release or surrender of, realization upon or other manner or order of dealing with any property by whomsoever pledged or mortgaged to secure or howsoever securing the Obligations or any liabilities or obligations (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof and/or any offset there against, (vii) the application of any sums by whomsoever paid or howsoever realized to any obligations and liabilities of the Issuers or any other Person to the Second Mortgage Note Holders under the Indenture Documents in the manner provided therein regardless of what obligations and liabilities remain unpaid, (viii) any action or failure to act in any manner referred to in this Deed of Trust which may deprive Trustor of its right to subrogation against the Issuers or any other Person to recover full indemnity for any payments or performances made pursuant to this Deed of Trust or of its right of contribution against any other party and (ix) any other circumstance which might otherwise constitute a defense available to, or a legal or equitable discharge of, the Issuers, any other Person, Trustor, any surety or any guarantor.

8.2 Waiver. Trustor hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including (i) any right to require Beneficiary or any other Second Mortgage Note Holder to proceed against the Issuers or any other Person or to proceed against or exhaust any security held by Beneficiary or any other Second Mortgage Note Holder at any time or to pursue any other remedy in

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Beneficiary's or any other Second Mortgage Note Holder's power before proceeding against Trustor, (ii) any defense that may arise by reason of the incapacity, lack of power or authority, death, dissolution, merger, termination or disability of the Issuers or any other Person or the failure of Beneficiary or any other Second Mortgage Note Holder to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of the Issuers or any other Person, (iii) demand, presentment, protest and notice of any kind except as provided herein, including notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of the Issuers, Beneficiary, any other Second Mortgage Note Holder, any endorser or creditor of the Issuers, Trustor or on the part of any other Person under this or any other instrument in connection with any obligation or evidence of indebtedness held by Beneficiary or any other Second Mortgage Note Holder as collateral or in connection with any Obligation, (iv) any defense based upon an election of remedies by Beneficiary or any other Second Mortgage Note Holder, including an election to proceed by non-judicial rather than judicial foreclosure, which destroys or otherwise impairs the subrogation rights of Trustor, the right of Trustor to proceed against the Issuers or any other Person for reimbursement, or both, (v) any defense based on any offset against any amounts which may be owed by any Person to Trustor for any reason whatsoever, (vi) any defense based on any act, failure to act, delay or omission whatsoever on the part of the Issuers or any other Person of the failure by the Issuers or any other Person to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the Indenture Documents, (vii) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal, provided, that, upon payment or performance in full of the Obligations, this Deed of Trust shall no longer be of any force or effect, (viii) any defense, setoff or counterclaim which may at any time be available to or asserted by the Issuers or any other Person against Beneficiary, any other Second Mortgage Note Holder or any other Person under the Indenture Documents, (ix) any duty on the part of Beneficiary or any other Second Mortgage Note Holder to disclose to Trustor any facts Beneficiary or any other Second Mortgage Note Holder may now or hereafter know about the Issuers or any other Person, regardless of whether Beneficiary or such Second Mortgage Note Holder have reason to believe that any such facts materially increase the risk beyond that which Trustor intends to assume, or have reason to believe that such facts are unknown to Trustor, or have a reasonable opportunity to communicate such facts to Trustor, since Trustor acknowledges that Trustor is fully responsible for being and keeping informed of the financial condition of the Issuers and any other Person liable for the Obligations and of all circumstances bearing on the risk of non-payment or non-performance of any obligations and liabilities hereby guaranteed, (x) the fact that Trustor may at any time in the future dispose of all or part of its direct or indirect interest in the Issuers or any other Person or otherwise cease to be an Affiliate of the Issuers or any other Person, as the case may be, (xi) any defense based on any change in the time, manner or place of any payment or performance under, or in any other term of, the Indenture Documents or any other amendment, renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of the Indenture Documents, (xii) any defense arising because of Beneficiary's or any other Second Mortgage Note Holder's election, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code, and (xiii) any defense based upon any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code. To the fullest extent permitted by NRS 40.485 (1) and (2), the provisions of NRS 40.430 are waived.

8.3 Net Worth Limitation. If, notwithstanding the representation and warranty set forth in Section 1.2(b) hereof or anything to the contrary herein, enforcement of the liability of Trustor under this Deed of Trust for the full amount of the Obligations would be an unlawful or voidable transfer under any applicable fraudulent conveyance or fraudulent transfer law or any comparable law, then the liability of Trustor hereunder shall be reduced to the highest amount for which such liability may then be enforced without giving rise to an unlawful or voidable transfer under any such law.

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QuickLinks

[DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING MADE BY WYNN RESORTS HOLDINGS, LLC,](#)

APNs: 162-16-511-008 and 162-16-510-001
through 006, inclusive

Recording requested by and recorded
counterparts should be returned to:

Sony Ben-Moshe, Esq.
Latham & Watkins
701 B Street, Suite 2100
San Diego, California 92101

Mail Property Tax Statements to:

Valvino Lamore, LLC
Legal Department
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

MADE BY

**VALVINO LAMORE, LLC, a Nevada limited liability company,
as Trustor,**

to

**Nevada Title Company,
a Nevada corporation,
as Trustee,
for the benefit of**

**WELLS FARGO BANK, NATIONAL ASSOCIATION,
in its capacity as the Mortgage Notes Indenture Trustee,
as Beneficiary**

THIS INSTRUMENT IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS OF CLARK COUNTY, NEVADA UNDER THE NAMES OF VALVINO LAMORE, LLC AS "DEBTOR" AND WELLS FARGO BANK, NATIONAL ASSOCIATION AS "SECURED PARTY." TRUSTOR'S ORGANIZATIONAL NUMBER IS NEVADA FILE NUMBER LLC3830-2000.

THIS INSTRUMENT IS A "CONSTRUCTION MORTGAGE" AS THAT TERM IS DEFINED IN SECTION 104.9334(8) OF THE NEVADA REVISED STATUTES AND SECURES AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT UPON LAND.

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**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (hereinafter called "**Deed of Trust**") is made and effective as of October 30, 2002, by VALVINO LAMORE, LLC, a Nevada limited liability company (together with all successors and assigns of the Trust Estate (as hereinafter defined), "**Trustor**"), whose address is 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109, to Nevada Title Company, a Nevada corporation, whose address is 2500 North Buffalo, Suite 150, Las Vegas, Nevada 89128, as Trustee ("**Trustee**"), for the benefit of WELLS FARGO BANK, NATIONAL ASSOCIATION ("**Beneficiary**"), in its capacity as the Mortgage Notes Indenture Trustee under that certain Indenture, dated as of even date herewith, among Trustor, Wynn Las Vegas, LLC, a Nevada limited liability company, Wynn Las Vegas Capital Corp., a Nevada corporation (Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp. being hereinafter referred to as the "**Issuers**"), Beneficiary and the other parties signatory thereto (as the same may be amended or modified from time to time, the "**Mortgage Notes Indenture**") pertaining to the 12% Mortgage Notes due 2010, issued by the Issuers in the aggregate principal amount of \$370,000,000 and pursuant to which Trustor, among other things, guarantees the payment and performance of the obligations of the Issuers under the Notes and the Mortgage Notes Indenture.

THIS INSTRUMENT SECURES FUTURE ADVANCES. THE MAXIMUM AMOUNT OF PRINCIPAL TO BE SECURED HEREBY IS \$370,000,000. THIS INSTRUMENT IS TO BE GOVERNED BY THE PROVISIONS OF NRS 106.300 THROUGH NRS 106.400 INCLUSIVE.

DEFINITIONS—As used in this Deed of Trust, the following terms have the meanings hereinafter set forth:

"**Accounts Receivable**" shall have the meaning set forth in Section 9-102 (NRS 104.9102) of the UCC for the term "account."

"**Appurtenant Rights**" means all and singular tenements, hereditaments, rights, reversions, remainders, development rights, privileges, benefits, easements (in gross or appurtenant), rights-of-way, licenses, gores or strips of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, and all appurtenances whatsoever and claims or demands of Trustor at law or in equity in any way belonging, benefiting, relating or appertaining to the Land, the Trustor, the Project, the airspace over the Land, the Improvements or any of the Trust Estate encumbered by this Deed of Trust, or which hereinafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Trustor.

"**Bankruptcy**" means, with respect to any Person, that (i) a court having jurisdiction in the Trust Estate shall have entered a decree or order for relief in respect of such Person in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order has not been stayed; or any other similar relief shall have been granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against such Person, under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the Trust Estate for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over such Person, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of such Person, for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of such Person, and any such event described in this clause (ii) shall continue for 60 days unless dismissed, bonded or discharged; or (iii) such Person shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect or shall consent to the entry of an order for relief

in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or such Person shall make any assignment for the benefit of creditors, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable or if the fair market value of its assets does not exceed its aggregate liabilities; or (iv) such Person shall, or the Board of Directors of such Person (or any committee thereof) shall, adopt any resolution or otherwise authorize any action to approve any of the actions referred to in clause (iii) above.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute thereto.

"**Business Day**" means any day that is not a Saturday, a Sunday or a day on which banking institutions in the State of Nevada or the City of New York are not required to be open.

"**Deed of Trust**" means this Deed of Trust as it may be amended, increased or modified from time to time.

"Disbursement Agreement" means that certain Master Disbursement Agreement dated as of even date herewith, among the Issuers, Beneficiary, Deutsche Bank Trust Company Americas, as the administrative agent for the lenders under a credit agreement entered into in connection with the financing of the Project and as disbursement agent, and the other parties signatory thereto, as the same may hereafter be amended or modified in accordance with its terms and the terms of the Mortgage Notes Indenture.

"Event of Default" has the meaning set forth in Section 3.1 hereof.

"FF&E" means all furniture, fixtures, equipment, appurtenances and personal property now or in the future contained in, used in connection with, attached to, or otherwise useful or convenient to the use, operation, or occupancy of, or placed on, but unattached to, any part of the Site or Improvements whether or not the same constitutes real property or fixtures in the State of Nevada, including all removable window and floor coverings, all furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator and escalator plants, cooking facilities, vacuum cleaning systems, public address and communications systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings, fixtures, and building materials, all gaming and financial equipment, computer equipment, calculators, adding machines, gaming tables, video game and slot machines, and any other electronic equipment of every nature used or located on any part of the Site or Improvements, together with all Venetian blinds, shades, draperies, drapery and curtain rods, brackets, bulbs, cleaning apparatus, mirrors, lamps, ornaments, cooling apparatus and equipment, ranges and ovens, garbage disposals, dishwashers, mantels, and any and all such property which is at any time installed in, affixed to or placed upon the Site or Improvements.

"FF&E Financing Agreement" means any financing agreement entered into by Trustor (i) the proceeds of which are used by Trustor for the acquisition or lease of FF&E, (ii) pursuant to which Trustor grants to the lender or lessor thereunder a security interest in the FF&E so acquired or leased and (iii) which is permitted by the Mortgage Notes Indenture.

"Governmental Authority" means any agency, authority, board, bureau, commission, department, office, public entity, or instrumentality of any nature whatsoever of the United States federal or foreign government, any state, province or any city or other political subdivision or otherwise, whether now or hereafter in existence, or any officer or official thereof, including, without limitation, any Nevada Gaming Authority.

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"Guaranty" means that certain Guarantee and Collateral Agreement dated as of even date herewith by Trustor and the other parties thereto for the benefit of Beneficiary on behalf of the Second Mortgage Note Holders.

"Imposition" means any taxes, assessments, water rates, sewer rates, maintenance charges, other governmental impositions and other charges now or hereafter levied or assessed or imposed against the Trust Estate or any part thereof.

"Improvements" means (1) all the buildings, structures, facilities and improvements of every nature whatsoever now or hereafter situated on the Site or any real property encumbered hereby, and (2) all fixtures, machinery, appliances, goods, building or other materials, equipment, including without limitation all gaming equipment and devices, and all machinery, equipment, engines, appliances and fixtures for generating or distributing air, water, heat, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse or garbage; all wall-beds, wall-safes, built-in furniture and installations, shelving, lockers, partitions, doorstops, vaults, motors, elevators, dumb-waiters, awnings, window shades, Venetian blinds, light fixtures, fire hoses and brackets and boxes for the same, fire sprinklers, alarm, surveillance and security systems, computers, drapes, drapery rods and brackets, mirrors, mantels, screens, linoleum, carpets and carpeting, plumbing, bathtubs, sinks, basins, pipes, faucets, water closets, laundry equipment, washers, dryers, ice-boxes and heating units; all kitchen and restaurant equipment, including but not limited to silverware, dishes, menus, cooking utensils, stoves, refrigerators, ovens, ranges, dishwashers, disposals, water heaters, incinerators, furniture, fixtures and furnishings, communication systems, and equipment; all cocktail lounge supplies, including but not limited to bars, glassware, bottles and tables used in connection with the Site; all chaise lounges, hot tubs, swimming pool heaters and equipment and all other recreational equipment (computerized and otherwise), beauty and barber equipment, and maintenance supplies used in connection with the Site; all amusement rides and attractions attached to the Site, all specifically designed installations and furnishings, and all furniture, furnishings and personal property of every nature whatsoever now or hereafter owned or leased by Trustor or in which Trustor has any rights or interest and located in or on, or attached to, or used or intended to be used or which are now or may hereafter be appropriated for use on or in connection with the operation of the Site or any real or personal property encumbered hereby or any other Improvements, or in connection with any construction being conducted or which may be conducted thereon, and all extensions, additions, accessions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing, and all of the right, title and interest of Trustor in and to any such property, which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and improvements and a part of the real property hereby encumbered.

"Indemnity Agreement" means that certain Indemnity Agreement dated as of even date herewith by Trustor for the benefit of Beneficiary and certain other indemnified parties named therein.

"Indenture Documents" means, collectively, the Mortgage Notes Indenture, the Notes, the Indemnity Agreement, the Second Mortgage Notes Security Documents, the Guaranty and the Collateral Documents.

"Insolvent" means with respect to any person or entity, that such person or entity shall be deemed to be insolvent if it shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable and/or if the fair market value of its assets does not exceed its aggregate liabilities.

"Intangible Collateral" means (a) the rights to use all names and all derivations thereof now or hereafter used by Trustor in connection with the Site or Improvements, including, without limitation, the name "Le Reve", including any variations thereon, together with the goodwill associated therewith, and all names, logos, and designs used by Trustor, or in connection with the Site or in which Trustor has rights, with the exclusive right to use such names, logos and designs wherever they are now or

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hereafter used in connection with the Project (or in connection with the marketing of the Project), and any and all other trade names, trademarks or service marks, whether or not registered, now or hereafter used in the operation of the Project, including, without limitation, any interest as a lessee, licensee or franchisee, and, in each case, together with the goodwill associated therewith; (b) subject to the absolute assignment contained herein, the Rents; (c) any and all books, records,

customer lists, concession agreements, supply or service contracts, licenses, permits, governmental approvals (to the extent such licenses, permits and approvals may be pledged under applicable law), signs, goodwill, casino and hotel credit and charge records, supplier lists, checking accounts, safe deposit boxes (excluding the contents of such deposit boxes owned by persons other than Trustor and its subsidiaries), cash, instruments, chattel papers, including inter-company notes and pledges, documents, unearned premiums, deposits, refunds, including but not limited to income tax refunds, prepaid expenses, rebates, tax and insurance escrow and impound accounts, if any, actions and rights in action, and all other claims, including without limitation condemnation awards and insurance proceeds, and all other contract rights and general intangibles resulting from or used in connection with the operation and occupancy of the Trust Estate and the Improvements and in which Trustor now or hereafter has rights; and (d) general intangibles, vacation license resort agreements or other time share license or right to use agreements, including without limitation all rents, issues, profits, income and maintenance fees resulting therefrom, whether any of the foregoing is now owned or hereafter acquired.

"Land" means the real property situated in the County of Clark, State of Nevada, more specifically described in *Schedule A* attached hereto and incorporated herein by reference, including any after acquired title thereto.

"Legal Requirements" means all applicable restrictive covenants, applicable zoning and subdivision ordinances and building codes, all applicable health and Environmental Laws and regulations, all applicable gaming laws and regulations, and all other applicable laws, ordinances, rules, regulations, judicial decisions, administrative orders, and other requirements of any Governmental Authority having jurisdiction over Trustor, the Trust Estate and/or any Affiliate of Trustor, in effect either at the time of execution of this Deed of Trust or at any time during the term hereof, including, without limitation, all Environmental Laws and Nevada Gaming Laws.

"Nevada Gaming License" means any gaming license necessary for the ownership, construction, maintenance, financing or operation of the Project, whether issued and/or required by Nevada Gaming Authorities, Nevada Gaming Laws or otherwise.

"Notes" means, collectively, those certain mortgage note(s) issued pursuant to the Mortgage Notes Indenture, as the same may be amended or replaced from time to time in accordance with its terms.

"NRS" means the Nevada Revised Statutes as in effect from time to time.

"Obligations" means (i) the payment and performance by the Issuers of each covenant and agreement of the Issuers contained in the Mortgage Notes Indenture, the Notes and the other Indenture Documents and (ii) the payment and performance by Trustor of each covenant and agreement of Trustor contained in this Deed of Trust, the Mortgage Notes Indenture, the Indemnity Agreement, the Guaranty and the other Indenture Documents.

"Permitted Dispositions" means (a) the sale, transfer, lease or other disposition of assets in the Trust Estate, in the ordinary course of business, of inventory held in the ordinary course of business (b) the dispositions set forth in *Section 1.10* hereof and (c) other sales, transfers, leases or other dispositions of assets in the Trust Estate, including entering into Space Leases; *provided* that, in each case, all applicable provisions of the Indenture Documents are complied with.

"Personal Property" has the meaning set forth in *Section 1.12* hereof.

"Proceeds" has the meaning assigned to it under the UCC and, in any event, shall include but not be limited to (i) any and all proceeds of any insurance (including without limitation property casualty and title insurance), indemnity, warranty or guaranty payable from time to time with respect to any of the Trust Estate; (ii) any and all proceeds in the form of accounts, security deposits, tax escrows (if any), down payments (to the extent the same may be pledged under applicable law), collections, contract rights, documents, instruments, chattel paper, liens and security instruments, guarantees or general intangibles relating in whole or in part to the Project and all rights and remedies of whatever kind or nature Trustor may hold or acquire for the purpose of securing or enforcing any obligation due Trustor thereunder; (iii) any and all payments in any form whatsoever made or due and payable from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Trust Estate by any Governmental Authority; (iv) subject to the absolute assignment contained herein, the Rents or other benefits arising out of, in connection with or pursuant to any Space Lease of the Trust Estate; and (v) any and all other amounts from time to time paid or payable in connection with any of the Trust Estate; *provided, however*, that the Trustor is not authorized to dispose of any of the Trust Estate unless such disposition is a Permitted Disposition.

"Project" means the resort-hotel-casino-mall complex proposed to be constructed in Clark County, Nevada as described in the Plans and Specifications and as applicable to the Land and the Improvements, as such Plans and Specifications may be amended pursuant to the Disbursement Agreement.

"Rents" means all rents, room revenues, income, receipts, issues, profits, revenues and maintenance fees, room, food and beverage revenues, license and concession fees, income, proceeds and other benefits to which Trustor may now or hereafter be entitled from the Site, the Improvements, the Space Leases or any property encumbered hereby or any business or other activity conducted by Trustor at the Site or the Improvements.

"Site" means the Land and the Appurtenant Rights.

"Space Leases" means any and all leases, subleases, lettings, licenses, concessions, operating agreements, management agreements, and all other agreements affecting the Trust Estate that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, that give any person the right to conduct its business on, or otherwise use, operate or occupy, all or any portion of the Site or Improvements and any leases, agreements or arrangements permitting anyone to enter upon or use any of the Trust Estate to extract or remove natural resources of any kind, together with all amendments, extensions, and renewals of the foregoing entered into in compliance with this Deed of Trust, together with all rental, occupancy, service, maintenance or any other similar agreements pertaining to use or occupation of, or the rendering of services at the Site, the Improvements or any part thereof.

"Space Lessee(s)" means any and all tenants, licensees, or other grantees of the Space Leases and any and all guarantors, sureties, endorsers or others having primary or secondary liability with respect to such Space Leases.

"Tangible Collateral" means all personal property, goods, equipment, supplies, building and other materials of every nature whatsoever and all other tangible personal property constituting a part or portion of the Project and/or used in the operation of the hotel, casino, restaurants, stores, parking facilities, observation tower and all other commercial operations on the Site or Improvements, including but not limited to communication systems, visual and electronic surveillance systems and transportation systems and not constituting a part of the real property subject to the real property lien of this Deed of Trust and including

all property and materials stored therein in which Trustor has an interest and all tools, utensils, food and beverage, liquor, uniforms, linens, housekeeping and maintenance supplies, vehicles, fuel, advertising and promotional material, blueprints, surveys, plans and other documents relating to the Site or Improvements, and all construction materials and all

furnishings, fixtures and equipment, including, but not limited to, all FF&E and all equipment and devices which are or are to be installed and used in connection with the operation of the Project, those items of furniture, fixtures and equipment which are to be purchased or leased by Trustor, machinery and any other item of personal property in which Trustor now or hereafter own or acquire an interest or right, and which are used or useful in the construction, operation, use and occupancy of the Project and all present and future right and interest of Trustor in and to any casino operator's agreement, license agreement or sublease agreement used in connection with the Site or the Improvements.

"Title Insurer" means Chicago Title Insurance Company.

"Trust Estate" means all of the property described in Granting Clauses (A) through (O) below, inclusive, and each item of property therein described, provided, however, that such term shall not include the property described in Granting Clause (P) below.

"UCC" means the Uniform Commercial Code in effect in the State of Nevada from time to time, NRS chapters 104 and 104A.

The following terms shall have the meaning assigned to such terms in the Disbursement Agreement:

**Bank Phase II Deed of Trust
Disbursement Agent
Environmental Laws
Financing Agreements
Nevada Gaming Authorities
Nevada Gaming Laws
Permitted Encumbrance
Plans and Specifications
Project Lenders Intercreditor Agreement
Second Mortgage Note Holders
Second Mortgage Notes Security Documents**

The following terms shall have the meaning assigned to such terms in the Mortgage Notes Indenture:

**Affiliate
Collateral Documents
Lien
Permitted Liens
Person**

In addition, any capitalized terms used in this Deed of Trust which are not otherwise defined herein shall have the meaning ascribed to such terms in the Disbursement Agreement and, if not defined therein, the meaning ascribed to such terms in the Mortgage Notes Indenture; *provided*, that upon termination of the Disbursement Agreement, any defined terms used herein having meanings given to such terms in the Disbursement Agreement shall continue to have the meanings given to such terms in the Disbursement Agreement immediately prior to such termination.

W I T N E S E T H:

IN CONSIDERATION OF TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION; THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, AND FOR THE PURPOSE OF SECURING in favor of Beneficiary (1) the Obligations; (2) the payment of such additional loans or advances as hereafter may be made to Trustor (individually or jointly and severally with any other Person) or its successors or assigns, when evidenced

by a promissory note or notes reciting that they are secured by this Deed of Trust; *provided, however*, that any and all future advances by Beneficiary to Trustor made for the improvement, protection or preservation of the Trust Estate, together with interest at the rate applicable to overdue principal set forth in the Mortgage Notes Indenture, shall be automatically secured hereby unless such a note or instrument evidencing such advances specifically recites that it is not intended to be secured hereby and (3) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof or to protect the security hereof (including Protective Advances as such term is defined in *Section 4.2* hereof), together with interest thereon as herein provided (without limiting the generality of the protections afforded by NRS Chapter 106, funds disbursed that, in the reasonable exercise of Beneficiary's judgment, are needed to complete Improvements to the Land or to protect Beneficiary's security in the Trust Estate are to be deemed obligatory advances hereunder and will be added to the total indebtedness secured by this Deed of Trust and such indebtedness shall be increased accordingly), Trustor, in consideration of the premises, and for the purposes aforesaid, does hereby ASSIGN, BARGAIN, CONVEY, PLEDGE, RELEASE, HYPOTHECATE, WARRANT, AND TRANSFER WITH POWER OF SALE UNTO TRUSTEE IN TRUST FOR THE BENEFIT OF BENEFICIARY AND THE SECOND MORTGAGE NOTE HOLDERS each of the following:

(A) The Land;

(B) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Improvements;

(C) TOGETHER WITH all Appurtenant Rights;

(D) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Tangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(E) TOGETHER WITH the Intangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(F) TOGETHER WITH (i) all the estate, right, title and interest of Trustor of, in and to all judgments and decrees, insurance proceeds, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of any of the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof, or to any Appurtenant Rights thereto, and Beneficiary is (subject to the terms hereof) hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittance therefor, and (subject to the terms hereof) to apply the same toward the payment of the indebtedness and other sums secured hereby, notwithstanding the fact that the amount owing thereon may not then be due and payable; (ii) all proceeds of any sales or other dispositions of the property or rights described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof whether voluntary or involuntary, provided, however, that the foregoing shall not be deemed to permit such sales, transfers, or other dispositions except as specifically permitted herein; and (iii) whether arising from any voluntary or involuntary disposition of the property described in Granting Clauses (A), (B), (C), (D) and (E), all Proceeds, products, replacements, additions, substitutions, renewals and accessions, remainders, reversions and after-acquired interest in, of and to such property;

(G) TOGETHER WITH the absolute assignment of any Space Leases or any part thereof that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, together with all of the following (including all "Cash Collateral" within the meaning of the Bankruptcy Law) arising from the Space Leases: (a) Rents (subject, however, to the aforesaid absolute assignment to Trustee for the benefit of Beneficiary and the conditional

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permission hereinbelow given to Trustor to collect the Rents), (b) all guarantees, letters of credit, security deposits, collateral, cash deposits, and other credit enhancement documents, arrangements and other measures with respect to the Space Leases, (c) all of Trustor's right, title, and interest under the Space Leases, including the following: (i) the right to receive and collect the Rents from the lessee, sublessee or licensee, or their successor(s), under any Space Lease(s) and (ii) the right to enforce against any tenants thereunder and otherwise any and all remedies under the Space Leases, including Trustor's right to evict from possession any tenant thereunder or to retain, apply, use, draw upon, pursue, enforce or realize upon any guaranty of any Space Lease; to terminate, modify, or amend the Space Leases; to obtain possession of, use, or occupy, any of the real or personal property subject to the Space Leases; and to enforce or exercise, whether at law or in equity or by any other means, all provisions of the Space Leases and all obligations of the tenants thereunder based upon (A) any breach by such tenant under the applicable Space Lease (including any claim that Trustor may have by reason of a termination, rejection, or disaffirmance of such Space Lease pursuant to any Bankruptcy Law) and (B) the use and occupancy of the premises demised, whether or not pursuant to the applicable Space Lease (including any claim for use and occupancy arising under landlord-tenant law of the State of Nevada or any Bankruptcy Law). Permission is hereby given to Trustor, so long as no Event of Default has occurred and is continuing hereunder, to collect and use the Rents, as they become due and payable, but not more than one (1) month in advance thereof. Upon the occurrence of an Event of Default, the permission hereby given to Trustor to collect the Rents shall automatically terminate, but such permission shall be reinstated upon a cure or waiver of such Event of Default. Beneficiary shall have the right, at any time and from time to time, to notify any Space Lessee of the rights of Beneficiary as provided by this section;

Notwithstanding anything to the contrary contained herein, the foregoing provisions of this Paragraph (G) shall not constitute an assignment for purposes of security but shall constitute an absolute and present assignment of the Rents to Beneficiary, subject, however, to the conditional license given to Trustor to collect and use the Rents as hereinabove provided; and the existence or exercise of such right of Trustor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Trustor;

(H) TOGETHER WITH all of Trustor's right, title and interest in and to any and all Plans and Specifications and all maps, plans, specifications, surveys, studies, tests, reports, data and drawings relating to the development of the Site or the Project and the construction of the Improvements, including, without limitation, all marketing plans, feasibility studies, soils tests, design contracts and all contracts and agreements of Trustor relating thereto including, without limitation, architectural, structural, mechanical and engineering plans and specifications, studies, data and drawings prepared for or relating to the development of the Site or the Project or the construction, renovation or restoration of any of the Improvements or the extraction of minerals, sand, gravel or other valuable substances from the Site and purchase contracts or any agreement granting Trustor a right to acquire any land situated within Clark County, Nevada;

(I) TOGETHER WITH, to the extent permitted by applicable law, all of Trustor's right, title, and interest in and to any and all licenses, permits, variances, special permits, franchises, certificates, rulings, certifications, validations, exemptions, filings, registrations, authorizations, consents, approvals, waivers, orders, rights and agreements (including, without limitation, options, option rights, contract rights now or hereafter obtained by Trustor from any Governmental Authority having or claiming jurisdiction over the Land, the FF&E, the Project, or any other element of the Trust Estate or providing access thereto, or the operation of any business on, at, or from the Site including, without limitation, any liquor or Nevada Gaming Licenses (except for any registrations, licenses, findings of suitability or approvals issued by the Nevada Gaming Authorities or any other liquor or gaming licenses which are non-assignable); *provided*, that upon an Event of Default hereunder or under the Mortgage Notes Indenture, if Beneficiary is not qualified under the Nevada Gaming Laws to hold such Nevada

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Gaming Licenses, then Beneficiary may designate an appropriately qualified third party to which an assignment of such Nevada Gaming Licenses can be made in compliance with the Nevada Gaming Laws;

(J) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to all water stock, water permits and other water rights relating to the Site including, without limitation, those evidenced by Permit No. 60164 (Cert. 15447) and Permit No. 60165 (Cert. 15448), in each case as shown in the records of the State of Nevada, Division of Water Resources in Carson City Nevada;

(K) TOGETHER WITH all oil and gas and other mineral rights, if any, in or pertaining to the Site and all royalty, leasehold and other rights of Trustor pertaining thereto;

(L) TOGETHER WITH any and all monies and other property, real or personal, which may from time to time be subjected to the lien hereof by Trustor or by anyone on its behalf or with its consent, or which may come into the possession or be subject to the control of Trustee or Beneficiary pursuant to this Deed of Trust, the Mortgage Notes Indenture or any other Indenture Document, including, without limitation, any Protective Advances (as defined in Section 4.2 hereof) under this Deed of Trust; and all of Trustor's right, title, and interest in and to all extensions, improvements, betterments, renewals, substitutes for and replacements of, and all additions, accessions, and appurtenances to, any of the foregoing that Trustor may subsequently acquire or obtain by any means, or construct, assemble, or otherwise place on any of the Trust Estate, and all conversions of any of the foregoing; it being the intention of Trustor that all property hereafter acquired by Trustor and required by the Mortgage Notes Indenture, this Deed of Trust or any other Indenture Document to be subject to the lien of this Deed of Trust or intended so to be shall forthwith upon the acquisition thereof by Trustor be subject to the lien of this Deed of Trust as if such property were now owned by Trustor and were specifically described in this Deed of Trust and granted hereby or pursuant hereto, and Trustee and Beneficiary are hereby authorized, subject to Nevada Gaming Laws and other applicable laws, to receive any and all such property as and for additional security for the obligations secured or intended to be secured hereby. Trustor agrees to take any action as may reasonably be necessary to evidence and perfect such liens or security interests, including, without limitation, the execution of any documents necessary to evidence and perfect such liens or security interests;

(M) TOGETHER WITH, to the extent permitted by applicable laws, any and all Accounts Receivable and all royalties, earnings, income, proceeds, products, rents, revenues, reversions, remainders, issues, profits, avails, production payments, and other benefits directly or indirectly derived or otherwise arising from any of the foregoing, all of which are hereby assigned to Beneficiary, who, except as otherwise expressly provided in this Deed of Trust (including the provisions of Section 1.13 hereof), is authorized to collect and receive the same, to give receipts and acquittances therefor and to apply the same to the Obligations secured hereunder, whether or not then due and payable;

(N) TOGETHER WITH Proceeds of the foregoing property described in Granting Clauses (A) through (M);

(O) TOGETHER WITH Trustor's rights further to assign, sell, lease, encumber or otherwise transfer or dispose of the property described in Granting Clauses (A) through (N) inclusive, above, for debt or otherwise; and

(P) EXPRESSLY EXCLUDING, HOWEVER, any assets expressly excluded from the definition of "Collateral" in the Mortgage Notes Indenture.

Trustor, for itself and its successors and assigns, covenants and agrees to and with Trustee that, at the time or times of the execution of and delivery of these presents or any instrument of further assurance with respect thereto, Trustor has good right, full power and lawful authority to assign, grant, convey, warrant, transfer, bargain or sell its interests in the Trust Estate in the manner and form as aforesaid, and that the Trust Estate is free and clear of all liens and encumbrances whatsoever, except

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Permitted Liens, and Trustor shall warrant and forever defend the above-bargained property in the quiet and peaceable possession of Trustee and its successors and assigns against all and every person or persons lawfully or otherwise claiming or to claim the whole or any part thereof, except for Permitted Liens. Trustor agrees that any greater title to the Trust Estate hereafter acquired by Trustor during the term hereof shall be automatically subject hereto.

ARTICLE ONE COVENANTS OF TRUSTOR

The Beneficiary and the Second Mortgage Note Holders have been induced to enter into the Indenture Documents and to purchase the Notes, as the case may be, on the basis of the following material covenants, all agreed to by Trustor:

1.1 Performance of Indenture Documents. Trustor shall perform, observe and comply with each and every provision hereof, and with each and every provision contained in the Mortgage Notes Indenture and the other Indenture Documents and shall promptly pay to the Beneficiary or the Disbursement Agent, as applicable, when payment shall become due, the principal with interest thereon and all other sums required to be paid by Trustor under this Deed of Trust, the Mortgage Notes Indenture and the other Indenture Documents.

1.2 General Representations, Covenants and Warranties. Trustor represents, covenants and warrants that: (a) Trustor has good and marketable title to an indefeasible fee estate in the Site, free and clear of all encumbrances except Permitted Encumbrances, and that it has the right to hold, occupy and enjoy its interest in the Trust Estate, and has good right, full power and lawful authority to subject the Trust Estate to the Lien of this Deed of Trust and pledge the same as provided herein and Beneficiary may at all times peaceably and quietly enter upon, hold, occupy and enjoy the entire Trust Estate in accordance with the terms hereof; (b) Trustor is not Insolvent and no bankruptcy or insolvency proceedings are pending or contemplated by or, to the best of Trustor's knowledge, threatened against Trustor; (c) all costs arising from construction of any Improvements, the performance of any labor and the purchase of all Tangible Collateral and Improvements have been or shall be paid when due (subject to the provisions of the Disbursement Agreement, the Mortgage Notes Indenture and this Deed of Trust); (d) the Land has direct access for ingress and egress to dedicated street(s); (e) Trustor shall at all times conduct and operate the Trust Estate in a manner so as not to lose, or permit its affiliate to lose, the right to conduct gaming activities at the Project; (f) no material part of the Trust Estate has been damaged, destroyed, condemned or abandoned, other than those portions of the Trust Estate that (i) have been the subject of condemnation proceedings that have resulted in the conveyance of such portion of the Trust Estate to the Trustor or (ii) have been demolished in furtherance of the development of the Project as contemplated under the Disbursement Agreement; (g) as of the date hereof, no part of the Trust Estate is the subject of condemnation proceedings and Trustor has no knowledge of any contemplated or pending condemnation proceeding with respect to any portion of the Trust Estate; and (h) Trustor acknowledges and agrees that it presently may use, and in the past may have used, one or more of the trade or fictitious names, "Le Reve", "Wynn Collection", "Wynn Resorts" and "Desert Inn" and in each case variations thereof (collectively, the "**Enumerated Names**") in connection with the operation of the business at the Trust Estate, and Trustor further represents and warrants that the Enumerated Names are the only such trade or fictitious names Trustor has so used. For all purposes under this Deed of Trust it shall be deemed that the term "Trustor" includes all trade or fictitious names that Valvino Lamore, LLC (or any successor or assign thereof) now or hereafter uses, or has in the past used, including, without limitation, the Enumerated Names, with the same force and effect as if this Deed of Trust had been executed in all such names (in addition to "Valvino Lamore, LLC").

1.3 Compliance with Legal Requirements. Except as provided in the Mortgage Notes Indenture, Trustor shall promptly, fully, and faithfully comply in all material respects with all Legal Requirements

and shall cause all portions of the Trust Estate and its use and occupancy to fully comply in all material respects with Legal Requirements at all times, whether or not such compliance requires work or remedial measures that are ordinary or extraordinary, foreseen or unforeseen, structural or nonstructural, or that interfere with the use or enjoyment of the Trust Estate.

1.4 Taxes. Except as otherwise permitted by the Mortgage Notes Indenture, (a) Trustor shall pay all Impositions as they become due and payable and shall deliver to Beneficiary promptly upon Beneficiary's request, evidence satisfactory to Beneficiary that the Impositions have been paid or are not delinquent; (b) Trustor shall not suffer to exist, permit or initiate the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Land as a single lien, except as may be required by law; and (c) in the event of the passage of any law deducting from the value of real property for the purposes of taxation any lien thereon, or changing in any way the taxation of deeds of trust or obligations secured thereby for state or local purposes, or the manner of collecting such taxes and imposing a tax, either directly or indirectly, on this Deed of Trust or the other Indenture Documents to which Trustor is a party, Trustor shall pay all such taxes.

1.5 Insurance.

(a) Hazard Insurance Requirements and Proceeds.

(1) *Hazard Insurance.* Trustor shall at its sole expense obtain for, deliver to, assign and maintain for the benefit of Beneficiary, during the term of this Deed of Trust, insurance policies insuring the Trust Estate and liability insurance policies, all in accordance with the requirements of the Mortgage Notes Indenture. Trustor shall pay promptly when due any premiums on such insurance policies and on any renewals thereof. In the event of the foreclosure of this Deed of Trust or any other transfer of title to the Trust Estate in partial or complete extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of Beneficiary in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

(2) *Handling of Proceeds.* All Proceeds from any insurance policies shall be collected, held, handled and disbursed in accordance with the provisions of the Mortgage Notes Indenture and the Disbursement Agreement (while in effect). All proceeds of insurance allocable to Trustor, as owner of the Site, and attributable to business interruption insurance shall be collected, held, handled and disbursed in accordance with the provisions of the Mortgage Notes Indenture and the Disbursement Agreement. Any such proceeds disbursed to Beneficiary shall be applied to pay amounts then due and payable under this Deed of Trust. The balance shall be retained by Beneficiary or its designee in an interest bearing or other investment account approved by Beneficiary, which account Trustor hereby pledges to Beneficiary to secure the Obligations. Disbursements shall be permitted from such account to pay expenses reasonably incurred by Trustor in owning and operating the Trust Estate, as reasonably approved by Beneficiary.

(b) **Compliance with Insurance Policies.** Trustor shall not violate or permit to be violated any of the conditions or provisions of any policy of insurance required by the Mortgage Notes Indenture or this Deed of Trust and Trustor shall so perform and satisfy the requirements of the companies writing such policies that, at all times, companies of good standing shall be willing to write and/or continue such insurance. Trustor further covenants to promptly send to Beneficiary all notices relating to any violation of such policies or otherwise affecting Trustor's insurance coverage or ability to obtain and maintain such insurance coverage.

1.6 Condemnation. Beneficiary is hereby authorized, at its option, to commence, appear in and prosecute in its own or Trustor's name any action or proceeding relating to any condemnation and to

settle or compromise any claim in connection therewith, and Trustor hereby appoints Beneficiary as its attorney-in-fact to take any action in Trustor's name pursuant to Beneficiary's rights hereunder. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Trust Estate or any portion thereof, Trustor shall notify the Trustee and Beneficiary of the pendency of such proceedings. Trustor from time to time shall execute and deliver to Beneficiary all instruments requested by it to permit such participation; provided, however, that such instruments shall be deemed as supplemental to the foregoing grant of permission to Trustee and Beneficiary, and unless otherwise required, the foregoing permission shall, without more, be deemed sufficient to permit Trustee and/or Beneficiary to participate in such proceedings on behalf of Trustor. All such compensation awards, damages, claims, rights of action and Proceeds, and any other payments or relief, and the right thereto, are, whether paid to Beneficiary or Trustor or a third party trustee, included in the Trust Estate. Beneficiary, after deducting therefrom all its expenses, including reasonable attorneys fees, shall apply all Proceeds paid directly to it in accordance with the provisions of the Mortgage Notes Indenture. All Proceeds paid directly to the Trustor shall be applied, if received by Trustor prior to the Final Completion Date, in accordance with the Disbursement Agreement and, if received on or after the Final Completion Date, in accordance with the Mortgage Notes Indenture. To the extent that any condemnation proceeds are not required to be applied towards restoration of the improvements upon the Site, then Beneficiary shall have the right to apply said condemnation proceeds towards repayment of the Obligations. Trustor hereby waives any rights it may have under NRS 37.115, as amended or recodified from time to time.

1.7 Care of Trust Estate.

(a) Trustor shall preserve and maintain the Trust Estate in good condition and repair. Trustor shall not permit, commit or suffer to exist any waste, impairment or deterioration of the Trust Estate or of any part thereof that in any manner materially impairs Beneficiary's security hereunder and shall not take any action which will increase the risk of fire or other hazard to the Trust Estate or to any part thereof.

(b) Except for Permitted Dispositions, no material part of the Improvements or Tangible Collateral that are part of the Trust Estate shall be removed, demolished or materially altered, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld or delayed. Trustor shall have the right, without such consent, to remove and dispose of free from the lien of this Deed of Trust any part of the Improvements or Tangible Collateral that are part of the Trust Estate as from time to time may become worn out or obsolete or otherwise not useful in connection with the operation of the Trust Estate, provided that either (i) such removal or disposition does not materially affect the value of the Trust Estate or (ii) prior to or promptly following such removal, any such property shall be replaced with other property of substantially equal utility and of a value at least substantially equal to that of the replaced property when first acquired and free from any security interest of any other person (subject only to Permitted Liens), and by such removal and replacement Trustor shall be deemed to have subjected such replacement property to the lien of this Deed of Trust.

(c) Notwithstanding the foregoing provisions of this *Section 1.7*, the Trustor may develop the Project in the manner contemplated by the Disbursement Agreement, the Mortgage Notes Indenture and the other Indenture Documents.

1.8 *Leases.*

(a) Trustor represents, warrants and covenants that:

(i) except for the assignment effected hereby and in the other Financing Agreements, Trustor has not executed any assignment or pledge of any of the Space Leases, the Rents, or of Trustor's right, title and interest in the same; and

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(ii) this Deed of Trust does not and will not constitute a violation or default under any Space Lease, and is and shall at all times constitute a valid lien on Trustor's interests in the Space Leases.

(b) Trustor shall not enter into any Space Lease or any modifications or amendments to any Space Lease, either orally or in writing, unless such Space Lease complies with the requirements of the Mortgage Notes Indenture and the Secured Mortgage Notes Security Documents.

(c) After an Event of Default, upon the request of Beneficiary Trustor shall deliver to Beneficiary executed copies of all Space Leases.

1.9 *Further Encumbrance.*

(a) Trustor covenants that at all times prior to the discharge of the Obligations, except for Permitted Liens and Permitted Dispositions, Trustor shall neither make nor suffer to exist, nor enter into any agreement for, any sale, assignment, exchange, mortgage, transfer, Lien, hypothecation or encumbrance of all or any part of the Trust Estate, including, without limitation, the Rents. As used herein, "transfer" includes the actual transfer or other disposition, whether voluntary or involuntary, by law, or otherwise, except those transfers specifically permitted herein, provided, however, that "transfer" shall not include the granting of utility or other beneficial easements with respect to the Trust Estate which have been or are granted by Trustor and are reasonably necessary to the construction, maintenance or operation of the Project.

(b) Any Permitted Lien consisting of the lien of a deed of trust which is junior to the lien of the Indenture Documents (a "Subordinate Deed of Trust") shall be permitted hereunder so long as there shall have been delivered to Beneficiary, not less than thirty (30) days prior to the date thereof, a copy thereof which shall contain express covenants in form and substance satisfactory to Beneficiary to the effect that: (i) the Subordinate Deed of Trust is in all respects subject and subordinate to this Deed of Trust; (ii) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Trust Estate shall be named as a party defendant nor shall any action be taken with respect to the Trust Estate which would terminate any occupancy or tenancy of the Trust Estate, or any portion thereof, without the consent of Beneficiary; (iii) any Rents, if collected through a receiver or by the holder of the Subordinate Deed of Trust, shall be applied first to the obligations secured by this Deed of Trust, including principal and interest due and owing on or to become due and owing on the Notes or the other Indenture Documents, and then to the payment of maintenance expenses, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operation, and maintenance of the Trust Estate; and (iv) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust, prompt notice of the commencement thereof shall be given to Beneficiary.

(c) Trustor agrees that in the event the ownership of the Trust Estate or any part thereof becomes vested in a person other than Trustor, Beneficiary may, without notice to Trustor, deal in any way with such successor or successors in interest with reference to this Deed of Trust, the Notes, the other Indenture Documents and other Obligations hereby secured without in any way vitiating or discharging Trustor's or any guarantor's, surety's or endorser's liability hereunder or upon the obligations hereby secured. No sale of the Trust Estate and no forbearance to any person with respect to this Deed of Trust and no extension to any person of the time for payment of the Obligations, and other sums hereby secured given by Beneficiary shall operate to release, discharge, modify, change or affect the original liability of Trustor, or such guarantor, surety or endorser either in whole or in part.

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(d) If Trustor shall fail to make any payment required to be made by it under any FF&E Financing Agreement, except where Trustor is contesting such payment in good faith, then the Beneficiary shall be entitled to make such payment on Trustor's behalf and any and all sums so expended by the Beneficiary shall be secured by this Deed of Trust and shall be repaid by Trustor upon demand, together with interest thereon at the interest at the rate applicable to overdue principal set forth in the Mortgage Notes Indenture from the date of advance.

1.10 *Partial Releases of Trust Estate.*

(a) Trustor may from time to time make a Permitted Disposition including, but not limited to, (i) transferring a portion of the Trust Estate (including any temporary taking) to any person legally empowered to exercise the power of eminent domain, or pursuant to dedication agreements that are now in effect or entered into in the future in connection with the development of the Project, (ii) granting utility easements reasonably necessary or desirable for the construction and/or operation of the Project, which grant or transfer is for the benefit of the Trust Estate, or (iii) transferring all or a portion of the Trust Estate as permitted pursuant to the Disbursement Agreement or the other Indenture Documents. In each such case, Beneficiary shall execute and deliver any instruments necessary or appropriate to effectuate or confirm any such transfer or grant, free from the lien of this Deed of Trust, *provided, however*, that Beneficiary shall execute a lien release or subordination agreement, as appropriate, for matters described in clauses (i) and (iii) above only if:

(A) Such transfer, grant or release is not prohibited by the Mortgage Notes Indenture and all conditions precedent contained in the Mortgage Notes Indenture for such transfer, grant or release, if any, shall have been satisfied;

(B) Beneficiary and Trustee shall have received a counterpart of the instrument pursuant to which such transfer, grant or release is to be made, and each instrument which Beneficiary or Trustee is requested to execute in order to effectuate or confirm such transfer, grant or release; and

(b) Any consideration received for a transfer to any person empowered to exercise the right of eminent domain shall be subject to *Section 1.6* hereof.

1.11 **Further Assurances.**

(a) At its sole cost and without expense to Trustee or Beneficiary, and subject in all events to compliance with the Nevada Gaming Laws and other applicable Legal Requirements, Trustor shall do, execute, acknowledge and deliver any and all such further acts, deeds, conveyances, notices, requests for notices, financing statements, continuation statements, certificates, assignments, notices of assignments, agreements, instruments and further assurances, and shall mark any chattel paper, deliver any chattel paper or instruments to Beneficiary and take any other actions that are necessary, prudent, or reasonably requested by Beneficiary or Trustee to perfect or continue the perfection and first priority of Beneficiary's security interest in the Trust Estate, to protect the Trust Estate against the rights, claims, or interests of third persons other than holders of Permitted Liens or to effect the purposes of this Deed of Trust, including the security agreement and the absolute assignment of Rents contained herein, or for the filing, registering or recording thereof.

(b) Trustor shall forthwith upon the execution and delivery of this Deed of Trust, and thereafter from time to time, cause this Deed of Trust and each instrument of further assurance to be filed, indexed, registered, recorded, given or delivered in such manner and in such places as

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may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the title of Trustee and/or Beneficiary to, the Trust Estate.

1.12 Security Agreement and Financing Statements. Trustor (as debtor) hereby grants to Beneficiary (as creditor and secured party) a present and future security interest in all Tangible Collateral, Intangible Collateral, FF&E, Improvements, all other personal property now or hereafter owned or leased by Trustor or in which Trustor has or will have any interest, to the extent that such property constitutes a part of the Trust Estate (whether or not such items are stored on the premises or elsewhere), Proceeds of the foregoing comprising a portion of the Trust Estate and all products, substitutions, and accessions therefor and thereto, subject to Beneficiary's rights to treat such property as real property as herein provided (collectively, the "**Personal Property**"). Trustor shall execute and/or deliver any and all documents and writings, including without limitation financing statements pursuant to the UCC, as may be necessary or prudent to preserve and maintain the priority of the security interest granted hereby on property which may be deemed subject to the foregoing security agreement or as Beneficiary may reasonably request, and shall pay to Beneficiary on demand any reasonable expenses incurred by Beneficiary in connection with the preparation, execution and filing of any such documents. Trustor hereby authorizes and empowers Beneficiary to file, on Trustor's behalf, all financing statements and refiling and continuations thereof as advisable to create, preserve and protect said security interest. Trustor acknowledges and agrees that it is not authorized to, and will not, authenticate or file, or authorize the filing of, any financing statements or other record with respect to the Personal Property (including any amendments thereto, or continuation or termination statements thereof), except as permitted by the Indenture Documents. Trustor approves and ratifies any filing or recording of records made by or on behalf of Beneficiary in connection with the perfection of the security interest in favor of Beneficiary hereunder. This Deed of Trust constitutes both a real property deed of trust and a "security agreement," within the meaning of the UCC, and the Trust Estate includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Trust Estate. Trustor by executing and delivering this Deed of Trust has granted to Beneficiary, as security of the Obligations, a security interest in the Trust Estate.

(a) **Fixture Filing.** Without in any way limiting the generality of the immediately preceding paragraph or of the definition of the Trust Estate, this Deed of Trust constitutes a fixture filing under Sections 9-334 and 9-502 of the UCC (NRS 104.9334 and 104.9502). For such purposes, (i) the "debtor" is Trustor and its address is the address given for it in the initial paragraph of this Deed of Trust; (ii) the "secured party" is Beneficiary, and its address for the purpose of obtaining information is the address given for it in the initial paragraph of this Deed of Trust; (iii) the real estate to which the fixtures are or are to become attached is Trustor's interest in the Site; and (iv) the record owner of such real estate is Trustor.

(b) **Remedies.** This Deed of Trust shall be deemed a security agreement as defined in the UCC and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall include any or all of (i) those prescribed herein, and (ii) those available under applicable law, and (iii) those available under the UCC, all at Beneficiary's sole election. In addition, a photographic or other reproduction of this Deed of Trust shall be sufficient as a financing statement for filing wherever filing may be necessary to perfect or continue the security interest granted herein.

(c) **Derogation of Real Property.** It is the intention of the parties that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in anyway derogating from or impairing the express declaration and intention of the parties hereto as hereinabove stated that everything used in connection with the production of income from the Trust Estate and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real property encumbered by this Deed of Trust irrespective of whether

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(i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. It is the intention of the parties that the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Trustor's interest as lessors in any present or future Space Lease or rights to Rents, shall never be construed as in anyway altering any of the rights of Beneficiary as determined by this Deed of Trust or impugning the priority of Beneficiary's real property lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of Beneficiary in the event any court or judge shall at any time hold with respect to the matters set forth in the foregoing clauses (1), (2) and (3) that notice of Beneficiary's priority of interest to be effective against a particular class of persons, including but not limited to, the federal government and any subdivisions or entity of the federal government, must be filed in the UCC records.

(d) **Priority; Permitted Financing of Tangible Collateral.** All Personal Property of any nature whatsoever which is subject to the provisions of this security agreement shall be purchased or obtained by Trustor in its name and free and clear of any lien or encumbrance, except for Permitted Liens and the

lien hereof, for use only in connection with the business and operation of the Project, and shall be and at all times remain free and clear of any lease or similar arrangement, chattel financing, installment sale agreement, security agreement and any encumbrance of like kind, so that Beneficiary's security interest shall attach to and vest in Trustor for the benefit of Beneficiary, with the priority herein specified, immediately upon the installation or use of the Personal Property at the Site and Trustor warrants and represents that Beneficiary's security interest in the Personal Property is a validly attached and binding security interest, properly perfected and prior to all other security interests therein except as otherwise permitted in this Deed of Trust. The foregoing shall not be construed as limiting Trustor's rights to transfer Personal Property pursuant to Permitted Dispositions or to obtain releases of Personal Property from the Lien of this Deed of Trust pursuant to Section 1.10 hereof.

(e) **Preservation of Contractual Rights of Collateral.** Trustor shall, prior to delinquency, default, or forfeiture, perform all obligations and satisfy all material conditions required on its part to be satisfied to preserve its rights and privileges under any contract, lease, license, permit, or other authorization (i) under which it holds any Tangible Collateral or (ii) which constitutes part of the Intangible Collateral, except where Trustor is contesting such obligations in good faith.

(f) **Removal of Collateral.** Except for damaged or obsolete Tangible Collateral which is either no longer usable or which is removed temporarily for repair or improvement or removed for replacement on the Trust Estate with Tangible Collateral of similar function or as otherwise permitted herein, none of the Tangible Collateral shall be removed from the Trust Estate without Beneficiary's prior written consent.

(g) **Change of Name.** Trustor shall not change its corporate (or other entity) or business name, or do business within the State of Nevada under any name other than such name, or any trade name(s) other than those as to which Trustor gives prior written notice to Beneficiary of its intent to use such trade names, or any other business names (if any) specified in the financing statements delivered to Beneficiary for filing in connection with the execution hereof, without, in each case, providing Beneficiary with the additional financing statement(s) and any other similar documents deemed reasonably necessary by Beneficiary to assure that its security interest remains perfected and of undiminished priority in all such Personal Property notwithstanding such name change.

1.13 Assignment of Leases and Rents. Subject to Nevada Gaming Laws and other applicable Legal Requirements, the assignment of Leases and Rents set out above in Granting Clause (G) shall constitute an absolute and present assignment to Beneficiary, subject to the license herein given to Trustor to collect the Rents, and shall be fully operative without any further action on the part of any party, and specifically Beneficiary shall be entitled upon the occurrence of an Event of Default hereunder to all Rents and to enter upon the Site and the Improvements to collect such Rents, provided, however, that Beneficiary shall not be obligated to take possession of the Trust Estate, or any portion thereof. The absolute assignment contained in Granting Clause (G) shall not be deemed to impose upon Beneficiary any of the obligations or duties of Trustor provided in any such Space Lease (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease in the event that any lessee shall have been joined as a party defendant in any action to foreclose this Deed of Trust and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Trust Estate or any part thereof).

1.14 Expenses.

(a) Trustor shall pay when due and payable all out-of-pocket costs, including without limitation, those reasonable appraisal fees, recording fees, taxes, abstract fees, title policy fees, escrow fees, attorneys' and paralegal fees, travel expenses, fees for inspecting architect(s) and engineer(s) and all other costs and expenses of every character which may hereafter be incurred by Beneficiary or any assignee of Beneficiary in connection with the preparation and execution of the Mortgage Notes Indenture and the other Indenture Documents to which Trustor is a party or instruments, agreements or documents of further assurance, the funding of the indebtedness secured hereby, and the enforcement of the Mortgage Notes Indenture or any other Indenture Document to which Trustor is a party. Other than costs associated with the enforcement of any Indenture Document, all such costs shall be itemized in reasonable detail; and

(b) Trustor shall, upon demand by Beneficiary, reimburse Beneficiary or any assignee of Beneficiary for all such reasonable expenses which have been incurred or which shall be incurred by it; and

(c) Trustor shall indemnify Beneficiary with respect to any transaction or matter in any way connected with any portion of the Trust Estate, this Deed of Trust, including any occurrence at, in, on, upon or about the Trust Estate (including any personal injury, loss of life, or property damage), or Trustor's use, occupancy, or operation of the Trust Estate, or the filing or enforcement of any mechanic's lien, or otherwise caused in whole or in part by any act, omission or negligence occurring on or at the Trust Estate, including failure to comply with any Legal Requirement or with any requirement of this Deed of Trust that applies to Trustor, except to the extent resulting from the gross negligence, fraud or willful misconduct of Trustee or Beneficiary. If Beneficiary is a party to any litigation as to which either Trustor is required to indemnify Beneficiary (or is made a defendant in any action of any kind against Trustor or relating directly or indirectly to any portion of the Trust Estate) then, at Beneficiary's option, Trustor shall undertake Beneficiary's defense, using counsel reasonably satisfactory to Beneficiary (and any settlement shall be subject to Beneficiary's consent, which consent shall not be unreasonably withheld), and in any case shall indemnify Beneficiary against such litigation. Trustor shall pay all reasonable costs and expenses, including reasonable legal costs, that Beneficiary pays or incurs in connection with any such litigation. Any amount payable under any indemnity in this Deed of Trust shall be a demand obligation, shall be added to, and become a part of, the secured obligations under this Deed of Trust, shall be secured by this Deed of Trust and shall bear interest at the interest rate specified in the Mortgage Notes Indenture. Such indemnity shall survive any release of this Deed of Trust and any foreclosure.

1.15 Beneficiary's Cure of Trustor's Default. If Trustor defaults hereunder in the payment of any tax, assessment, lien, encumbrance or other Imposition, in its obligation to furnish insurance hereunder, or in the performance or observance of any other covenant, condition or term of this Deed of Trust or any other Financing Agreement or any FF&E Financing Agreement, Beneficiary may, but is not obligated to, to preserve its interest in the Trust Estate, perform or observe the same, and all payments made (whether such payments are regular or accelerated payments) and reasonable costs and expenses incurred or paid by Beneficiary in connection therewith shall become due and payable immediately. The amounts so incurred or paid by Beneficiary, together with interest thereon at the interest rate applicable to overdue principal set forth in the Mortgage Notes Indenture, from the date incurred until paid by Trustor, shall be added to the indebtedness and

secured by the lien of this Deed of Trust. Beneficiary, is hereby empowered to enter and to authorize others to enter upon the Site or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Trustor or any person in possession holding under Trustor. No exercise of any rights under this Section 1.15 by Beneficiary shall cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

1.16 **Use of Land.** Trustor covenants that the Trust Estate shall be used and operated in a manner consistent with the requirements of the Indenture Documents.

1.17 **Compliance with Permitted Lien Agreements.** Trustor shall comply with each and every material obligation contained in any agreement pertaining to a Permitted Lien.

1.18 **Defense of Actions.** Trustor shall appear in and defend any action or proceeding affecting or purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and shall pay all costs and expenses, including cost of title search and insurance or other evidence of title, preparation of survey, and reasonable attorneys' fees in any such action or proceeding in which Beneficiary or Trustee may appear or may be joined as a party and in any suit brought by Beneficiary based upon or in connection with this Deed of Trust, the Mortgage Notes Indenture or any other Indenture Document to which Trustor is a party. Nothing contained in this section shall, however, limit the right of Beneficiary to appear in such action or proceeding with counsel of its own choice, either on its own behalf or on behalf of Trustor.

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1.19 **Affiliates.**

(a) **Subject to Trust Deed.** Subject to compliance with the requirements of applicable Nevada Gaming Laws, Trustor shall cause all of its Affiliates in any way involved with the operation of the Trust Estate or the Project to observe the covenants and conditions of this Deed of Trust to the extent necessary to give the full intended effect to such covenants and conditions and to protect and preserve the security of Beneficiary hereunder.

(b) **Restriction on Use of Subsidiary or Affiliate.** Except as permitted under the Notes, the Mortgage Notes Indenture or the other Indenture Documents, Trustor shall not use any Affiliate in the operation of the Trust Estate or the Project if such use would in any way impair the security for the Obligations or circumvent any covenant or condition of this Deed of Trust, the Mortgage Notes Indenture or of any other Indenture Document.

1.20 **Title Insurance.** Promptly after the execution of this Deed of Trust, Trustor shall cause to be delivered to Trustee at Trustor's expense, one or more ALTA extended coverage Lender's Policies of Title Insurance showing fee title to the real property situated in the County of Clark, State of Nevada, more specifically described in Schedule A attached hereto, vested in Trustor and the lien of this Deed of Trust to be a perfected lien, prior to any and all encumbrances other than Permitted Encumbrances (excluding, however, any such non-Permitted Encumbrances for which the Title Insurer has agreed to provide an endorsement or affirmative coverage protecting the lien of this Deed of Trust against such non-Permitted Encumbrances).

**ARTICLE TWO
MORTGAGE NOTES INDENTURE PROVISIONS**

2.1 **Interaction with Mortgage Notes Indenture**

(a) **Incorporation by Reference.** All terms, covenants, conditions, provisions and requirements of the Mortgage Notes Indenture are incorporated by reference in this Deed of Trust.

(b) **Conflicts.** In the event of any conflict or inconsistency between the provisions of this Deed of Trust and those of the Mortgage Notes Indenture or the Disbursement Agreement, the provisions of the Mortgage Notes Indenture or the Disbursement Agreement, as applicable, shall govern.

2.2 **Other Collateral.** This Deed of Trust is one of a number of security agreements delivered by or on behalf of Trustor and other Persons pursuant to the Mortgage Notes Indenture and the other Indenture Documents and securing the Obligations secured hereunder. All potential junior Lien claimants are placed on notice that, under any of the Indenture Documents (including a separate future unrecorded agreement between Trustor and Beneficiary), other collateral for the Obligations secured hereunder (*i.e.*, collateral other than the Trust Estate) may, under certain circumstances, be released without a corresponding reduction in the total principal amount secured by this Deed of Trust. Such a release would decrease the amount of collateral securing the same indebtedness, thereby increasing the burden on the remaining Trust Estate created and continued by this Deed of Trust. No such release shall impair the priority of the lien of this Deed of Trust. By accepting its interest in the Trust Estate, each and every junior Lien claimant shall be deemed to have acknowledged the possibility of, and consented to, any such release. Nothing in this paragraph shall impose any obligation upon Beneficiary.

2.3 **Subordination to Bank Deed of Trust.** Notwithstanding any other provision hereof, this Deed of Trust, including, without limitation, the security interest granted herein, the rights, power and remedies of the Trustee and the Beneficiary and the obligations of Trustor set forth herein, shall, to the extent provided in the Project Lenders Intercreditor Agreement, be subject and subordinate to the Bank Phase II Deed of Trust.

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**ARTICLE THREE
DEFAULTS**

3.1 **Event of Default.** The term "Event of Default," wherever used in this Deed of Trust, shall mean any of (i) one or more of the events of default listed in the Mortgage Notes Indenture (ii) so long as the Disbursement Agreement is in effect, one or more of the events of default listed in the Disbursement Agreement (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) or (iii) if any "borrower" (as that term is defined in NRS 106.310) who may send a notice pursuant to NRS 106.380(1), (x) delivers, sends by mail or otherwise gives, or purports to deliver, send by mail or otherwise give, to a beneficiary under this Deeds of Trust (A) any notice of an election to terminate the operation of this Deed of Trust as security for any secured obligation, including, without limitation, any obligation to repay any "future advance" (as defined in NRS 106.320) of "principal" (as defined in NRS 106.345), or

(B) any other notice pursuant to NRS 106.380(1), (y) records a statement pursuant to NRS 106.380(3), or (z) causes this Deed of Trust, any secured obligation, or any Secured Party to be subject to NRS 106.380(2), 106.380(3) or 106.400.

ARTICLE FOUR REMEDIES

4.1 Acceleration of Maturity. If an Event of Default occurs, Beneficiary may (except that such acceleration shall be automatic if the Event of Default is caused by either Issuer's or Trustor's Bankruptcy), in accordance with the Indenture Documents, declare the Obligations to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become due and payable without demand, presentment, notice or other requirements of any kind (all of which Trustor waives) notwithstanding anything in this Deed of Trust or any Indenture Document or applicable law to the contrary.

4.2 Protective Advances. If either Issuer or Trustor fails to make any payment or perform any other obligation under the Notes, the Mortgage Notes Indenture or any other Financing Agreement, then without thereby limiting Beneficiary's other rights or remedies, waiving or releasing any of Trustor's obligations, or imposing any obligation on Beneficiary, Beneficiary may either advance any amount owing or perform any or all actions that Beneficiary considers necessary or appropriate to cure such default. All such advances shall constitute "Protective Advances" and shall bear interest thereon at the interest rate applicable to overdue principal set forth in the Mortgage Notes Indenture from the date incurred until paid by Trustor. No sums advanced or performance rendered by Beneficiary shall cure, or be deemed a waiver of any Event of Default.

4.3 Institution of Equity Proceedings. If an Event of Default occurs, Beneficiary may institute an action, suit or proceeding in equity for specific performance of this Deed of Trust, the Notes, the Mortgage Notes Indenture or any other Indenture Document, all of which shall be specifically enforceable by injunction or other equitable remedy. Trustor waives any defense based on laches or any applicable statute of limitations.

4.4 Beneficiary's Power of Enforcement.

(a) If an Event of Default occurs, Beneficiary shall be entitled, at its option and in its sole and absolute discretion, to prepare and record on its own behalf, or to deliver to Trustee for recording, if appropriate, written declaration of default and demand for sale and written Notice of Breach and Election to Sell (NRS 107.080(3)) (or other statutory notice) to cause the Trust Estate to be sold to satisfy the obligations hereof, and in the case of delivery to Trustee, Trustee shall cause said notice to be filed for record.

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(b) After the lapse of such time as may then be required by law following the recordation of said Notice of Breach and Election to Sell, and notice of sale having been given as then required by law, including compliance with any applicable Nevada Gaming Laws, Trustee without demand on Trustor, shall sell the Trust Estate or any portion thereof at the time and place fixed by it in said notice, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder, of cash in lawful money of the United States payable at the time of sale. Trustee may, for any cause it deems expedient, postpone the sale of all or any portion of said property until it shall be completed and, in every case, notice of postponement shall be given by public announcement thereof at the time and place last appointed for the sale and from time to time thereafter Trustee may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall execute and deliver to the purchaser its Deed, Bill of Sale, or other instrument conveying said property so sold, but without any covenant or warranty, express or implied. The recitals in such instrument of conveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale.

(c) After deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including, without limitation, costs of evidence of title and reasonable attorneys' fees and other legal expenses of Trustee or Beneficiary in connection with a sale, Trustee shall apply the proceeds of such sale to payment of all sums expended under the terms hereof not then repaid, with accrued interest at the rate applicable to overdue principal set forth in the Mortgage Notes Indenture to the payment of all other sums then secured hereby and the remainder, if any, to the person or persons legally entitled thereto as provided in NRS 40.462.

(d) Subject to compliance with applicable Nevada Gaming Laws, if any Event of Default occurs, Beneficiary may, either with or without entry or taking possession of the Trust Estate, and without regard to whether or not the indebtedness and other sums secured hereby shall be due and without prejudice to the right of Beneficiary thereafter to bring an action or proceeding to foreclose or any other action for any default existing at the time such earlier action was commenced, proceed by any appropriate action or proceeding: (1) to enforce payment of the Obligations, to the extent permitted by law, or the performance of any term hereof or any other right; (2) to foreclose this Deed of Trust in any manner provided by law for the foreclosure of mortgages or deeds of trust on real property and to sell, as an entirety or in separate lots or parcels, the Trust Estate or any portion thereof pursuant to the laws of the State of Nevada or under the judgment or decree of a court or courts of competent jurisdiction, and Beneficiary shall be entitled to recover in any such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees in such amount as shall be awarded by the court; (3) to exercise any or all of the rights and remedies available to it under the Indenture Documents; and (4) to pursue any other remedy available to it. Beneficiary shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Beneficiary may determine.

(e) The remedies described in this Section 4.4 may be exercised with respect to all or any portion of the Personal Property, either simultaneously with the sale of any real property encumbered hereby or independent thereof. Beneficiary shall at any time be permitted to proceed with respect to all or any portion of the Personal Property in any manner permitted by the UCC. Trustor agrees that Beneficiary's inclusion of all or any portion of the Personal Property (and all personal property that is subject to a security interest in favor, or for the benefit, of Beneficiary) in a sale or other remedy exercised with respect to the real property encumbered hereby, as permitted by the UCC, is a commercially reasonable disposition of such property.

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4.5 Beneficiary's Right to Enter and Take Possession, Operate and Apply Income.

(a) Subject to compliance with applicable Nevada Gaming Laws, if an Event of Default occurs, (i) Trustor, upon demand of Beneficiary, shall forthwith surrender to Beneficiary the actual possession and, if and to the extent permitted by law, Beneficiary itself, or by such officers or agents as it

may appoint, may enter and take possession of all the Trust Estate including the Personal Property, without liability for trespass, damages or otherwise, and may exclude Trustor and its agents and employees wholly therefrom and may have joint access with Trustor to the books, papers and accounts of Trustor; and (ii) Trustor shall pay monthly in advance to Beneficiary on Beneficiary's entry into possession, or to any receiver appointed to collect the Rents, all Rents then due and payable.

(b) If Trustor shall for any reason fail to surrender or deliver the Trust Estate, the Personal Property or any part thereof after Beneficiary's demand, Beneficiary may obtain a judgment or decree conferring on Beneficiary or Trustee the right to immediate possession or requiring Trustor to deliver immediate possession of all or part of such property to Beneficiary or Trustee and Trustor hereby specifically consents to the entry of such judgment or decree. Trustor shall pay to Beneficiary or Trustee, upon demand, all reasonable costs and expenses of obtaining such judgment or decree and reasonable compensation to Beneficiary or Trustee, their attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Deed of Trust.

(c) Subject to compliance with applicable Nevada Gaming Laws, upon every such entering upon or taking of possession, Beneficiary or Trustee may hold, store, use, operate, manage and control the Trust Estate and conduct the business thereof, and, from time to time in its sole and absolute discretion and without being under any duty to so act:

(1) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;

(2) insure or keep the Trust Estate insured;

(3) manage and operate the Trust Estate and exercise all the rights and powers of Trustor in their name or otherwise with respect to the same;

(4) enter into agreements with others to exercise the powers herein granted Beneficiary or Trustee, all as Beneficiary or Trustee from time to time may determine; and, subject to the absolute assignment of the Leases and Rents to Beneficiary, Beneficiary or Trustee may collect and receive all the Rents, including those past due as well as those accruing thereafter; and shall apply the monies so received by Beneficiary or Trustee in such priority as Beneficiary may determine to (1) the payment of interest and principal due and payable on the Notes or the other Indenture Documents, (2) the deposits for taxes and assessments and insurance premiums due, (3) the cost of insurance, taxes, assessments and other proper charges upon the Trust Estate or any part thereof; (4) the compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary or Trustee; and (5) any other charges or costs required to be paid by Trustor under the terms hereof; and

(5) rent or sublet the Trust Estate or any portion thereof for any purpose permitted by this Deed of Trust.

Beneficiary or Trustee shall surrender possession of the Trust Estate and the Personal Property to Trustor only when all that is due upon such interest and principal, tax and insurance deposits, and all amounts under any of the terms of the Mortgage Notes Indenture or this Deed of Trust, shall have

been paid and all defaults made good. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.6 Leases. Beneficiary is authorized to foreclose this Deed of Trust subject to the rights of any tenants of the Trust Estate, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights shall not be, nor be asserted by Trustor to be, a defense to any proceedings instituted by Beneficiary to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Trust Estate, or any portion thereof. Unless otherwise agreed by Beneficiary in writing, all Space Leases executed subsequent to the date hereof, or any part thereof, shall be subordinate and inferior to the lien of this Deed of Trust; provided, however that (i) in accordance with the terms of the Indenture Documents, Beneficiary may be required to execute a non-disturbance and attornment agreement in connection with certain Space Leases; and (ii) from time to time Beneficiary may execute and record among the land records of the jurisdiction where this Deed of Trust is recorded, subordination statements with respect to such of said Space Leases as Beneficiary may designate in its sole discretion, whereby the Space Leases so designated by Beneficiary shall be made superior to the lien of this Deed of Trust for the term set forth in such subordination statement. From and after the recordation of such subordination statements, and for the respective periods as may be set forth therein, the Space Leases therein referred to shall be superior to the lien of this Deed of Trust and shall not be affected by any foreclosure hereof. All such Space Leases shall contain a provision to the effect that the Trustor and Space Lessee recognize the right of Beneficiary to elect and to effect such subordination of this Deed of Trust and consents thereto.

4.7 Purchase by Beneficiary. Upon any foreclosure sale (whether judicial or nonjudicial), Beneficiary may bid for and purchase the property subject to such sale and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

4.8 Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws. Trustor agrees to the full extent permitted by law that if an Event of Default occurs, neither Trustor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust or the absolute sale of the Trust Estate or any portion thereof or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof, and Trustor for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Trust Estate marshalled upon any foreclosure of the lien hereof and agrees that Trustee or any court having jurisdiction to foreclose such lien may sell the Trust Estate in part or as an entirety.

4.9 Receiver. If an Event of Default occurs, Beneficiary, to the extent permitted by law and subject to compliance with all applicable Nevada Gaming Laws, and without regard to the value, adequacy or occupancy of the security for the indebtedness and other sums secured hereby, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Trust Estate and to collect all Rents and apply the same as the court may direct, and such receiver may be appointed by any court of competent jurisdiction upon application by Beneficiary. Beneficiary may have a receiver appointed without notice to Trustor or any third party, and Beneficiary may waive any requirement that the receiver post a bond. Beneficiary shall have the power to designate and select the Person who shall serve as the receiver and to negotiate all terms and conditions under which such receiver shall serve. Any receiver appointed on Beneficiary's behalf may be an Affiliate of Beneficiary. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Deed of Trust. The right to enter and take possession of and to manage and operate the Trust Estate and to collect all Rents, whether by a

receiver or otherwise, shall be cumulative to any other right or remedy available to Beneficiary under this Deed of Trust, the Mortgage Notes Indenture or the other Indenture Documents or otherwise available to Beneficiary and may be exercised concurrently therewith or independently thereof. Beneficiary shall be liable to account only for such Rents (including, without limitation, security deposits) actually received by Beneficiary, whether received pursuant to this section or any other provision hereof. Notwithstanding the appointment of any receiver or other custodian, Beneficiary shall be entitled as pledgee to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Deed of Trust to, Beneficiary.

4.10 Suits to Protect the Trust Estate. Beneficiary shall have the power and authority to institute and maintain any suits and proceedings as Beneficiary, in its sole and absolute discretion, may deem advisable (a) to prevent any impairment of the Trust Estate by any acts which may be unlawful or in violation of this Deed of Trust, (b) to preserve or protect its interest in the Trust Estate, or (c) to restrain the enforcement of or compliance with any legislation or other Legal Requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Beneficiary's interest.

4.11 Proofs of Claim. In the case of any receivership, Insolvency, Bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Trustor, or, to the extent the same would result in an Event of Default hereunder, any Subsidiary, or any guarantor, co-maker or endorser of any of Trustor's obligations, its creditors or its property, Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim or other documents as it may deem to be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Trustor under the Indenture Documents, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Trustor after such date.

4.12 Trustor to Pay the Obligations on Any Default in Payment; Application of Monies by Beneficiary.

(a) In case of a foreclosure sale of all or any part of the Trust Estate and of the application of the proceeds of sale to the payment of the sums secured hereby, Beneficiary shall be entitled to enforce payment from Trustor of any additional amounts then remaining due and unpaid with respect to the Obligations and to recover judgment against Trustor for any portion thereof remaining unpaid, with interest at the rate applicable to overdue principal as set forth in the Mortgage Notes Indenture.

(b) Trustor hereby agrees to the extent permitted by law, that no recovery of any judgment by Beneficiary or other action by Beneficiary and no attachment or levy of any execution upon any Property of Trustor by Beneficiary (other than a foreclosure of the entire Trust Estate hereunder) shall in any way affect the Lien and security interest of this Deed of Trust upon the Trust Estate or any part thereof or any Lien, rights, powers or remedies of Beneficiary hereunder, but such Lien, rights, powers and remedies shall continue unimpaired as before.

(c) Any monies collected or received by Beneficiary under this *Section 4.12* shall be first applied to the payment of reasonable compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary, and the balance remaining shall be applied to the Obligations.

(d) The provisions of this section shall not be deemed to limit or otherwise modify the provisions of any guaranty of the indebtedness evidenced by the Notes or the other Indenture Documents.

4.13 Delay or Omission; No Waiver. No delay or omission of Beneficiary or any Second Mortgage Note Holder to exercise any right, power or remedy upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to

constitute acquiescence therein. Every right, power and remedy given to Beneficiary whether contained herein or in the other Indenture Documents or otherwise available to Beneficiary may be exercised from time to time and as often as may be deemed expedient by Beneficiary.

4.14 No Waiver of One Default to Affect Another. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If Beneficiary or the required percentage of the Second Mortgage Note Holders (as determined pursuant to the Mortgage Notes Indenture), to the extent applicable under the Mortgage Notes Indenture, (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Notes, the Mortgage Notes Indenture, this Deed of Trust, the Disbursement Agreement or any other Indenture Document; (d) releases any part of the Trust Estate from the lien or security interest of this Deed of Trust or any other instrument securing the Obligations; (e) consents to the filing of any map, plat or replat of the Site (to the extent such consent is required); (f) consents to the granting of any easement on the Site (to the extent such consent is required); or (g) makes or consents to any agreement changing the terms of this Deed of Trust or any other Indenture Document subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability of Trustor under the Mortgage Notes Indenture or any other Indenture Document or otherwise, or any subsequent purchaser of the Trust Estate or any part thereof or any maker, co-signer, surety or guarantor. No such act or omission shall preclude Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by Beneficiary, shall the lien or security interest of this Deed of Trust be altered thereby, except to the extent expressly provided in any releases, maps, easements or subordinations described in clause (d), (e), (f) or (g) above of this Section 4.14. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Trust Estate, Beneficiary, without notice to any person, firm or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Trust Estate or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder, or waiving its right to declare such sale or transfer an Event of Default as provided herein. Notwithstanding anything to the contrary contained in this Deed of Trust or any other Indenture Document, (i) in the case of any non-monetary Event of Default, Beneficiary may continue to accept payments secured hereunder without thereby waiving the existence of such or any other Event of Default and (ii) in the case of any monetary Event of Default, Beneficiary may accept partial payments of any sums secured hereunder without thereby waiving the existence of such Event of Default if the partial payment is not sufficient to completely cure such Event of Default.

4.15 Discontinuance of Proceedings; Position of Parties Restored. If Beneficiary shall have proceeded to enforce any right or remedy under this Deed of Trust by foreclosure, entry of judgment or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall

have resulted in a final determination adverse to Beneficiary, then and in every such case Trustor and Beneficiary shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Beneficiary shall continue as if no such proceedings had occurred or had been taken.

4.16 **Remedies Cumulative.** No right, power or remedy, including without limitation remedies with respect to any security for Obligations, conferred upon or reserved to Beneficiary by this Deed of Trust or any other Indenture Document is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or any other Indenture Document, now or hereafter existing

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at law, in equity or by statute, and Beneficiary shall be entitled to resort to such rights, powers, remedies or security as Beneficiary shall in its sole and absolute discretion deem advisable.

4.17 **Interest After Event of Default.** If an Event of Default shall have occurred and is continuing, all sums outstanding and unpaid under the Obligations shall, at Beneficiary's option, bear interest at the rate applicable to overdue principal set forth in the Mortgage Notes Indenture until such Event of Default has been cured. Trustor's obligation to pay such interest shall be secured by this Deed of Trust.

4.18 **Foreclosure; Expenses of Litigation.** If Trustee forecloses, reasonable attorneys' fees for services in the supervision of said foreclosure proceeding shall be allowed to the Trustee and Beneficiary as part of the foreclosure costs. In the event of foreclosure of the lien hereof, there shall be allowed and included as additional indebtedness all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after foreclosure sale or entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and guarantees, and similar data and assurances with respect to title as Beneficiary may deem reasonably advisable either to prosecute such suit or to evidence to a bidder at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Trust Estate or any portion thereof. All expenditures and expenses of the nature in this section mentioned, and such expenses and fees as may be incurred in the protection of the Trust Estate and the maintenance of the lien and security interest of this Deed of Trust, including the fees of any attorney employed by Beneficiary in any litigation or proceeding affecting this Deed of Trust, the Mortgage Notes Indenture or any other Indenture Document, the Trust Estate or any portion thereof, including, without limitation, civil, probate, appellate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Trustor, with interest thereon at the rate applicable to overdue principal set forth in the Mortgage Notes Indenture, and shall be secured by this Deed of Trust. Trustee waives its right to any statutory fee in connection with any judicial or nonjudicial foreclosure of the lien hereof and agrees to accept a reasonable fee for such services.

4.19 **Deficiency Judgments.** If after foreclosure of this Deed of Trust or Trustee's sale hereunder, there shall remain any deficiency with respect to any Obligations, and Beneficiary shall institute any proceedings to recover such deficiency or deficiencies, all such amounts shall continue to bear interest at the rate applicable to overdue principal set forth in the Mortgage Notes Indenture. Trustor waives any defense to Beneficiary's recovery against Trustor of any deficiency after any foreclosure sale of the Trust Estate. Trustor expressly waives any defense or benefits that may be derived from any statute granting Trustor any defense to any such recovery by Beneficiary. In addition, Beneficiary and Trustee shall be entitled to recovery of all of their reasonable costs and expenditures (including without limitation any court imposed costs) in connection with such proceedings, including their reasonable attorneys' fees, appraisal fees and the other costs, fees and expenditures referred to in Section 4.18 above. This provision shall survive any foreclosure or sale of the Trust Estate, any portion thereof and/or the extinguishment of the lien hereof.

4.20 **Waiver of Jury Trial.** Beneficiary and Trustor each waive any right to have a jury participate in resolving any dispute whether sounding in contract, tort or otherwise arising out of, connected with, related to or incidental to the relationship established between them in connection with the Obligations. Any such disputes shall be resolved in a bench trial without a jury.

4.21 **Exculpation of Beneficiary.** The acceptance by Beneficiary of the assignment contained herein with all of the rights, powers, privileges and authority created hereby shall not, prior to entry upon and taking possession of the Trust Estate by Beneficiary, be deemed or construed to make Beneficiary a "mortgagee in possession"; nor thereafter or at any time or in any event obligate Beneficiary to appear in or defend any action or proceeding relating to the Space Leases, the Rents or the Trust Estate, or to

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take any action hereunder or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under any Space Lease or to assume any obligation or responsibility for any security deposits or other deposits except to the extent such deposits are actually received by Beneficiary, nor shall Beneficiary, prior to such entry and taking, be liable in any way for any injury or damage to person or property sustained by any Person in or about the Trust Estate.

ARTICLE FIVE RIGHTS AND RESPONSIBILITIES OF TRUSTEE; OTHER PROVISIONS RELATING TO TRUSTEE

Notwithstanding anything to the contrary in this Deed of Trust, Trustor and Beneficiary agree as follows.

5.1 **Exercise of Remedies by Trustee.** To the extent that this Deed of Trust or applicable law, including all applicable Nevada Gaming Laws, authorizes or empowers, or does not require approval for, Beneficiary to exercise any remedies set forth in Article Four hereof or otherwise, or perform any acts in connection therewith, Trustee (but not to the exclusion of Beneficiary unless so required under the law of the State of Nevada) shall have the power to exercise any or all such remedies, and to perform any acts provided for in this Deed of Trust in connection therewith, all for the benefit of Beneficiary and on Beneficiary's behalf in accordance with applicable law of the State of Nevada. In connection therewith, Trustee: (a) shall not exercise, or waive the exercise of, any of Beneficiary's remedies (other than any rights of Trustee to any indemnity or reimbursement), except at Beneficiary's request, and (b) shall exercise, or waive the exercise of, any or all of Beneficiary's remedies at Beneficiary's request, and in accordance with Beneficiary's directions as to the manner of such exercise or waiver. Trustee

may, however, decline to follow Beneficiary's request or direction if Trustee shall be advised by counsel that the action or proceeding, or manner thereof, so directed may not lawfully be taken or waived.

5.2 Rights and Privileges of Trustee. To the extent that this Deed of Trust requires Trustor to indemnify Beneficiary or reimburse Beneficiary for any expenditures Beneficiary may incur, Trustee shall be entitled to the same indemnity and the same rights to reimbursement of expenses as Beneficiary, subject to such limitations and conditions as would apply in the case of Beneficiary. To the extent that this Deed of Trust negates or limits Beneficiary's liability as to any matter, Trustee shall be entitled to the same negation or limitation of liability. To the extent that Trustor, pursuant to this Deed of Trust, appoints Beneficiary as Trustor's attorney in fact for any purpose, Beneficiary or (when so instructed by Beneficiary) Trustee shall be entitled to act on Trustor's behalf without joinder or confirmation by the other.

5.3 Resignation or Replacement of Trustee. Trustee may resign by an instrument in writing addressed to Beneficiary, and Trustee may be removed at any time with or without cause (i.e., in Beneficiary's sole and absolute discretion) by an instrument in writing executed by Beneficiary. In case of the death, resignation, removal or disqualification of Trustee or if for any reason Beneficiary shall deem it desirable to appoint a substitute, successor or replacement Trustee to act instead of Trustee originally named (or in place of any substitute, successor or replacement Trustee), then Beneficiary shall have the right and is hereby authorized and empowered to appoint a successor, substitute or replacement Trustee, without any formality other than appointment and designation in writing executed by Beneficiary, which instrument shall be recorded in the Office of the Recorder of Clark County, Nevada. The law of the State of Nevada (including, without limitation, the Nevada Gaming Laws) shall govern the qualifications of any Trustee. The authority conferred upon Trustee by this Deed of Trust shall automatically extend to any and all other successor, substitute and replacement Trustee(s) successively until the obligations secured hereunder have been paid in full or the Trust Estate has been sold hereunder or released in accordance with the provisions of the Mortgage Notes Indenture and the other Indenture Documents. Beneficiary's written appointment and designation of any Trustee shall be

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full evidence of Beneficiary's right and authority to make the same and of all facts therein recited. No confirmation, authorization, approval or other action by Trustor shall be required in connection with any resignation or other replacement of Trustee.

5.4 Authority of Beneficiary. If Beneficiary is a banking corporation, state banking corporation or a national banking association and the instrument of appointment of any successor or replacement Trustee is executed on Beneficiary's behalf by an officer of such corporation, state banking corporation or national banking association, then such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of Beneficiary.

5.5 Effect of Appointment of Successor Trustee. Upon the appointment and designation of any successor, substitute or replacement Trustee, and subject to compliance with applicable Nevada Gaming Laws and other applicable laws, Trustee's entire estate and title in the Trust Estate shall vest in the designated successor, substitute or replacement Trustee. Such successor, substitute or replacement Trustee shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon Trustee. All references herein to Trustee shall be deemed to refer to Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder.

5.6 Confirmation of Transfer and Succession. Upon the written request of Beneficiary or of any successor, substitute or replacement Trustee, any former Trustee ceasing to act shall execute and deliver an instrument transferring to such successor, substitute or replacement Trustee all of the right, title, estate and interest in the Trust Estate of Trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon Trustee, and shall duly assign, transfer and deliver all properties and moneys held by said Trustee hereunder to said successor, substitute or replacement Trustee.

5.7 Exculpation. Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or otherwise be responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence, willful misconduct or knowing violation of law. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law). Trustee shall be under no liability for interest on any moneys received by it hereunder.

5.8 Endorsement and Execution of Documents. Upon Beneficiary's written request, Trustee shall, without liability or notice to Trustor, execute, consent to, or join in any instrument or agreement in connection with or necessary to effectuate the purposes of the Mortgage Notes Indenture and the other Indenture Documents. Trustor hereby irrevocably designates Trustee as its attorney in fact to execute, acknowledge and deliver, on Trustor's behalf and in Trustor's name, all instruments or agreements necessary to implement any provision(s) of this Deed of Trust or to further perfect the lien created by this Deed of Trust on the Trust Estate. This power of attorney shall be deemed to be coupled with an interest and shall survive any disability of Trustor.

5.9 Multiple Trustees. If Beneficiary appoints multiple trustees, then any Trustee, individually, may exercise all powers granted to Trustee under this instrument, without the need for action by any other Trustee(s).

5.10 Terms of Trustee's Acceptance. Trustee accepts the trust created by this Deed of Trust upon the following terms and conditions:

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(a) **Delegation.** Trustee may exercise any of its powers through appointment of attorney(s) in fact or agents.

(b) **Counsel.** Trustee may select and employ legal counsel (including any law firm representing Beneficiary). Trustor shall reimburse all reasonable legal fees and expenses that Trustee may thereby incur.

(c) **Security.** Trustee shall be under no obligation to take any action upon any Event of Default unless furnished security or indemnity, in form satisfactory to Trustee, against costs, expenses, and liabilities that Trustee may incur.

(d) **Costs and Expenses.** Trustor shall reimburse Trustee, as part of the Obligations secured hereunder, for all reasonable disbursements and expenses (including reasonable legal fees and expenses) incurred by reason of and as provided for in this Deed of Trust, including any of the foregoing incurred in Trustee's administering and executing the trust created by this Deed of Trust, in complying with all applicable Nevada Gaming Laws and performing Trustee's duties and exercising Trustee's powers under this Deed of Trust.

(e) **Release.** Upon full and indefeasible payment and performance of the Obligations secured hereunder, Beneficiary shall request that Trustee release this Deed of Trust. Upon receipt of such request Trustee shall release this Deed of Trust to Trustor. Trustor shall pay all costs of recordation, if any.

ARTICLE SIX MISCELLANEOUS PROVISIONS

6.1 **Heirs, Successors and Assigns Included in Parties.** Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included, and subject to the limitations set forth in Section 1.9, all covenants and agreements contained in this Deed of Trust, by or on behalf of Trustor or Beneficiary shall bind and inure to the benefit of its heirs, successors and assigns, whether so expressed or not.

6.2 **Addresses for Notices, Etc.** Any notice, report, demand or other instrument authorized or required to be given or furnished under this Deed of Trust to Trustor or Beneficiary shall be deemed given or furnished (i) when addressed to the party intended to receive the same, at the address of such party set forth below, and delivered by hand at such address or (ii) three (3) days after the same is deposited in the United States mail as first class certified mail, return receipt requested, postage paid, whether or not the same is actually received by such party:

Beneficiary: Wells Fargo Bank, National Association
MAC N9303-110
Sixth & Marquette
Minneapolis, MN 55479
Attn.: Michael Slade

Trustor: Valvino Lamore, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Legal Department

With a copy to: Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Attn: C. Kevin McGeehan

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Trustee: Nevada Title Company
2500 North Buffalo, Suite 150
Las Vegas, Nevada 89128
Attn: Robbie Graham

6.3 **Change of Notice Address.** Any Person may change the address to which any such notice, report, demand or other instrument is to be delivered or mailed to that person, by furnishing written notice of such change to the other parties, but no such notice of change shall be effective unless and until received by such other parties.

6.4 **Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Deed of Trust are for convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

6.5 **Invalid Provisions to Affect No Others.** In the event that any of the covenants, agreements, terms or provisions contained herein or in the Notes, the Mortgage Notes Indenture or any other Indenture Document shall be invalid, illegal or unenforceable in any respect, the validity of the lien hereof and the remaining covenants, agreements, terms or provisions contained herein or in the Notes, the Mortgage Notes Indenture or any other Indenture Document shall be in no way affected, prejudiced or disturbed thereby. To the extent permitted by law, Trustor waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

6.6 **Changes and Priority Over Intervening Liens.** Neither this Deed of Trust nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Trustor and Beneficiary relating to this Deed of Trust shall be superior to the rights of the holder of any intervening lien or encumbrance.

6.7 **Estoppel Certificates.** Within ten (10) Business Days after Beneficiary's written request, Trustor shall from time to time execute a certificate, in recordable form (an "Estoppel Certificate"), stating, except to the extent it would be inaccurate to so state: (a) the current amount of the Obligations secured hereunder and all elements thereof, including principal, interest, and all other elements; (b) that Trustor has no defense, offset, claim, counterclaim, right of recoupment, deduction, or reduction against any of the Obligations secured hereunder; (c) that neither the Mortgage Notes Indenture, this Deed of Trust nor any other Indenture Documents to which it is a party have been amended, whether orally or in writing; (d) that Trustor has no claims against Beneficiary of any kind; (e) that any power of attorney granted to Beneficiary is in full force and effect; and (f) such other matters relating to this Deed of Trust, the Mortgage Notes Indenture or any other Indenture Document to which it is a party and the relationship of Trustor and Beneficiary as Beneficiary shall request. In addition, the Estoppel Certificate shall set forth the reasons why it would be inaccurate to make any of the foregoing assurances.

6.8 Waiver of Setoff and Counterclaim. All Obligations shall be payable without setoff, counterclaim or any deduction whatsoever. Trustor hereby waives the right to assert a counterclaim (other than a compulsory counterclaim) in any action or proceeding brought against it by Beneficiary and/or any Second Mortgage Note Holder under the Indenture Documents, or arising out of or in any way connected with this Deed of Trust or the other Indenture Documents or the Obligations.

6.9 Governing Law. The Mortgage Notes Indenture and the Notes provide that they are governed by, and construed and enforced in accordance with, the laws of the State of New York. This Deed of Trust shall also be construed under and governed by the laws of the State of New York; provided, however, that (i) the terms and provisions of this Deed of Trust pertaining to the priority, perfection, enforcement or realization by Beneficiary of its respective rights and remedies under this Deed of Trust with respect to the Trust Estate shall be governed and construed and enforced in accordance with the

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internal laws of the State of Nevada (the "State") without giving effect to the conflicts-of-law rules and principles of the State; (ii) Trustor agrees that to the extent deficiency judgments are available under the laws of the State after a foreclosure (judicial or nonjudicial) of the Trust Estate, or any portion thereof, or any other realization thereon by Beneficiary or any Second Mortgage Note Holder under the Indenture Documents, Beneficiary or such Second Mortgage Note Holder, as the case may be, shall have the right to seek such a deficiency judgment against Trustor in the State; and (iii) Trustor agrees that if Beneficiary or any Second Mortgage Note Holder under the Indenture Documents obtains a deficiency judgment in another state against Trustor, then Beneficiary or such Second Mortgage Note Holder, as the case may be, shall have the right to enforce such judgment in the State to the extent permitted under the laws of the State, as well as in other states.

6.10 Required Notices. Trustor shall notify Beneficiary promptly of the occurrence of any of the following and shall immediately provide Beneficiary a copy of the notice or documents referred to: (i) receipt of notice from any Governmental Authority relating to all or any material part of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (ii) receipt of any notice from any tenant leasing all or any material portion of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iii) receipt of notice from the holder of any Permitted Lien relating to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iv) the commencement of any proceedings or the entry of any judgment, decree or order materially affecting all or any portion of the Trust Estate or which involve the potential liability of Trustor or its Affiliates in an amount in excess of \$25,000,000 (other than for personal injury actions and related property damage suits which are covered by such insurance); or (v) commencement of any judicial or administrative proceedings or the entry of any judgment, decree or order by or against or otherwise affecting Trustor or any Affiliate of Trustor, a material portion of the Trust Estate, or a material portion of the Personal Property, or any other action by any creditor or lessor thereof as a result of any default under the terms of any lease.

6.11 Reconveyance. Upon written request of Trustor when the Obligations secured hereby have been satisfied in full, Beneficiary shall cause Trustee to reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

6.12 Attorneys' Fees. Without limiting any other provision contained herein, Trustor agrees to pay all costs of Beneficiary or Trustee incurred in connection with the enforcement of this Deed of Trust, the Mortgage Notes Indenture or the other Indenture Documents to which it is a party, including without limitation all reasonable attorneys' fees whether or not suit is commenced, and including, without limitation, fees incurred in connection with any probate, appellate, bankruptcy, deficiency or any other litigation proceedings, all of which sums shall be secured hereby.

6.13 Late Charges. accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to collect any late charge thereon or interest thereon at the interest rate on the Notes or as otherwise specified in the Mortgage Notes Indenture, if so provided, not then paid or its right either to require prompt payment when due of all other sums so secured or to declare default for failure to pay any amounts not so paid.

6.14 Cost of Accounting. Trustor shall pay to Beneficiary, for and on account of the preparation and rendition of any accounting, which Trustor may be entitled to require under any law or statute now or hereafter providing therefor, the reasonable costs thereof.

6.15 Right of Entry. Subject to compliance with applicable Nevada Gaming Laws, Beneficiary may at any reasonable time or times and on reasonable prior written notice to Trustor make or cause to be made entry upon and inspections of the Trust Estate or any part thereof in person or by agent.

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6.16 Corrections. Trustor shall, upon request of Beneficiary or Trustee, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust (including, but not limited to, in the exhibits and schedules attached hereto) or in the execution or acknowledgement hereof, and shall execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Trustee to carry out more effectively the purposes of this Deed of Trust, to subject to the lien and security interest hereby created any of Trustor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.

6.17 Statute of Limitations. To the fullest extent allowed by the law, the right to plead, use or assert any statute of limitations as a plea or defense or bar of any kind, or for any purpose, to any debt, demand or obligation secured or to be secured hereby, or to any complaint or other pleading or proceeding filed, instituted or maintained for the purpose of enforcing this Deed of Trust or any rights hereunder, is hereby waived by Trustor.

6.18 Subrogation. Should the proceeds of any Note or advance made by Beneficiary or any Second Mortgage Note Holder under the Mortgage Notes Indenture, repayment of which is hereby secured, or any part thereof, or any amount paid out or advanced by Beneficiary or any Second Mortgage Note Holder under the Mortgage Notes Indenture, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior or superior lien or encumbrance upon the Trust Estate, or any part thereof, then, as additional security hereunder, Trustee, on behalf of Beneficiary, shall be subrogated to any and all rights, superior titles, liens, and equities owned or claimed by any owner or holder of said outstanding liens, charges, and indebtedness, however remote, regardless of whether said liens, charges, and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

6.19 Joint and Several Liability. All obligations of Trustor hereunder, if more than one, are joint and several. Recourse for deficiency after sale hereunder may be had against the property of Trustor, without, however, creating a present or other lien or charge thereon.

6.20 **Homestead.** Trustor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Trust Estate as against the collection of the Obligations, or any part hereof.

6.21 **Context.** In this Deed of Trust, whenever the context so requires, the neuter includes the masculine and feminine, and the singular including the plural, and vice versa.

6.22 **Time.** Time is of the essence of each and every term, covenant and condition hereof. Unless otherwise specified herein, any reference to "days" in this Deed of Trust shall be deemed to mean "calendar days."

6.23 **Interpretation.** As used in this Deed of Trust unless the context clearly requires otherwise: The terms "herein" or "hereunder" and similar terms without reference to a particular section shall refer to the entire Deed of Trust and not just to the section in which such terms appear; the term "lien" shall also mean a security interest, and the term "security interest" shall also mean a lien.

6.24 **Effect of NRS 107.030.** To the extent not inconsistent herewith, the provisions of NRS 107.030 (1), (2) (in amounts as hereinabove provided for), (3), (4) (with interest at the default rate provided for under the Mortgage Notes Indenture), (5), (6), (7) (reasonable), (8) and (9) are included herein by reference and made part of this Deed of Trust.

6.25 **Amendments.** This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought and only as permitted by the provisions of the Mortgage Notes Indenture.

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6.26 **No Conflicts.** In the event that any of the provisions contained here conflict with the Mortgage Notes Indenture, the provisions contained in the Mortgage Notes Indenture shall prevail.

ARTICLE SEVEN POWER OF ATTORNEY

7.1 **Grant of Power.** Subject to compliance with applicable Nevada Gaming Laws, Trustor irrevocably appoints Beneficiary and any successor thereto as its attorney-in-fact, with full power and authority, including the power of substitution, exercisable only during the continuance of an Event of Default to act for Trustor in its name, place and stead as hereinafter provided:

7.1.1 **Possession and Completion.** To take possession of the Site and the Project, remove all employees, contractors and agents of Trustor therefrom, complete or attempt to complete the work of construction, and market, sell or lease the Site and the Project.

7.1.2 **Plans.** To make such additions, changes and corrections in the current Plans and Specifications as may be necessary or desirable, in Beneficiary's reasonable discretion, or as it deems proper to complete the Project.

7.1.3 **Employment of Others.** To employ such contractors, subcontractors, suppliers, architects, inspectors, consultants, property managers and other agents as Beneficiary, in its discretion, deems proper for the completion of the Project, for the protection or clearance of title to the Site or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.4 **Security Guards.** To employ watchmen to protect the Site and the Project from injury.

7.1.5 **Compromise Claims.** To pay, settle or compromise all bills and claims then existing or thereafter arising against Trustor, which Beneficiary, in its discretion, deems proper for the protection or clearance of title to the Site or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.6 **Legal Proceedings.** To prosecute and defend all actions and proceedings in connection with the Site or the Project.

7.2 **Other Acts.** To execute, acknowledge and deliver all other instruments and documents in the name of Trustor that are necessary or desirable, to exercise Trustor's rights under all contracts concerning the Site or the Project, including, without limitation, under any Space Leases, and to do all other acts with respect to the Site or the Project that Trustor might do on its own behalf, as Beneficiary, in its reasonable discretion, deems proper.

ARTICLE EIGHT GUARANTOR PROVISIONS

8.1 **Absolute and Unconditional Obligations.** All rights of Beneficiary and all obligations of Trustor hereunder shall be absolute and unconditional irrespective of (i) any lack of validity, legality or enforceability of the Mortgage Notes Indenture, any Note, or any other Indenture Document, (ii) the failure of any Second Mortgage Note Holder or any holder of any of the Obligations to assert any claim or demand or to enforce any right or remedy against the Issuers, Trustor or any other Person (including any other guarantor of the Obligations) under the provisions of the Mortgage Notes Indenture, any Note, any other Indenture Document or otherwise or to exercise any right or remedy against any other guarantor of, or collateral securing, any of the Obligations, (iii) any change in the time, manner or place of payment of, or in any other term of, all of the Obligations, or any other extension or renewal of any Obligation, (iv) any reduction, limitation, impairment or termination of any of the Obligations for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to, and Trustor hereby waives any right to or claim of, any

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defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, nongenuineness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, any Obligation, (v) any amendment to, rescission, waiver, or other modification of, or any consent

to departure from, any of the terms of the Mortgage Notes Indenture, any Note or any other Indenture Document, (vi) any sale, exchange, release or surrender of, realization upon or other manner or order of dealing with any property by whomsoever pledged or mortgaged to secure or howsoever securing the Obligations or any liabilities or obligations (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof and/or any offset there against, (vii) the application of any sums by whomsoever paid or howsoever realized to any obligations and liabilities of the Issuers or any other Person to the Second Mortgage Note Holders under the Indenture Documents in the manner provided therein regardless of what obligations and liabilities remain unpaid, (viii) any action or failure to act in any manner referred to in this Deed of Trust which may deprive Trustor of its right to subrogation against the Issuers or any other Person to recover full indemnity for any payments or performances made pursuant to this Deed of Trust or of its right of contribution against any other party and (ix) any other circumstance which might otherwise constitute a defense available to, or a legal or equitable discharge of, the Issuers, any other Person, Trustor, any surety or any guarantor.

8.2 **Waiver.** Trustor hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including (i) any right to require Beneficiary or any other Second Mortgage Note Holder to proceed against the Issuers or any other Person or to proceed against or exhaust any security held by Beneficiary or any other Second Mortgage Note Holder at any time or to pursue any other remedy in Beneficiary's or any other Second Mortgage Note Holder's power before proceeding against Trustor, (ii) any defense that may arise by reason of the incapacity, lack of power or authority, death, dissolution, merger, termination or disability of the Issuers or any other Person or the failure of Beneficiary or any other Second Mortgage Note Holder to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of the Issuers or any other Person, (iii) demand, presentment, protest and notice of any kind except as provided herein, including notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of the Issuers, Beneficiary, any other Second Mortgage Note Holder, any endorser or creditor of the Issuers, Trustor or on the part of any other Person under this or any other instrument in connection with any obligation or evidence of indebtedness held by Beneficiary or any other Second Mortgage Note Holder as collateral or in connection with any Obligation, (iv) any defense based upon an election of remedies by Beneficiary or any other Second Mortgage Note Holder, including an election to proceed by non-judicial rather than judicial foreclosure, which destroys or otherwise impairs the subrogation rights of Trustor, the right of Trustor to proceed against the Issuers or any other Person for reimbursement, or both, (v) any defense based on any offset against any amounts which may be owed by any Person to Trustor for any reason whatsoever, (vi) any defense based on any act, failure to act, delay or omission whatsoever on the part of the Issuers or any other Person of the failure by the Issuers or any other Person to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the Indenture Documents, (vii) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal, provided, that, upon payment or performance in full of the Obligations, this Deed of Trust shall no longer be of any force or effect, (viii) any defense, setoff or counterclaim which may at any time be available to or asserted by the Issuers or any other Person against Beneficiary, any other Second Mortgage Note Holder or any other Person under the Indenture Documents, (ix) any duty on the part of Beneficiary or any other Second Mortgage Note Holder to disclose to Trustor any facts Beneficiary or any other Second Mortgage Note Holder may now or hereafter know about the Issuers or any other Person, regardless of whether Beneficiary or such Second Mortgage Note Holder have reason to believe that any such facts materially increase the risk beyond that which Trustor intends to

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assume, or have reason to believe that such facts are unknown to Trustor, or have a reasonable opportunity to communicate such facts to Trustor, since Trustor acknowledges that Trustor is fully responsible for being and keeping informed of the financial condition of the Issuers and any other Person liable for the Obligations and of all circumstances bearing on the risk of non-payment or non-performance of any obligations and liabilities hereby guaranteed, (x) the fact that Trustor may at any time in the future dispose of all or part of its direct or indirect interest in the Issuers or any other Person or otherwise cease to be an Affiliate of the Issuers or any other Person, as the case may be, (xi) any defense based on any change in the time, manner or place of any payment or performance under, or in any other term of, the Indenture Documents or any other amendment, renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of the Indenture Documents, (xii) any defense arising because of Beneficiary's or any other Second Mortgage Note Holder's election, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code, and (xiii) any defense based upon any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code. To the fullest extent permitted by NRS 40.485 (1) and (2), the provisions of NRS 40.430 are waived.

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IN WITNESS WHEREOF, Trustor has executed this Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing as of the day and year first above written.

TRUSTOR:

VALVINO LAMORE, LLC,
a Nevada limited liability company,

By: Wynn Resorts, Limited
a Nevada corporation, its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein

Title: Senior Vice President, General Counsel and
Secretary

QuickLinks

[DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING MADE BY VALVINO LAMORE, LLC
ARTICLE SEVEN POWER OF ATTORNEY](#)

APNs: 162-16-610-016,
162-16-610-007 and
162-16-610-006

Recording requested by and recorded
counterparts should be returned to:

Sony Ben-Moshe, Esq.
Latham & Watkins
701 B Street, Suite 2100
San Diego, California 92101

Mail Property Tax Statements to:

Palo, LLC
Legal Department
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

MADE BY

**PALO, LLC,
a Delaware limited liability company,
as Trustor,**

to

**Nevada Title Company,
a Nevada corporation,
as Trustee,
for the benefit of**

**WELLS FARGO BANK, NATIONAL ASSOCIATION,
in its capacity as the Mortgage Notes Indenture Trustee,
as Beneficiary**

THIS INSTRUMENT IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS OF CLARK COUNTY, NEVADA UNDER THE NAMES OF PALO, LLC AS "DEBTOR" AND WELLS FARGO BANK, NATIONAL ASSOCIATION AS "SECURED PARTY." TRUSTOR'S ORGANIZATIONAL NUMBER IS DELAWARE FILE NUMBER 3114855.

THIS INSTRUMENT IS A "CONSTRUCTION MORTGAGE" AS THAT TERM IS DEFINED IN SECTION 104.9334(8) OF THE NEVADA REVISED STATUTES AND SECURES AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT UPON LAND.

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**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (hereinafter called "**Deed of Trust**") is made and effective as of October 30, 2002, by PALO, LLC, a Delaware limited liability company (together with all successors and assigns of the Trust Estate (as hereinafter defined), "**Trustor**"), whose address is 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109, to Nevada Title Company, a Nevada corporation, whose address is 2500 North Buffalo, Suite 150, Las Vegas, Nevada 89128, as Trustee ("**Trustee**"), for the benefit of WELLS FARGO BANK, NATIONAL ASSOCIATION ("**Beneficiary**"), in its capacity as the Mortgage Notes Indenture Trustee under that certain Indenture, dated as of even date herewith, among Trustor, Wynn Las Vegas, LLC, a Nevada limited liability company, Wynn Las Vegas Capital Corp., a Nevada corporation (Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp. being hereinafter referred to as the "**Issuers**"), Beneficiary and the other parties signatory thereto (as the same may be amended or modified from time to time, the "**Mortgage Notes Indenture**") pertaining to the 12% Mortgage Notes due 2010, issued by the Issuers in the aggregate principal amount of \$370,000,000 and pursuant to which Trustor, among other things, guarantees the payment and performance of the obligations of the Issuers under the Notes and the Mortgage Notes Indenture. Trustor is an affiliate of the Issuers and it is anticipated that the Issuers will use proceeds of the Notes for, among other things, the development and improvement of the Land (as hereinafter defined) and certain surrounding properties. Beneficiary and the Second Mortgage Note Holders have agreed to enter into the Mortgage Notes Indenture and purchase the Notes, as the case may be, on the condition that Trustor execute this Deed of Trust. Trustor acknowledges that it will benefit, directly and indirectly, if Beneficiary and the Second Mortgage Note Holders enter into the Mortgage Notes Indenture and purchase the Notes, as the case may be, and executes this Deed of Trust in consideration and furtherance thereof.

THIS INSTRUMENT SECURES FUTURE ADVANCES. THE MAXIMUM AMOUNT OF PRINCIPAL TO BE SECURED HEREBY IS \$370,000,000. THIS INSTRUMENT IS TO BE GOVERNED BY THE PROVISIONS OF NRS 106.300 THROUGH NRS 106.400 INCLUSIVE.

DEFINITIONS—As used in this Deed of Trust, the following terms have the meanings hereinafter set forth:

"**Accounts Receivable**" shall have the meaning set forth in Section 9-102 (NRS 104.9102) of the UCC for the term "account."

"**Appurtenant Rights**" means all and singular tenements, hereditaments, rights, reversions, remainders, development rights, privileges, benefits, easements (in gross or appurtenant), rights-of-way, licenses, gores or strips of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, and all appurtenances whatsoever and claims or demands of Trustor at law or in equity in any way belonging, benefiting, relating or appertaining to the Land, the Trustor, the Project, the airspace over the Land, the Improvements or any of the Trust Estate encumbered by this Deed of Trust, or which hereinafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Trustor.

"**Bankruptcy**" means, with respect to any Person, that (i) a court having jurisdiction in the Trust Estate shall have entered a decree or order for relief in respect of such Person in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order has not been stayed; or any other similar relief shall have been granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against such Person, under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the Trust Estate for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over such Person, or over all or a substantial part of its property, shall have been

entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of such Person, for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of such Person, and any such event described in this clause (ii) shall continue for 60 days unless dismissed, bonded or discharged; or (iii) such Person shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or such Person shall make any assignment for the benefit of creditors, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable or if the fair market value of its assets does not exceed its aggregate liabilities; or (iv) such Person shall, or the Board of Directors of such Person (or any committee thereof) shall, adopt any resolution or otherwise authorize any action to approve any of the actions referred to in clause (iii) above.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute thereto.

"**Business Day**" means any day that is not a Saturday, a Sunday or a day on which banking institutions in the State of Nevada or the City of New York are not required to be open.

"**Deed of Trust**" means this Deed of Trust as it may be amended, increased or modified from time to time.

"**Disbursement Agreement**" means that certain Master Disbursement Agreement dated as of even date herewith, among the Issuers, Beneficiary, Deutsche Bank Trust Company Americas, as the administrative agent for the lenders under a credit agreement entered into in connection with the financing of the Project and as disbursement agent, and the other parties signatory thereto, as the same may hereafter be amended or modified in accordance with its terms and the terms of the Mortgage Notes Indenture.

"**Event of Default**" has the meaning set forth in *Section 3.1* hereof.

"**FF&E**" means all furniture, fixtures, equipment, appurtenances and personal property now or in the future contained in, used in connection with, attached to, or otherwise useful or convenient to the use, operation, or occupancy of, or placed on, but unattached to, any part of the Site or Improvements whether or not the same constitutes real property or fixtures in the State of Nevada, including all removable window and floor coverings, all furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator and escalator plants, cooking facilities, vacuum cleaning systems, public address and communications systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings, fixtures, and building materials, all gaming and financial equipment, computer equipment, calculators, adding machines, gaming tables, video game and slot machines, and any other electronic equipment of every nature used or located on any part of the Site or Improvements, together with all Venetian blinds, shades, draperies, drapery and curtain rods, brackets, bulbs, cleaning apparatus, mirrors, lamps, ornaments, cooling apparatus and equipment, ranges and ovens, garbage disposals, dishwashers, mantels, and any and all such property which is at any time installed in, affixed to or placed upon the Site or Improvements.

"**FF&E Financing Agreement**" means any financing agreement entered into by Trustor (i) the proceeds of which are used by Trustor for the acquisition or lease of FF&E, (ii) pursuant to which Trustor grants to the lender or lessor thereunder a security interest in the FF&E so acquired or leased and (iii) which is permitted by the Mortgage Notes Indenture.

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"**Governmental Authority**" means any agency, authority, board, bureau, commission, department, office, public entity, or instrumentality of any nature whatsoever of the United States federal or foreign government, any state, province or any city or other political subdivision or otherwise, whether now or hereafter in existence, or any officer or official thereof, including, without limitation, any Nevada Gaming Authority.

"**Guaranty**" means that certain Guarantee and Collateral Agreement dated as of even date herewith by Trustor and the other parties thereto for the benefit of Beneficiary on behalf of the Second Mortgage Note Holders.

"**Imposition**" means any taxes, assessments, water rates, sewer rates, maintenance charges, other governmental impositions and other charges now or hereafter levied or assessed or imposed against the Trust Estate or any part thereof.

"**Improvements**" means (1) all the buildings, structures, facilities and improvements of every nature whatsoever now or hereafter situated on the Site or any real property encumbered hereby, and (2) all fixtures, machinery, appliances, goods, building or other materials, equipment, including without limitation all gaming equipment and devices, and all machinery, equipment, engines, appliances and fixtures for generating or distributing air, water, heat, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse or garbage; all wall-beds, wall-safes, built-in furniture and installations, shelving, lockers, partitions, doorstops, vaults, motors, elevators, dumb-waiters, awnings, window shades, Venetian blinds, light fixtures, fire hoses and brackets and boxes for the same, fire sprinklers, alarm, surveillance and security systems, computers, drapes, drapery rods and brackets, mirrors, mantels, screens, linoleum, carpets and carpeting, plumbing, bathtubs, sinks, basins, pipes, faucets, water closets, laundry equipment, washers, dryers, ice-boxes and heating units; all kitchen and restaurant equipment, including but not limited to silverware, dishes, menus, cooking utensils, stoves, refrigerators, ovens, ranges, dishwashers, disposals, water heaters, incinerators, furniture, fixtures and furnishings, communication systems, and equipment; all cocktail lounge supplies, including but not limited to bars, glassware, bottles and tables used in connection with the Site; all chaise lounges, hot tubs, swimming pool heaters and equipment and all other recreational equipment (computerized and otherwise), beauty and barber equipment, and maintenance supplies used in connection with the Site; all amusement rides and attractions attached to the Site, all specifically designed installations and furnishings, and all furniture, furnishings and personal property of every nature whatsoever now or hereafter owned or leased by Trustor or in which Trustor has any rights or interest and located in or on, or attached to, or used or intended to be used or which are now or may hereafter be appropriated for use on or in connection with the operation of the Site or any real or personal property encumbered hereby or any other Improvements, or in connection with any construction being conducted or which may be conducted thereon, and all extensions, additions, accessions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing, and all of the right, title and interest of Trustor in and to any such property, which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and improvements and a part of the real property hereby encumbered.

"**Indemnity Agreement**" means that certain Indemnity Agreement dated as of even date herewith by Trustor for the benefit of Beneficiary and certain other indemnified parties named therein.

"**Indenture Documents**" means, collectively, the Mortgage Notes Indenture, the Notes, the Indemnity Agreement, the Second Mortgage Notes Security Documents, the Guaranty and the Collateral Documents.

"**Insolvent**" means with respect to any person or entity, that such person or entity shall be deemed to be insolvent if it shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable and/or if the fair market value of its assets does not exceed its aggregate liabilities.

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"**Intangible Collateral**" means (a) the rights to use all names and all derivations thereof now or hereafter used by Trustor in connection with the Site or Improvements, including, without limitation, the name "Le Reve", including any variations thereon, together with the goodwill associated therewith, and all names, logos, and designs used by Trustor, or in connection with the Site or in which Trustor has rights, with the exclusive right to use such names, logos and

designs wherever they are now or hereafter used in connection with the Project (or in connection with the marketing of the Project), and any and all other trade names, trademarks or service marks, whether or not registered, now or hereafter used in the operation of the Project, including, without limitation, any interest as a lessee, licensee or franchisee, and, in each case, together with the goodwill associated therewith; (b) subject to the absolute assignment contained herein, the Rents; (c) any and all books, records, customer lists, concession agreements, supply or service contracts, licenses, permits, governmental approvals (to the extent such licenses, permits and approvals may be pledged under applicable law), signs, goodwill, casino and hotel credit and charge records, supplier lists, checking accounts, safe deposit boxes (excluding the contents of such deposit boxes owned by persons other than Trustor and its subsidiaries), cash, instruments, chattel papers, including inter-company notes and pledges, documents, unearned premiums, deposits, refunds, including but not limited to income tax refunds, prepaid expenses, rebates, tax and insurance escrow and impound accounts, if any, actions and rights in action, and all other claims, including without limitation condemnation awards and insurance proceeds, and all other contract rights and general intangibles resulting from or used in connection with the operation and occupancy of the Trust Estate and the Improvements and in which Trustor now or hereafter has rights; and (d) general intangibles, vacation license resort agreements or other time share license or right to use agreements, including without limitation all rents, issues, profits, income and maintenance fees resulting therefrom, whether any of the foregoing is now owned or hereafter acquired.

"**Land**" means the real property situated in the County of Clark, State of Nevada, more specifically described in *Schedule A* attached hereto and incorporated herein by reference, including any after acquired title thereto.

"**Legal Requirements**" means all applicable restrictive covenants, applicable zoning and subdivision ordinances and building codes, all applicable health and Environmental Laws and regulations, all applicable gaming laws and regulations, and all other applicable laws, ordinances, rules, regulations, judicial decisions, administrative orders, and other requirements of any Governmental Authority having jurisdiction over Trustor, the Trust Estate and/or any Affiliate of Trustor, in effect either at the time of execution of this Deed of Trust or at any time during the term hereof, including, without limitation, all Environmental Laws and Nevada Gaming Laws.

"**Nevada Gaming License**" means any gaming license necessary for the ownership, construction, maintenance, financing or operation of the Project, whether issued and/or required by Nevada Gaming Authorities, Nevada Gaming Laws or otherwise.

"**Notes**" means, collectively, those certain mortgage note(s) issued pursuant to the Mortgage Notes Indenture, as the same may be amended or replaced from time to time in accordance with its terms.

"**NRS**" means the Nevada Revised Statutes as in effect from time to time.

"**Obligations**" means (i) the payment and performance by the Issuers of each covenant and agreement of the Issuers contained in the Mortgage Notes Indenture, the Notes and the other Indenture Documents and (ii) the payment and performance by Trustor of each covenant and agreement of Trustor contained in this Deed of Trust, the Mortgage Notes Indenture, the Indemnity Agreement, the Guaranty and the other Indenture Documents.

"**Permitted Dispositions**" means (a) the sale, transfer, lease or other disposition of assets in the Trust Estate, in the ordinary course of business, of inventory held in the ordinary course of business (b) the dispositions set forth in *Section 1.10* hereof and (c) other sales, transfers, leases or other dispositions of

assets in the Trust Estate, including entering into Space Leases; *provided* that, in each case, all applicable provisions of the Indenture Documents are complied with.

"**Personal Property**" has the meaning set forth in *Section 1.12* hereof.

"**Proceeds**" has the meaning assigned to it under the UCC and, in any event, shall include but not be limited to (i) any and all proceeds of any insurance (including without limitation property casualty and title insurance), indemnity, warranty or guaranty payable from time to time with respect to any of the Trust Estate; (ii) any and all proceeds in the form of accounts, security deposits, tax escrows (if any), down payments (to the extent the same may be pledged under applicable law), collections, contract rights, documents, instruments, chattel paper, liens and security instruments, guarantees or general intangibles relating in whole or in part to the Project and all rights and remedies of whatever kind or nature Trustor may hold or acquire for the purpose of securing or enforcing any obligation due Trustor thereunder; (iii) any and all payments in any form whatsoever made or due and payable from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Trust Estate by any Governmental Authority; (iv) subject to the absolute assignment contained herein, the Rents or other benefits arising out of, in connection with or pursuant to any Space Lease of the Trust Estate; and (v) any and all other amounts from time to time paid or payable in connection with any of the Trust Estate; *provided, however*, that the Trustor is not authorized to dispose of any of the Trust Estate unless such disposition is a Permitted Disposition.

"**Project**" means the resort-hotel-casino-mall complex proposed to be constructed in Clark County, Nevada as described in the Plans and Specifications and as applicable to the Land and the Improvements, as such Plans and Specifications may be amended pursuant to the Disbursement Agreement.

"**Rents**" means all rents, room revenues, income, receipts, issues, profits, revenues and maintenance fees, room, food and beverage revenues, license and concession fees, income, proceeds and other benefits to which Trustor may now or hereafter be entitled from the Site, the Improvements, the Space Leases or any property encumbered hereby or any business or other activity conducted by Trustor at the Site or the Improvements.

"**Site**" means the Land and the Appurtenant Rights.

"**Space Leases**" means any and all leases, subleases, lettings, licenses, concessions, operating agreements, management agreements, and all other agreements affecting the Trust Estate that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, that give any person the right to conduct its business on, or otherwise use, operate or occupy, all or any portion of the Site or Improvements and any leases, agreements or arrangements permitting anyone to enter upon or use any of the Trust Estate to extract or remove natural resources of any kind, together with all amendments, extensions, and renewals of the foregoing entered into in compliance with this Deed of Trust, together with all rental, occupancy, service, maintenance or any other similar agreements pertaining to use or occupation of, or the rendering of services at the Site, the Improvements or any part thereof.

"**Space Lessee(s)**" means any and all tenants, licensees, or other grantees of the Space Leases and any and all guarantors, sureties, endorsers or others having primary or secondary liability with respect to such Space Leases.

"Tangible Collateral" means all personal property, goods, equipment, supplies, building and other materials of every nature whatsoever and all other tangible personal property constituting a part or portion of the Project and/or used in the operation of the hotel, casino, restaurants, stores, parking facilities, observation tower and all other commercial operations on the Site or Improvements, including but not limited to communication systems, visual and electronic surveillance systems and transportation systems and not constituting a part of the real property subject to the real property lien

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of this Deed of Trust and including all property and materials stored therein in which Trustor has an interest and all tools, utensils, food and beverage, liquor, uniforms, linens, housekeeping and maintenance supplies, vehicles, fuel, advertising and promotional material, blueprints, surveys, plans and other documents relating to the Site or Improvements, and all construction materials and all furnishings, fixtures and equipment, including, but not limited to, all FF&E and all equipment and devices which are or are to be installed and used in connection with the operation of the Project, those items of furniture, fixtures and equipment which are to be purchased or leased by Trustor, machinery and any other item of personal property in which Trustor now or hereafter own or acquire an interest or right, and which are used or useful in the construction, operation, use and occupancy of the Project and all present and future right and interest of Trustor in and to any casino operator's agreement, license agreement or sublease agreement used in connection with the Site or the Improvements.

"Title Insurer" means Chicago Title Insurance Company.

"Trust Estate" means all of the property described in Granting Clauses (A) through (O) below, inclusive, and each item of property therein described, provided, however, that such term shall not include the property described in Granting Clause (P) below.

"UCC" means the Uniform Commercial Code in effect in the State of Nevada from time to time, NRS chapters 104 and 104A.

The following terms shall have the meaning assigned to such terms in the Disbursement Agreement:

Bank Palo Deed of Trust
Disbursement Agent
Environmental Laws
Financing Agreements
Nevada Gaming Authorities
Nevada Gaming Laws
Permitted Encumbrance
Plans and Specifications
Project Lenders Intercreditor Agreement
Second Mortgage Note Holders
Second Mortgage Notes Security Documents

The following terms shall have the meaning assigned to such terms in the Mortgage Notes Indenture:

Affiliate
Collateral Documents
Lien
Permitted Liens
Person

In addition, any capitalized terms used in this Deed of Trust which are not otherwise defined herein shall have the meaning ascribed to such terms in the Disbursement Agreement and, if not defined therein, the meaning ascribed to such terms in the Mortgage Notes Indenture; provided, that upon termination of the Disbursement Agreement, any defined terms used herein having meanings given to such terms in the Disbursement Agreement shall continue to have the meanings given to such terms in the Disbursement Agreement immediately prior to such termination.

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W I T N E S E T H:

IN CONSIDERATION OF TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION; THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, AND FOR THE PURPOSE OF SECURING in favor of Beneficiary (1) the Obligations; (2) the payment of such additional loans or advances as hereafter may be made to Trustor (individually or jointly and severally with any other Person) or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; *provided, however*, that any and all future advances by Beneficiary to Trustor made for the improvement, protection or preservation of the Trust Estate, together with interest at the rate applicable to overdue principal set forth in the Mortgage Notes Indenture, shall be automatically secured hereby unless such a note or instrument evidencing such advances specifically recites that it is not intended to be secured hereby and (3) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof or to protect the security hereof (including Protective Advances as such term is defined in *Section 4.2* hereof), together with interest thereon as herein provided (without limiting the generality of the protections afforded by NRS Chapter 106, funds disbursed that, in the reasonable exercise of Beneficiary's judgment, are needed to complete Improvements to the Land or to protect Beneficiary's security in the Trust Estate are to be deemed obligatory advances hereunder and will be added to the total indebtedness secured by this Deed of Trust and such indebtedness shall be increased accordingly), Trustor, in consideration of the premises, and for the purposes aforesaid, does hereby ASSIGN, BARGAIN, CONVEY, PLEDGE, RELEASE, HYPOTHECATE, WARRANT, AND TRANSFER WITH POWER OF SALE UNTO TRUSTEE IN TRUST FOR THE BENEFIT OF BENEFICIARY AND THE SECOND MORTGAGE NOTE HOLDERS each of the following:

(A) The Land;

(B) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Improvements;

(C) TOGETHER WITH all Appurtenant Rights;

(D) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Tangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(E) TOGETHER WITH the Intangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(F) TOGETHER WITH (i) all the estate, right, title and interest of Trustor of, in and to all judgments and decrees, insurance proceeds, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of any of the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof, or to any Appurtenant Rights thereto, and Beneficiary is (subject to the terms hereof) hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittance therefor, and (subject to the terms hereof) to apply the same toward the payment of the indebtedness and other sums secured hereby, notwithstanding the fact that the amount owing thereon may not then be due and payable; (ii) all proceeds of any sales or other dispositions of the property or rights described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof whether voluntary or involuntary, provided, however, that the foregoing shall not be deemed to permit such sales, transfers, or other dispositions except as specifically permitted herein; and (iii) whether arising from any voluntary or involuntary disposition of the property described in Granting Clauses (A), (B), (C), (D) and (E), all Proceeds, products,

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replacements, additions, substitutions, renewals and accessions, remainders, reversions and after-acquired interest in, of and to such property;

(G) TOGETHER WITH the absolute assignment of any Space Leases or any part thereof that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, together with all of the following (including all "Cash Collateral" within the meaning of the Bankruptcy Law) arising from the Space Leases: (a) Rents (subject, however, to the aforesaid absolute assignment to Trustee for the benefit of Beneficiary and the conditional permission hereinbelow given to Trustor to collect the Rents), (b) all guarantees, letters of credit, security deposits, collateral, cash deposits, and other credit enhancement documents, arrangements and other measures with respect to the Space Leases, (c) all of Trustor's right, title, and interest under the Space Leases, including the following: (i) the right to receive and collect the Rents from the lessee, sublessee or licensee, or their successor(s), under any Space Lease(s) and (ii) the right to enforce against any tenants thereunder and otherwise any and all remedies under the Space Leases, including Trustor's right to evict from possession any tenant thereunder or to retain, apply, use, draw upon, pursue, enforce or realize upon any guaranty of any Space Lease; to terminate, modify, or amend the Space Leases; to obtain possession of, use, or occupy, any of the real or personal property subject to the Space Leases; and to enforce or exercise, whether at law or in equity or by any other means, all provisions of the Space Leases and all obligations of the tenants thereunder based upon (A) any breach by such tenant under the applicable Space Lease (including any claim that Trustor may have by reason of a termination, rejection, or disaffirmance of such Space Lease pursuant to any Bankruptcy Law) and (B) the use and occupancy of the premises demised, whether or not pursuant to the applicable Space Lease (including any claim for use and occupancy arising under landlord-tenant law of the State of Nevada or any Bankruptcy Law). Permission is hereby given to Trustor, so long as no Event of Default has occurred and is continuing hereunder, to collect and use the Rents, as they become due and payable, but not more than one (1) month in advance thereof. Upon the occurrence of an Event of Default, the permission hereby given to Trustor to collect the Rents shall automatically terminate, but such permission shall be reinstated upon a cure or waiver of such Event of Default. Beneficiary shall have the right, at any time and from time to time, to notify any Space Lessee of the rights of Beneficiary as provided by this section;

Notwithstanding anything to the contrary contained herein, the foregoing provisions of this Paragraph (G) shall not constitute an assignment for purposes of security but shall constitute an absolute and present assignment of the Rents to Beneficiary, subject, however, to the conditional license given to Trustor to collect and use the Rents as hereinabove provided; and the existence or exercise of such right of Trustor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Trustor;

(H) TOGETHER WITH all of Trustor's right, title and interest in and to any and all Plans and Specifications and all maps, plans, specifications, surveys, studies, tests, reports, data and drawings relating to the development of the Site or the Project and the construction of the Improvements, including, without limitation, all marketing plans, feasibility studies, soils tests, design contracts and all contracts and agreements of Trustor relating thereto including, without limitation, architectural, structural, mechanical and engineering plans and specifications, studies, data and drawings prepared for or relating to the development of the Site or the Project or the construction, renovation or restoration of any of the Improvements or the extraction of minerals, sand, gravel or other valuable substances from the Site and purchase contracts or any agreement granting Trustor a right to acquire any land situated within Clark County, Nevada;

(I) TOGETHER WITH, to the extent permitted by applicable law, all of Trustor's right, title, and interest in and to any and all licenses, permits, variances, special permits, franchises, certificates, rulings, certifications, validations, exemptions, filings, registrations, authorizations, consents, approvals, waivers, orders, rights and agreements (including, without limitation, options, option rights, contract

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rights now or hereafter obtained by Trustor from any Governmental Authority having or claiming jurisdiction over the Land, the FF&E, the Project, or any other element of the Trust Estate or providing access thereto, or the operation of any business on, at, or from the Site including, without limitation, any liquor or Nevada Gaming Licenses (except for any registrations, licenses, findings of suitability or approvals issued by the Nevada Gaming Authorities or any other liquor or gaming licenses which are non-assignable); provided, that upon an Event of Default hereunder or under the Mortgage Notes Indenture, if Beneficiary is not qualified under the Nevada Gaming Laws to hold such Nevada Gaming Licenses, then Beneficiary may designate an appropriately qualified third party to which an assignment of such Nevada Gaming Licenses can be made in compliance with the Nevada Gaming Laws;

(J) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to all water stock, water permits and other water rights relating to the Site;

(K) TOGETHER WITH all oil and gas and other mineral rights, if any, in or pertaining to the Site and all royalty, leasehold and other rights of Trustor pertaining thereto;

(L) TOGETHER WITH any and all monies and other property, real or personal, which may from time to time be subjected to the lien hereof by Trustor or by anyone on its behalf or with its consent, or which may come into the possession or be subject to the control of Trustee or Beneficiary pursuant to this Deed of Trust, the Mortgage Notes Indenture or any other Indenture Document, including, without limitation, any Protective Advances (as defined in Section 4.2 hereof)

under this Deed of Trust; and all of Trustor's right, title, and interest in and to all extensions, improvements, betterments, renewals, substitutes for and replacements of, and all additions, accessions, and appurtenances to, any of the foregoing that Trustor may subsequently acquire or obtain by any means, or construct, assemble, or otherwise place on any of the Trust Estate, and all conversions of any of the foregoing; it being the intention of Trustor that all property hereafter acquired by Trustor and required by the Mortgage Notes Indenture, this Deed of Trust or any other Indenture Document to be subject to the lien of this Deed of Trust or intended so to be shall forthwith upon the acquisition thereof by Trustor be subject to the lien of this Deed of Trust as if such property were now owned by Trustor and were specifically described in this Deed of Trust and granted hereby or pursuant hereto, and Trustee and Beneficiary are hereby authorized, subject to Nevada Gaming Laws and other applicable laws, to receive any and all such property as and for additional security for the obligations secured or intended to be secured hereby. Trustor agrees to take any action as may reasonably be necessary to evidence and perfect such liens or security interests, including, without limitation, the execution of any documents necessary to evidence and perfect such liens or security interests;

(M) TOGETHER WITH, to the extent permitted by applicable laws, any and all Accounts Receivable and all royalties, earnings, income, proceeds, products, rents, revenues, reversions, remainders, issues, profits, avails, production payments, and other benefits directly or indirectly derived or otherwise arising from any of the foregoing, all of which are hereby assigned to Beneficiary, who, except as otherwise expressly provided in this Deed of Trust (including the provisions of *Section 1.13* hereof), is authorized to collect and receive the same, to give receipts and acquittances therefor and to apply the same to the Obligations secured hereunder, whether or not then due and payable;

(N) TOGETHER WITH Proceeds of the foregoing property described in Granting Clauses (A) through (M);

(O) TOGETHER WITH Trustor's rights further to assign, sell, lease, encumber or otherwise transfer or dispose of the property described in Granting Clauses (A) through (N) inclusive, above, for debt or otherwise; and

(P) EXPRESSLY EXCLUDING, HOWEVER, any assets expressly excluded from the definition of "Collateral" in the Mortgage Notes Indenture.

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Trustor, for itself and its successors and assigns, covenants and agrees to and with Trustee that, at the time or times of the execution of and delivery of these presents or any instrument of further assurance with respect thereto, Trustor has good right, full power and lawful authority to assign, grant, convey, warrant, transfer, bargain or sell its interests in the Trust Estate in the manner and form as aforesaid, and that the Trust Estate is free and clear of all liens and encumbrances whatsoever, except Permitted Liens, and Trustor shall warrant and forever defend the above-bargained property in the quiet and peaceable possession of Trustee and its successors and assigns against all and every person or persons lawfully or otherwise claiming or to claim the whole or any part thereof, except for Permitted Liens. Trustor agrees that any greater title to the Trust Estate hereafter acquired by Trustor during the term hereof shall be automatically subject hereto.

ARTICLE ONE COVENANTS OF TRUSTOR

The Beneficiary and the Second Mortgage Note Holders have been induced to enter into the Indenture Documents and to purchase the Notes, as the case may be, on the basis of the following material covenants, all agreed to by Trustor:

1.1 Performance of Indenture Documents. Trustor shall perform, observe and comply with each and every provision hereof, and with each and every provision contained in the Mortgage Notes Indenture and the other Indenture Documents and shall promptly pay to the Beneficiary or the Disbursement Agent, as applicable, when payment shall become due, the principal with interest thereon and all other sums required to be paid by Trustor under this Deed of Trust, the Mortgage Notes Indenture and the other Indenture Documents.

1.2 General Representations, Covenants and Warranties. Trustor represents, covenants and warrants that: (a) Trustor has good and marketable title to an indefeasible fee estate in the Site, free and clear of all encumbrances except Permitted Encumbrances, and that it has the right to hold, occupy and enjoy its interest in the Trust Estate, and has good right, full power and lawful authority to subject the Trust Estate to the Lien of this Deed of Trust and pledge the same as provided herein and Beneficiary may at all times peaceably and quietly enter upon, hold, occupy and enjoy the entire Trust Estate in accordance with the terms hereof; (b) Trustor is not Insolvent and no bankruptcy or insolvency proceedings are pending or contemplated by or, to the best of Trustor's knowledge, threatened against Trustor; (c) all costs arising from construction of any Improvements, the performance of any labor and the purchase of all Tangible Collateral and Improvements have been or shall be paid when due (subject to the provisions of the Disbursement Agreement, the Mortgage Notes Indenture and this Deed of Trust); (d) the Land has direct access for ingress and egress to dedicated street(s); (e) Trustor shall at all times conduct and operate the Trust Estate in a manner so as not to lose, or permit its affiliate to lose, the right to conduct gaming activities at the Project; (f) no material part of the Trust Estate has been damaged, destroyed, condemned or abandoned, other than those portions of the Trust Estate that (i) have been the subject of condemnation proceedings that have resulted in the conveyance of such portion of the Trust Estate to the Trustor or (ii) have been demolished in furtherance of the development of the Project as contemplated under the Disbursement Agreement; (g) as of the date hereof, no part of the Trust Estate is the subject of condemnation proceedings and Trustor has no knowledge of any contemplated or pending condemnation proceeding with respect to any portion of the Trust Estate; and (h) Trustor acknowledges and agrees that it presently may use, and in the past may have used, one or more of the trade or fictitious names, "Le Reve", "Wynn Collection", "Wynn Resorts" and "Desert Inn" and in each case variations thereof (collectively, the "**Enumerated Names**") in connection with the operation of the business at the Trust Estate, and Trustor further represents and warrants that the Enumerated Names are the only such trade or fictitious names Trustor has so used. For all purposes under this Deed of Trust it shall be deemed that the term "Trustor" includes all trade or fictitious names that Palo, LLC (or any successor or assign thereof) now or hereafter uses, or has in

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the past used, including, without limitation, the Enumerated Names, with the same force and effect as if this Deed of Trust had been executed in all such names (in addition to "Palo, LLC").

1.3 Compliance with Legal Requirements. Except as provided in the Mortgage Notes Indenture, Trustor shall promptly, fully, and faithfully comply in all material respects with all Legal Requirements and shall cause all portions of the Trust Estate and its use and occupancy to fully comply in all material respects

with Legal Requirements at all times, whether or not such compliance requires work or remedial measures that are ordinary or extraordinary, foreseen or unforeseen, structural or nonstructural, or that interfere with the use or enjoyment of the Trust Estate.

1.4 Taxes. Except as otherwise permitted by the Mortgage Notes Indenture, (a) Trustor shall pay all Impositions as they become due and payable and shall deliver to Beneficiary promptly upon Beneficiary's request, evidence satisfactory to Beneficiary that the Impositions have been paid or are not delinquent; (b) Trustor shall not suffer to exist, permit or initiate the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Land as a single lien, except as may be required by law; and (c) in the event of the passage of any law deducting from the value of real property for the purposes of taxation any lien thereon, or changing in any way the taxation of deeds of trust or obligations secured thereby for state or local purposes, or the manner of collecting such taxes and imposing a tax, either directly or indirectly, on this Deed of Trust or the other Indenture Documents to which Trustor is a party, Trustor shall pay all such taxes.

1.5 Insurance.

(a) Hazard Insurance Requirements and Proceeds.

(1) *Hazard Insurance.* Trustor shall at its sole expense obtain for, deliver to, assign and maintain for the benefit of Beneficiary, during the term of this Deed of Trust, insurance policies insuring the Trust Estate and liability insurance policies, all in accordance with the requirements of the Mortgage Notes Indenture. Trustor shall pay promptly when due any premiums on such insurance policies and on any renewals thereof. In the event of the foreclosure of this Deed of Trust or any other transfer of title to the Trust Estate in partial or complete extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of Beneficiary in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

(2) *Handling of Proceeds.* All Proceeds from any insurance policies shall be collected, held, handled and disbursed in accordance with the provisions of the Mortgage Notes Indenture and the Disbursement Agreement (while in effect). All proceeds of insurance allocable to Trustor, as owner of the Site, and attributable to business interruption insurance shall be collected, held, handled and disbursed in accordance with the provisions of the Mortgage Notes Indenture and the Disbursement Agreement. Any such proceeds disbursed to Beneficiary shall be applied to pay amounts then due and payable under this Deed of Trust. The balance shall be retained by Beneficiary or its designee in an interest bearing or other investment account approved by Beneficiary, which account Trustor hereby pledges to Beneficiary to secure the Obligations. Disbursements shall be permitted from such account to pay expenses reasonably incurred by Trustor in owning and operating the Trust Estate, as reasonably approved by Beneficiary.

(b) **Compliance with Insurance Policies.** Trustor shall not violate or permit to be violated any of the conditions or provisions of any policy of insurance required by the Mortgage Notes Indenture or this Deed of Trust and Trustor shall so perform and satisfy the requirements of the companies writing such policies that, at all times, companies of good standing shall be willing to write and/or continue such insurance. Trustor further covenants to promptly send to Beneficiary all

notices relating to any violation of such policies or otherwise affecting Trustor's insurance coverage or ability to obtain and maintain such insurance coverage.

1.6 Condemnation. Beneficiary is hereby authorized, at its option, to commence, appear in and prosecute in its own or Trustor's name any action or proceeding relating to any condemnation and to settle or compromise any claim in connection therewith, and Trustor hereby appoints Beneficiary as its attorney-in-fact to take any action in Trustor's name pursuant to Beneficiary's rights hereunder. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Trust Estate or any portion thereof, Trustor shall notify the Trustee and Beneficiary of the pendency of such proceedings. Trustor from time to time shall execute and deliver to Beneficiary all instruments requested by it to permit such participation; provided, however, that such instruments shall be deemed as supplemental to the foregoing grant of permission to Trustee and Beneficiary, and unless otherwise required, the foregoing permission shall, without more, be deemed sufficient to permit Trustee and/or Beneficiary to participate in such proceedings on behalf of Trustor. All such compensation awards, damages, claims, rights of action and Proceeds, and any other payments or relief, and the right thereto, are, whether paid to Beneficiary or Trustor or a third party trustee, included in the Trust Estate. Beneficiary, after deducting therefrom all its expenses, including reasonable attorneys fees, shall apply all Proceeds paid directly to it in accordance with the provisions of the Mortgage Notes Indenture. All Proceeds paid directly to the Trustor shall be applied, if received by Trustor prior to the Final Completion Date, in accordance with the Disbursement Agreement and, if received on or after the Final Completion Date, in accordance with the Mortgage Notes Indenture. To the extent that any condemnation proceeds are not required to be applied towards restoration of the improvements upon the Site, then Beneficiary shall have the right to apply said condemnation proceeds towards repayment of the Obligations. Trustor hereby waives any rights it may have under NRS 37.115, as amended or recodified from time to time.

1.7 Care of Trust Estate.

(a) Trustor shall preserve and maintain the Trust Estate in good condition and repair. Trustor shall not permit, commit or suffer to exist any waste, impairment or deterioration of the Trust Estate or of any part thereof that in any manner materially impairs Beneficiary's security hereunder and shall not take any action which will increase the risk of fire or other hazard to the Trust Estate or to any part thereof.

(b) Except for Permitted Dispositions, no material part of the Improvements or Tangible Collateral that are part of the Trust Estate shall be removed, demolished or materially altered, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld or delayed. Trustor shall have the right, without such consent, to remove and dispose of free from the lien of this Deed of Trust any part of the Improvements or Tangible Collateral that are part of the Trust Estate as from time to time may become worn out or obsolete or otherwise not useful in connection with the operation of the Trust Estate, provided that either (i) such removal or disposition does not materially affect the value of the Trust Estate or (ii) prior to or promptly following such removal, any such property shall be replaced with other property of substantially equal utility and of a value at least substantially equal to that of the replaced property when first acquired and free from any security interest of any other person (subject only to Permitted Liens), and by such removal and replacement Trustor shall be deemed to have subjected such replacement property to the lien of this Deed of Trust.

(c) Notwithstanding the foregoing provisions of this *Section 1.7*, the Trustor may develop the Project in the manner contemplated by the Disbursement Agreement, the Mortgage Notes Indenture and the other Indenture Documents.

1.8 Leases.

(a) Trustor represents, warrants and covenants that:

(i) except for the assignment effected hereby and in the other Financing Agreements, Trustor has not executed any assignment or pledge of any of the Space Leases, the Rents, or of Trustor's right, title and interest in the same; and

(ii) this Deed of Trust does not and will not constitute a violation or default under any Space Lease, and is and shall at all times constitute a valid lien on Trustor's interests in the Space Leases.

(b) Trustor shall not enter into any Space Lease or any modifications or amendments to any Space Lease, either orally or in writing, unless such Space Lease complies with the requirements of the Mortgage Notes Indenture and the Second Mortgage Notes Security Documents.

(c) After an Event of Default, upon the request of Beneficiary Trustor shall deliver to Beneficiary executed copies of all Space Leases.

1.9 *Further Encumbrance.*

(a) Trustor covenants that at all times prior to the discharge of the Obligations, except for Permitted Liens and Permitted Dispositions, Trustor shall neither make nor suffer to exist, nor enter into any agreement for, any sale, assignment, exchange, mortgage, transfer, Lien, hypothecation or encumbrance of all or any part of the Trust Estate, including, without limitation, the Rents. As used herein, "transfer" includes the actual transfer or other disposition, whether voluntary or involuntary, by law, or otherwise, except those transfers specifically permitted herein, provided, however, that "transfer" shall not include the granting of utility or other beneficial easements with respect to the Trust Estate which have been or are granted by Trustor and are reasonably necessary to the construction, maintenance or operation of the Project.

(b) Any Permitted Lien consisting of the lien of a deed of trust which is junior to the lien of the Indenture Documents (a "Subordinate Deed of Trust") shall be permitted hereunder so long as there shall have been delivered to Beneficiary, not less than thirty (30) days prior to the date thereof, a copy thereof which shall contain express covenants in form and substance satisfactory to Beneficiary to the effect that: (i) the Subordinate Deed of Trust is in all respects subject and subordinate to this Deed of Trust; (ii) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Trust Estate shall be named as a party defendant nor shall any action be taken with respect to the Trust Estate which would terminate any occupancy or tenancy of the Trust Estate, or any portion thereof, without the consent of Beneficiary; (iii) any Rents, if collected through a receiver or by the holder of the Subordinate Deed of Trust, shall be applied first to the obligations secured by this Deed of Trust, including principal and interest due and owing on or to become due and owing on the Notes or the other Indenture Documents, and then to the payment of maintenance expenses, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operation, and maintenance of the Trust Estate; and (iv) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust, prompt notice of the commencement thereof shall be given to Beneficiary.

(c) Trustor agrees that in the event the ownership of the Trust Estate or any part thereof becomes vested in a person other than Trustor, Beneficiary may, without notice to Trustor, deal in any way with such successor or successors in interest with reference to this Deed of Trust, the Notes, the other Indenture Documents and other Obligations hereby secured without in any way vitiating or discharging Trustor's or any guarantor's, surety's or endorser's liability hereunder or upon the obligations hereby secured. No sale of the Trust Estate and no forbearance to any person with respect to this Deed of Trust and no extension to any person of the time for payment of the

Obligations, and other sums hereby secured given by Beneficiary shall operate to release, discharge, modify, change or affect the original liability of Trustor, or such guarantor, surety or endorser either in whole or in part.

(d) If Trustor shall fail to make any payment required to be made by it under any FF&E Financing Agreement, except where Trustor is contesting such payment in good faith, then the Beneficiary shall be entitled to make such payment on Trustor's behalf and any and all sums so expended by the Beneficiary shall be secured by this Deed of Trust and shall be repaid by Trustor upon demand, together with interest thereon at the interest at the rate applicable to overdue principal set forth in the Mortgage Notes Indenture from the date of advance.

1.10 *Partial Releases of Trust Estate.*

(a) Trustor may from time to time make a Permitted Disposition including, but not limited to, (i) transferring a portion of the Trust Estate (including any temporary taking) to any person legally empowered to exercise the power of eminent domain, or pursuant to dedication agreements that are now in effect or entered into in the future in connection with the development of the Project, (ii) granting utility easements reasonably necessary or desirable for the construction and/or operation of the Project, which grant or transfer is for the benefit of the Trust Estate, or (iii) transferring all or a portion of the Trust Estate as permitted pursuant to the Disbursement Agreement or the other Indenture Documents. In each such case, Beneficiary shall execute and deliver any instruments necessary or appropriate to effectuate or confirm any such transfer or grant, free from the lien of this Deed of Trust, provided, however, that Beneficiary shall execute a lien release or subordination agreement, as appropriate, for matters described in clauses (i) and (iii) above only if:

(A) Such transfer, grant or release is not prohibited by the Mortgage Notes Indenture and all conditions precedent contained in the Mortgage Notes Indenture for such transfer, grant or release, if any, shall have been satisfied;

(B) Beneficiary and Trustee shall have received a counterpart of the instrument pursuant to which such transfer, grant or release is to be made, and each instrument which Beneficiary or Trustee is requested to execute in order to effectuate or confirm such transfer, grant or release; and

(C) Beneficiary and Trustee shall have received an Officer's Certificate if required pursuant to the Mortgage Notes Indenture.

(b) Any consideration received for a transfer to any person empowered to exercise the right of eminent domain shall be subject to *Section 1.6* hereof.

1.11 **Further Assurances.**

(a) At its sole cost and without expense to Trustee or Beneficiary, and subject in all events to compliance with the Nevada Gaming Laws and other applicable Legal Requirements, Trustor shall do, execute, acknowledge and deliver any and all such further acts, deeds, conveyances, notices, requests for notices, financing statements, continuation statements, certificates, assignments, notices of assignments, agreements, instruments and further assurances, and shall mark any chattel paper, deliver any chattel paper or instruments to Beneficiary and take any other actions that are necessary, prudent, or reasonably requested by Beneficiary or Trustee to perfect or continue the perfection and first priority of Beneficiary's security interest in the Trust Estate, to protect the Trust Estate against the rights, claims, or interests of third persons other than holders of Permitted Liens or to effect the purposes of this Deed of Trust, including the security agreement and the absolute assignment of Rents contained herein, or for the filing, registering or recording thereof.

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(b) Trustor shall forthwith upon the execution and delivery of this Deed of Trust, and thereafter from time to time, cause this Deed of Trust and each instrument of further assurance to be filed, indexed, registered, recorded, given or delivered in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the title of Trustee and/or Beneficiary to, the Trust Estate.

1.12 Security Agreement and Financing Statements. Trustor (as debtor) hereby grants to Beneficiary (as creditor and secured party) a present and future security interest in all Tangible Collateral, Intangible Collateral, FF&E, Improvements, all other personal property now or hereafter owned or leased by Trustor or in which Trustor has or will have any interest, to the extent that such property constitutes a part of the Trust Estate (whether or not such items are stored on the premises or elsewhere), Proceeds of the foregoing comprising a portion of the Trust Estate and all products, substitutions, and accessions therefor and thereto, subject to Beneficiary's rights to treat such property as real property as herein provided (collectively, the "**Personal Property**"). Trustor shall execute and/or deliver any and all documents and writings, including without limitation financing statements pursuant to the UCC, as may be necessary or prudent to preserve and maintain the priority of the security interest granted hereby on property which may be deemed subject to the foregoing security agreement or as Beneficiary may reasonably request, and shall pay to Beneficiary on demand any reasonable expenses incurred by Beneficiary in connection with the preparation, execution and filing of any such documents. Trustor hereby authorizes and empowers Beneficiary to file, on Trustor's behalf, all financing statements and refiling and continuations thereof as advisable to create, preserve and protect said security interest. Trustor acknowledges and agrees that it is not authorized to, and will not, authenticate or file, or authorize the filing of, any financing statements or other record with respect to the Personal Property (including any amendments thereto, or continuation or termination statements thereof), except as permitted by the Indenture Documents. Trustor approves and ratifies any filing or recording of records made by or on behalf of Beneficiary in connection with the perfection of the security interest in favor of Beneficiary hereunder. This Deed of Trust constitutes both a real property deed of trust and a "security agreement," within the meaning of the UCC, and the Trust Estate includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Trust Estate. Trustor by executing and delivering this Deed of Trust has granted to Beneficiary, as security of the Obligations, a security interest in the Trust Estate.

(a) **Fixture Filing.** Without in any way limiting the generality of the immediately preceding paragraph or of the definition of the Trust Estate, this Deed of Trust constitutes a fixture filing under Sections 9-334 and 9-502 of the UCC (NRS 104.9334 and 104.9502). For such purposes, (i) the "debtor" is Trustor and its address is the address given for it in the initial paragraph of this Deed of Trust; (ii) the "secured party" is Beneficiary, and its address for the purpose of obtaining information is the address given for it in the initial paragraph of this Deed of Trust; (iii) the real estate to which the fixtures are or are to become attached is Trustor's interest in the Site; and (iv) the record owner of such real estate is Trustor.

(b) **Remedies.** This Deed of Trust shall be deemed a security agreement as defined in the UCC and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall include any or all of (i) those prescribed herein, and (ii) those available under applicable law, and (iii) those available under the UCC, all at Beneficiary's sole election. In addition, a photographic or other reproduction of this Deed of Trust shall be sufficient as a financing statement for filing wherever filing may be necessary to perfect or continue the security interest granted herein.

(c) **Derogation of Real Property.** It is the intention of the parties that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in anyway derogating from or impairing the express declaration and intention of the parties hereto as hereinabove stated that everything used in connection with the production of income from the

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Trust Estate and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real property encumbered by this Deed of Trust irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. It is the intention of the parties that the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Trustor's interest as lessors in any present or future Space Lease or rights to Rents, shall never be construed as in anyway altering any of the rights of Beneficiary as determined by this Deed of Trust or impugning the priority of Beneficiary's real property lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of Beneficiary in the event any court or judge shall at any time hold with respect to the matters set forth in the foregoing clauses (1), (2) and (3) that notice of Beneficiary's priority of interest to be effective against a particular class of persons, including but not limited to, the federal government and any subdivisions or entity of the federal government, must be filed in the UCC records.

(d) **Priority; Permitted Financing of Tangible Collateral.** All Personal Property of any nature whatsoever which is subject to the provisions of this security agreement shall be purchased or obtained by Trustor in its name and free and clear of any lien or encumbrance, except for Permitted Liens and the lien hereof, for use only in connection with the business and operation of the Project, and shall be and at all times remain free and clear of any lease or similar arrangement, chattel financing, installment sale agreement, security agreement and any encumbrance of like kind, so that Beneficiary's security interest shall attach to and vest in Trustor for the benefit of Beneficiary, with the priority herein specified, immediately upon the installation or use of the Personal Property at the Site and Trustor warrants and represents that Beneficiary's security interest in the Personal Property is a validly attached and binding security interest, properly perfected and prior to all other security interests therein except as otherwise permitted in this Deed of Trust. The

foregoing shall not be construed as limiting Trustor's rights to transfer Personal Property pursuant to Permitted Dispositions or to obtain releases of Personal Property from the Lien of this Deed of Trust pursuant to *Section 1.10* hereof.

(e) **Preservation of Contractual Rights of Collateral.** Trustor shall, prior to delinquency, default, or forfeiture, perform all obligations and satisfy all material conditions required on its part to be satisfied to preserve its rights and privileges under any contract, lease, license, permit, or other authorization (i) under which it holds any Tangible Collateral or (ii) which constitutes part of the Intangible Collateral, except where Trustor is contesting such obligations in good faith.

(f) **Removal of Collateral.** Except for damaged or obsolete Tangible Collateral which is either no longer usable or which is removed temporarily for repair or improvement or removed for replacement on the Trust Estate with Tangible Collateral of similar function or as otherwise permitted herein, none of the Tangible Collateral shall be removed from the Trust Estate without Beneficiary's prior written consent.

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(g) **Change of Name.** Trustor shall not change its corporate (or other entity) or business name, or do business within the State of Nevada under any name other than such name, or any trade name(s) other than those as to which Trustor gives prior written notice to Beneficiary of its intent to use such trade names, or any other business names (if any) specified in the financing statements delivered to Beneficiary for filing in connection with the execution hereof, without, in each case, providing Beneficiary with the additional financing statement(s) and any other similar documents deemed reasonably necessary by Beneficiary to assure that its security interest remains perfected and of undiminished priority in all such Personal Property notwithstanding such name change.

1.13 **Assignment of Leases and Rents.** Subject to Nevada Gaming Laws and other applicable Legal Requirements, the assignment of Leases and Rents set out above in Granting Clause (G) shall constitute an absolute and present assignment to Beneficiary, subject to the license herein given to Trustor to collect the Rents, and shall be fully operative without any further action on the part of any party, and specifically Beneficiary shall be entitled upon the occurrence of an Event of Default hereunder to all Rents and to enter upon the Site and the Improvements to collect such Rents, provided, however, that Beneficiary shall not be obligated to take possession of the Trust Estate, or any portion thereof. The absolute assignment contained in Granting Clause (G) shall not be deemed to impose upon Beneficiary any of the obligations or duties of Trustor provided in any such Space Lease (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease in the event that any lessee shall have been joined as a party defendant in any action to foreclose this Deed of Trust and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Trust Estate or any part thereof).

1.14 Expenses.

(a) Trustor shall pay when due and payable all out-of-pocket costs, including without limitation, those reasonable appraisal fees, recording fees, taxes, abstract fees, title policy fees, escrow fees, attorneys' and paralegal fees, travel expenses, fees for inspecting architect(s) and engineer(s) and all other costs and expenses of every character which may hereafter be incurred by Beneficiary or any assignee of Beneficiary in connection with the preparation and execution of the Mortgage Notes Indenture and the other Indenture Documents to which Trustor is a party or instruments, agreements or documents of further assurance, the funding of the indebtedness secured hereby, and the enforcement of the Mortgage Notes Indenture or any other Indenture Document to which Trustor is a party. Other than costs associated with the enforcement of any Indenture Document, all such costs shall be itemized in reasonable detail; and

(b) Trustor shall, upon demand by Beneficiary, reimburse Beneficiary or any assignee of Beneficiary for all such reasonable expenses which have been incurred or which shall be incurred by it; and

(c) Trustor shall indemnify Beneficiary with respect to any transaction or matter in any way connected with any portion of the Trust Estate, this Deed of Trust, including any occurrence at, in, on, upon or about the Trust Estate (including any personal injury, loss of life, or property damage), or Trustor's use, occupancy, or operation of the Trust Estate, or the filing or enforcement of any mechanic's lien, or otherwise caused in whole or in part by any act, omission or negligence occurring on or at the Trust Estate, including failure to comply with any Legal Requirement or with any requirement of this Deed of Trust that applies to Trustor, except to the extent resulting from the gross negligence, fraud or willful misconduct of Trustee or Beneficiary. If Beneficiary is a party to any litigation as to which either Trustor is required to indemnify Beneficiary (or is made a defendant in any action of any kind against Trustor or relating directly or indirectly to any portion of the Trust Estate) then, at Beneficiary's option, Trustor shall undertake Beneficiary's defense, using counsel reasonably satisfactory to Beneficiary (and any settlement shall be subject to Beneficiary's consent, which consent shall not be unreasonably withheld), and in any case shall

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indemnify Beneficiary against such litigation. Trustor shall pay all reasonable costs and expenses, including reasonable legal costs, that Beneficiary pays or incurs in connection with any such litigation. Any amount payable under any indemnity in this Deed of Trust shall be a demand obligation, shall be added to, and become a part of, the secured obligations under this Deed of Trust, shall be secured by this Deed of Trust and shall bear interest at the interest rate specified in the Mortgage Notes Indenture. Such indemnity shall survive any release of this Deed of Trust and any foreclosure.

1.15 **Beneficiary's Cure of Trustor's Default.** If Trustor defaults hereunder in the payment of any tax, assessment, lien, encumbrance or other Imposition, in its obligation to furnish insurance hereunder, or in the performance or observance of any other covenant, condition or term of this Deed of Trust or any other Financing Agreement or any FF&E Financing Agreement, Beneficiary may, but is not obligated to, to preserve its interest in the Trust Estate, perform or observe the same, and all payments made (whether such payments are regular or accelerated payments) and reasonable costs and expenses incurred or paid by Beneficiary in connection therewith shall become due and payable immediately. The amounts so incurred or paid by Beneficiary, together with interest thereon at the interest rate applicable to overdue principal set forth in the Mortgage Notes Indenture, from the date incurred until paid by Trustor, shall be added to the indebtedness and secured by the lien of this Deed of Trust. Beneficiary, is hereby empowered to enter and to authorize others to enter upon the Site or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Trustor or any person in possession holding under Trustor. No exercise of any rights under this Section 1.15 by Beneficiary shall cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

1.16 **Use of Land.** Trustor covenants that the Trust Estate shall be used and operated in a manner consistent with the requirements of the Indenture Documents.

1.17 **Compliance with Permitted Lien Agreements.** Trustor shall comply with each and every material obligation contained in any agreement pertaining to a Permitted Lien.

1.18 **Defense of Actions.** Trustor shall appear in and defend any action or proceeding affecting or purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and shall pay all costs and expenses, including cost of title search and insurance or other evidence of title, preparation of survey, and reasonable attorneys' fees in any such action or proceeding in which Beneficiary or Trustee may appear or may be joined as a party and in any suit brought by Beneficiary based upon or in connection with this Deed of Trust, the Mortgage Notes Indenture or any other Indenture Document to which Trustor is a party. Nothing contained in this section shall, however, limit the right of Beneficiary to appear in such action or proceeding with counsel of its own choice, either on its own behalf or on behalf of Trustor.

1.19 **Affiliates.**

(a) **Subject to Trust Deed.** Subject to compliance with the requirements of applicable Nevada Gaming Laws, Trustor shall cause all of its Affiliates in any way involved with the operation of the Trust Estate or the Project to observe the covenants and conditions of this Deed of Trust to the extent necessary to give the full intended effect to such covenants and conditions and to protect and preserve the security of Beneficiary hereunder.

(b) **Restriction on Use of Subsidiary or Affiliate.** Except as permitted under the Notes, the Mortgage Notes Indenture or the other Indenture Documents, Trustor shall not use any Affiliate in the operation of the Trust Estate or the Project if such use would in any way impair the security for the Obligations or circumvent any covenant or condition of this Deed of Trust, the Mortgage Notes Indenture or of any other Indenture Document.

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1.20 **Title Insurance.** Promptly after the execution of this Deed of Trust, Trustor shall cause to be delivered to Trustee at Trustor's expense, one or more ALTA extended coverage Lender's Policies of Title Insurance showing fee title to the real property situated in the County of Clark, State of Nevada, more specifically described in Schedule A attached hereto, vested in Trustor and the lien of this Deed of Trust to be a perfected lien, prior to any and all encumbrances other than Permitted Encumbrances (excluding, however, any such non-Permitted Encumbrances for which the Title Insurer has agreed to provide an endorsement or affirmative coverage protecting the lien of this Deed of Trust against such non-Permitted Encumbrances).

ARTICLE TWO MORTGAGE NOTES INDENTURE PROVISIONS

2.1 **Interaction with Mortgage Notes Indenture**

(a) **Incorporation by Reference.** All terms, covenants, conditions, provisions and requirements of the Mortgage Notes Indenture are incorporated by reference in this Deed of Trust.

(b) **Conflicts.** In the event of any conflict or inconsistency between the provisions of this Deed of Trust and those of the Mortgage Notes Indenture or the Disbursement Agreement, the provisions of the Mortgage Notes Indenture or the Disbursement Agreement, as applicable, shall govern.

2.2 **Other Collateral.** This Deed of Trust is one of a number of security agreements delivered by or on behalf of Trustor and other Persons pursuant to the Mortgage Notes Indenture and the other Indenture Documents and securing the Obligations secured hereunder. All potential junior Lien claimants are placed on notice that, under any of the Indenture Documents (including a separate future unrecorded agreement between Trustor and Beneficiary), other collateral for the Obligations secured hereunder (*i.e.*, collateral other than the Trust Estate) may, under certain circumstances, be released without a corresponding reduction in the total principal amount secured by this Deed of Trust. Such a release would decrease the amount of collateral securing the same indebtedness, thereby increasing the burden on the remaining Trust Estate created and continued by this Deed of Trust. No such release shall impair the priority of the lien of this Deed of Trust. By accepting its interest in the Trust Estate, each and every junior Lien claimant shall be deemed to have acknowledged the possibility of, and consented to, any such release. Nothing in this paragraph shall impose any obligation upon Beneficiary.

2.3 **Subordination to Bank Deed of Trust** Notwithstanding any other provision hereof, this Deed of Trust, including, without limitation, the security interest granted herein, the rights, power and remedies of the Trustee and the Beneficiary and the obligations of Trustor set forth herein, shall, to the extent provided in the Project Lenders Intercreditor Agreement, be subject and subordinate to the Bank Palo Deed of Trust.

ARTICLE THREE DEFAULTS

3.1 **Event of Default.** The term "Event of Default," wherever used in this Deed of Trust, shall mean any of (i) one or more of the events of default listed in the Mortgage Notes Indenture (ii) so long as the Disbursement Agreement is in effect, one or more of the events of default listed in the Disbursement Agreement (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) or (iii) if any "borrower" (as that term is defined in NRS 106.310) who may send a notice pursuant to NRS 106.380(1), (x) delivers, sends by mail or otherwise gives, or purports to deliver, send by mail or otherwise give, to a beneficiary under this Deeds of Trust (A) any notice of an election to terminate

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the operation of this Deed of Trust as security for any secured obligation, including, without limitation, any obligation to repay any "future advance" (as defined in NRS 106.320) of "principal" (as defined in NRS 106.345), or (B) any other notice pursuant to NRS 106.380(1), (y) records a statement pursuant to NRS 106.380(3), or (z) causes this Deed of Trust, any secured obligation, or any Secured Party to be subject to NRS 106.380(2), 106.380(3) or 106.400.

**ARTICLE FOUR
REMEDIES**

4.1 Acceleration of Maturity. If an Event of Default occurs, Beneficiary may (except that such acceleration shall be automatic if the Event of Default is caused by either Issuer's or Trustor's Bankruptcy), in accordance with the Indenture Documents, declare the Obligations to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become due and payable without demand, presentment, notice or other requirements of any kind (all of which Trustor waives) notwithstanding anything in this Deed of Trust or any Indenture Document or applicable law to the contrary.

4.2 Protective Advances. If either Issuer or Trustor fails to make any payment or perform any other obligation under the Notes, the Mortgage Notes Indenture or any other Financing Agreement, then without thereby limiting Beneficiary's other rights or remedies, waiving or releasing any of Trustor's obligations, or imposing any obligation on Beneficiary, Beneficiary may either advance any amount owing or perform any or all actions that Beneficiary considers necessary or appropriate to cure such default. All such advances shall constitute "Protective Advances" and shall bear interest thereon at the interest rate applicable to overdue principal set forth in the Mortgage Notes Indenture from the date incurred until paid by Trustor. No sums advanced or performance rendered by Beneficiary shall cure, or be deemed a waiver of any Event of Default.

4.3 Institution of Equity Proceedings. If an Event of Default occurs, Beneficiary may institute an action, suit or proceeding in equity for specific performance of this Deed of Trust, the Notes, the Mortgage Notes Indenture or any other Indenture Document, all of which shall be specifically enforceable by injunction or other equitable remedy. Trustor waives any defense based on laches or any applicable statute of limitations.

4.4 Beneficiary's Power of Enforcement.

(a) If an Event of Default occurs, Beneficiary shall be entitled, at its option and in its sole and absolute discretion, to prepare and record on its own behalf, or to deliver to Trustee for recording, if appropriate, written declaration of default and demand for sale and written Notice of Breach and Election to Sell (NRS 107.080(3)) (or other statutory notice) to cause the Trust Estate to be sold to satisfy the obligations hereof, and in the case of delivery to Trustee, Trustee shall cause said notice to be filed for record.

(b) After the lapse of such time as may then be required by law following the recordation of said Notice of Breach and Election to Sell, and notice of sale having been given as then required by law, including compliance with any applicable Nevada Gaming Laws, Trustee without demand on Trustor, shall sell the Trust Estate or any portion thereof at the time and place fixed by it in said notice, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder, of cash in lawful money of the United States payable at the time of sale. Trustee may, for any cause it deems expedient, postpone the sale of all or any portion of said property until it shall be completed and, in every case, notice of postponement shall be given by public announcement thereof at the time and place last appointed for the sale and from time to time thereafter Trustee may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall execute and deliver to the purchaser its Deed, Bill of Sale, or other instrument conveying said property so sold, but without any covenant or warranty,

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express or implied. The recitals in such instrument of conveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale.

(c) After deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including, without limitation, costs of evidence of title and reasonable attorneys' fees and other legal expenses of Trustee or Beneficiary in connection with a sale, Trustee shall apply the proceeds of such sale to payment of all sums expended under the terms hereof not then repaid, with accrued interest at the rate applicable to overdue principal set forth in the Mortgage Notes Indenture to the payment of all other sums then secured hereby and the remainder, if any, to the person or persons legally entitled thereto as provided in NRS 40.462.

(d) Subject to compliance with applicable Nevada Gaming Laws, if any Event of Default occurs, Beneficiary may, either with or without entry or taking possession of the Trust Estate, and without regard to whether or not the indebtedness and other sums secured hereby shall be due and without prejudice to the right of Beneficiary thereafter to bring an action or proceeding to foreclose or any other action for any default existing at the time such earlier action was commenced, proceed by any appropriate action or proceeding: (1) to enforce payment of the Obligations, to the extent permitted by law, or the performance of any term hereof or any other right; (2) to foreclose this Deed of Trust in any manner provided by law for the foreclosure of mortgages or deeds of trust on real property and to sell, as an entirety or in separate lots or parcels, the Trust Estate or any portion thereof pursuant to the laws of the State of Nevada or under the judgment or decree of a court or courts of competent jurisdiction, and Beneficiary shall be entitled to recover in any such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees in such amount as shall be awarded by the court; (3) to exercise any or all of the rights and remedies available to it under the Indenture Documents; and (4) to pursue any other remedy available to it. Beneficiary shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Beneficiary may determine.

(e) The remedies described in this *Section 4.4* may be exercised with respect to all or any portion of the Personal Property, either simultaneously with the sale of any real property encumbered hereby or independent thereof. Beneficiary shall at any time be permitted to proceed with respect to all or any portion of the Personal Property in any manner permitted by the UCC. Trustor agrees that Beneficiary's inclusion of all or any portion of the Personal Property (and all personal property that is subject to a security interest in favor, or for the benefit, of Beneficiary) in a sale or other remedy exercised with respect to the real property encumbered hereby, as permitted by the UCC, is a commercially reasonable disposition of such property.

4.5 Beneficiary's Right to Enter and Take Possession, Operate and Apply Income.

(a) Subject to compliance with applicable Nevada Gaming Laws, if an Event of Default occurs, (i) Trustor, upon demand of Beneficiary, shall forthwith surrender to Beneficiary the actual possession and, if and to the extent permitted by law, Beneficiary itself, or by such officers or agents as it may appoint, may enter and take possession of all the Trust Estate including the Personal Property, without liability for trespass, damages or otherwise, and may exclude Trustor and its agents and employees wholly therefrom and may have joint access with Trustor to the books, papers and accounts of Trustor; and (ii) Trustor shall pay monthly in advance to Beneficiary on Beneficiary's entry into possession, or to any receiver appointed to collect the Rents, all Rents then due and payable.

(b) If Trustor shall for any reason fail to surrender or deliver the Trust Estate, the Personal Property or any part thereof after Beneficiary's demand, Beneficiary may obtain a judgment or decree conferring on Beneficiary or Trustee the right to immediate possession or requiring Trustor to deliver immediate possession of all or part of such property to Beneficiary or Trustee and

Trustor hereby specifically consents to the entry of such judgment or decree. Trustor shall pay to Beneficiary or Trustee, upon demand, all reasonable costs and expenses of obtaining such judgment or decree and reasonable compensation to Beneficiary or Trustee, their attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Deed of Trust.

(c) Subject to compliance with applicable Nevada Gaming Laws, upon every such entering upon or taking of possession, Beneficiary or Trustee may hold, store, use, operate, manage and control the Trust Estate and conduct the business thereof, and, from time to time in its sole and absolute discretion and without being under any duty to so act:

- (1) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;
- (2) insure or keep the Trust Estate insured;
- (3) manage and operate the Trust Estate and exercise all the rights and powers of Trustor in their name or otherwise with respect to the same;
- (4) enter into agreements with others to exercise the powers herein granted Beneficiary or Trustee, all as Beneficiary or Trustee from time to time may determine; and, subject to the absolute assignment of the Leases and Rents to Beneficiary, Beneficiary or Trustee may collect and receive all the Rents, including those past due as well as those accruing thereafter; and shall apply the monies so received by Beneficiary or Trustee in such priority as Beneficiary may determine to (1) the payment of interest and principal due and payable on the Notes or the other Indenture Documents, (2) the deposits for taxes and assessments and insurance premiums due, (3) the cost of insurance, taxes, assessments and other proper charges upon the Trust Estate or any part thereof; (4) the compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary or Trustee; and (5) any other charges or costs required to be paid by Trustor under the terms hereof; and
- (5) rent or sublet the Trust Estate or any portion thereof for any purpose permitted by this Deed of Trust.

Beneficiary or Trustee shall surrender possession of the Trust Estate and the Personal Property to Trustor only when all that is due upon such interest and principal, tax and insurance deposits, and all amounts under any of the terms of the Mortgage Notes Indenture or this Deed of Trust, shall have been paid and all defaults made good. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.6 Leases. Beneficiary is authorized to foreclose this Deed of Trust subject to the rights of any tenants of the Trust Estate, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights shall not be, nor be asserted by Trustor to be, a defense to any proceedings instituted by Beneficiary to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Trust Estate, or any portion thereof. Unless otherwise agreed by Beneficiary in writing, all Space Leases executed subsequent to the date hereof, or any part thereof, shall be subordinate and inferior to the lien of this Deed of Trust; provided, however that (i) in accordance with the terms of the Indenture Documents, Beneficiary may be required to execute a non-disturbance and attornment agreement in connection with certain Space Leases; and (ii) from time to time Beneficiary may execute and record among the land records of the jurisdiction where this Deed of Trust is recorded, subordination statements with respect to such of said Space Leases as Beneficiary may designate in its sole discretion, whereby the Space Leases so designated by Beneficiary shall be made superior to the lien of this Deed of Trust for the term set forth in such subordination statement. From and after the recordation of such subordination statements, and

for the respective periods as may be set forth therein, the Space Leases therein referred to shall be superior to the lien of this Deed of Trust and shall not be affected by any foreclosure hereof. All such Space Leases shall contain a provision to the effect that the Trustor and Space Lessee recognize the right of Beneficiary to elect and to effect such subordination of this Deed of Trust and consents thereto.

4.7 Purchase by Beneficiary. Upon any foreclosure sale (whether judicial or nonjudicial), Beneficiary may bid for and purchase the property subject to such sale and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

4.8 Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws. Trustor agrees to the full extent permitted by law that if an Event of Default occurs, neither Trustor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust or the absolute sale of the Trust Estate or any portion thereof or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof, and Trustor for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Trust Estate marshalled upon any foreclosure of the lien hereof and agrees that Trustee or any court having jurisdiction to foreclose such lien may sell the Trust Estate in part or as an entirety.

4.9 Receiver. If an Event of Default occurs, Beneficiary, to the extent permitted by law and subject to compliance with all applicable Nevada Gaming Laws, and without regard to the value, adequacy or occupancy of the security for the indebtedness and other sums secured hereby, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Trust Estate and to collect all Rents and apply the same as the court may direct, and such receiver may be appointed by any court of competent jurisdiction upon application by Beneficiary. Beneficiary may have a receiver appointed without notice to Trustor or any third party, and Beneficiary may waive any requirement that the receiver post a bond. Beneficiary shall have the power to designate and select the Person who shall serve as the receiver and to negotiate all terms and conditions under which such receiver shall serve. Any receiver appointed on Beneficiary's behalf may be an Affiliate of Beneficiary. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation,

incurred pursuant to the powers herein contained shall be secured by this Deed of Trust. The right to enter and take possession of and to manage and operate the Trust Estate and to collect all Rents, whether by a receiver or otherwise, shall be cumulative to any other right or remedy available to Beneficiary under this Deed of Trust, the Mortgage Notes Indenture or the other Indenture Documents or otherwise available to Beneficiary and may be exercised concurrently therewith or independently thereof. Beneficiary shall be liable to account only for such Rents (including, without limitation, security deposits) actually received by Beneficiary, whether received pursuant to this section or any other provision hereof. Notwithstanding the appointment of any receiver or other custodian, Beneficiary shall be entitled as pledgee to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Deed of Trust to, Beneficiary.

4.10 Suits to Protect the Trust Estate. Beneficiary shall have the power and authority to institute and maintain any suits and proceedings as Beneficiary, in its sole and absolute discretion, may deem advisable (a) to prevent any impairment of the Trust Estate by any acts which may be unlawful or in violation of this Deed of Trust, (b) to preserve or protect its interest in the Trust Estate, or (c) to restrain the enforcement of or compliance with any legislation or other Legal Requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Beneficiary's interest.

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4.11 Proofs of Claim. In the case of any receivership, Insolvency, Bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Trustor, or, to the extent the same would result in an Event of Default hereunder, any Subsidiary, or any guarantor, co-maker or endorser of any of Trustor's obligations, its creditors or its property, Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim or other documents as it may deem to be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Trustor under the Indenture Documents, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Trustor after such date.

4.12 Trustor to Pay the Obligations on Any Default in Payment; Application of Monies by Beneficiary.

(a) In case of a foreclosure sale of all or any part of the Trust Estate and of the application of the proceeds of sale to the payment of the sums secured hereby, Beneficiary shall be entitled to enforce payment from Trustor of any additional amounts then remaining due and unpaid with respect to the Obligations and to recover judgment against Trustor for any portion thereof remaining unpaid, with interest at the rate applicable to overdue principal as set forth in the Mortgage Notes Indenture.

(b) Trustor hereby agrees to the extent permitted by law, that no recovery of any judgment by Beneficiary or other action by Beneficiary and no attachment or levy of any execution upon any Property of Trustor by Beneficiary (other than a foreclosure of the entire Trust Estate hereunder) shall in any way affect the Lien and security interest of this Deed of Trust upon the Trust Estate or any part thereof or any Lien, rights, powers or remedies of Beneficiary hereunder, but such Lien, rights, powers and remedies shall continue unimpaired as before.

(c) Any monies collected or received by Beneficiary under this Section 4.12 shall be first applied to the payment of reasonable compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary, and the balance remaining shall be applied to the Obligations.

(d) The provisions of this section shall not be deemed to limit or otherwise modify the provisions of any guaranty of the indebtedness evidenced by the Notes or the other Indenture Documents.

4.13 Delay or Omission; No Waiver. No delay or omission of Beneficiary or any Second Mortgage Note Holder to exercise any right, power or remedy upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Beneficiary whether contained herein or in the other Indenture Documents or otherwise available to Beneficiary may be exercised from time to time and as often as may be deemed expedient by Beneficiary.

4.14 No Waiver of One Default to Affect Another. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If Beneficiary or the required percentage of the Second Mortgage Note Holders (as determined pursuant to the Mortgage Notes Indenture), to the extent applicable under the Mortgage Notes Indenture, (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Notes, the Mortgage Notes Indenture, this Deed of Trust, the Disbursement Agreement or any other Indenture Document; (d) releases any part of the Trust Estate from the lien or security interest of this Deed of Trust or any other instrument securing the Obligations; (e) consents to the filing of any map, plat or replat of the Site (to the extent such consent is required); (f) consents to the granting of any easement on the Site (to the extent such consent is required); or (g) makes or consents to any agreement changing the terms of this Deed of

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Trust or any other Indenture Document subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability of Trustor under the Mortgage Notes Indenture or any other Indenture Document or otherwise, or any subsequent purchaser of the Trust Estate or any part thereof or any maker, co-signer, surety or guarantor. No such act or omission shall preclude Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by Beneficiary, shall the lien or security interest of this Deed of Trust be altered thereby, except to the extent expressly provided in any releases, maps, easements or subordinations described in clause (d), (e), (f) or (g) above of this Section 4.14. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Trust Estate, Beneficiary, without notice to any person, firm or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Trust Estate or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder, or waiving its right to declare such sale or transfer an Event of Default as provided herein. Notwithstanding anything to the contrary contained in this Deed of Trust or any other Indenture Document, (i) in the case of any non-monetary Event of Default, Beneficiary may continue to accept payments secured hereunder without thereby waiving the existence of such or any other Event of Default and (ii) in the case of any monetary Event of

Default, Beneficiary may accept partial payments of any sums secured hereunder without thereby waiving the existence of such Event of Default if the partial payment is not sufficient to completely cure such Event of Default.

4.15 Discontinuance of Proceedings; Position of Parties Restored. If Beneficiary shall have proceeded to enforce any right or remedy under this Deed of Trust by foreclosure, entry of judgment or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Beneficiary, then and in every such case Trustor and Beneficiary shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Beneficiary shall continue as if no such proceedings had occurred or had been taken.

4.16 Remedies Cumulative. No right, power or remedy, including without limitation remedies with respect to any security for Obligations, conferred upon or reserved to Beneficiary by this Deed of Trust or any other Indenture Document is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or any other Indenture Document, now or hereafter existing at law, in equity or by statute, and Beneficiary shall be entitled to resort to such rights, powers, remedies or security as Beneficiary shall in its sole and absolute discretion deem advisable.

4.17 Interest After Event of Default. If an Event of Default shall have occurred and is continuing, all sums outstanding and unpaid under the Obligations shall, at Beneficiary's option, bear interest at the rate applicable to overdue principal set forth in the Mortgage Notes Indenture until such Event of Default has been cured. Trustor's obligation to pay such interest shall be secured by this Deed of Trust.

4.18 Foreclosure; Expenses of Litigation. If Trustee forecloses, reasonable attorneys' fees for services in the supervision of said foreclosure proceeding shall be allowed to the Trustee and Beneficiary as part of the foreclosure costs. In the event of foreclosure of the lien hereof, there shall be allowed and included as additional indebtedness all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after foreclosure sale or entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and guarantees, and similar data and assurances with respect to title as Beneficiary may deem reasonably advisable either to prosecute such suit or to evidence to a bidder at any sale which may be had pursuant to such decree the true condition

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of the title to or the value of the Trust Estate or any portion thereof. All expenditures and expenses of the nature in this section mentioned, and such expenses and fees as may be incurred in the protection of the Trust Estate and the maintenance of the lien and security interest of this Deed of Trust, including the fees of any attorney employed by Beneficiary in any litigation or proceeding affecting this Deed of Trust, the Mortgage Notes Indenture or any other Indenture Document, the Trust Estate or any portion thereof, including, without limitation, civil, probate, appellate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Trustor, with interest thereon at the rate applicable to overdue principal set forth in the Mortgage Notes Indenture, and shall be secured by this Deed of Trust. Trustee waives its right to any statutory fee in connection with any judicial or nonjudicial foreclosure of the lien hereof and agrees to accept a reasonable fee for such services.

4.19 Deficiency Judgments. If after foreclosure of this Deed of Trust or Trustee's sale hereunder, there shall remain any deficiency with respect to any Obligations, and Beneficiary shall institute any proceedings to recover such deficiency or deficiencies, all such amounts shall continue to bear interest at the rate applicable to overdue principal set forth in the Mortgage Notes Indenture. Trustor waives any defense to Beneficiary's recovery against Trustor of any deficiency after any foreclosure sale of the Trust Estate. Trustor expressly waives any defense or benefits that may be derived from any statute granting Trustor any defense to any such recovery by Beneficiary. In addition, Beneficiary and Trustee shall be entitled to recovery of all of their reasonable costs and expenditures (including without limitation any court imposed costs) in connection with such proceedings, including their reasonable attorneys' fees, appraisal fees and the other costs, fees and expenditures referred to in Section 4.18 above. This provision shall survive any foreclosure or sale of the Trust Estate, any portion thereof and/or the extinguishment of the lien hereof.

4.20 Waiver of Jury Trial. Beneficiary and Trustor each waive any right to have a jury participate in resolving any dispute whether sounding in contract, tort or otherwise arising out of, connected with, related to or incidental to the relationship established between them in connection with the Obligations. Any such disputes shall be resolved in a bench trial without a jury.

4.21 Exculpation of Beneficiary. The acceptance by Beneficiary of the assignment contained herein with all of the rights, powers, privileges and authority created hereby shall not, prior to entry upon and taking possession of the Trust Estate by Beneficiary, be deemed or construed to make Beneficiary a "mortgagee in possession"; nor thereafter or at any time or in any event obligate Beneficiary to appear in or defend any action or proceeding relating to the Space Leases, the Rents or the Trust Estate, or to take any action hereunder or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under any Space Lease or to assume any obligation or responsibility for any security deposits or other deposits except to the extent such deposits are actually received by Beneficiary, nor shall Beneficiary, prior to such entry and taking, be liable in any way for any injury or damage to person or property sustained by any Person in or about the Trust Estate.

ARTICLE FIVE RIGHTS AND RESPONSIBILITIES OF TRUSTEE; OTHER PROVISIONS RELATING TO TRUSTEE

Notwithstanding anything to the contrary in this Deed of Trust, Trustor and Beneficiary agree as follows.

5.1 Exercise of Remedies by Trustee. To the extent that this Deed of Trust or applicable law, including all applicable Nevada Gaming Laws, authorizes or empowers, or does not require approval for, Beneficiary to exercise any remedies set forth in Article Four hereof or otherwise, or perform any acts in connection therewith, Trustee (but not to the exclusion of Beneficiary unless so required under the law of the State of Nevada) shall have the power to exercise any or all such remedies, and to

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perform any acts provided for in this Deed of Trust in connection therewith, all for the benefit of Beneficiary and on Beneficiary's behalf in accordance with applicable law of the State of Nevada. In connection therewith, Trustee: (a) shall not exercise, or waive the exercise of, any of Beneficiary's remedies (other than any rights of Trustee to any indemnity or reimbursement), except at Beneficiary's request, and (b) shall exercise, or waive the exercise of, any or all of Beneficiary's remedies at Beneficiary's request, and in accordance with Beneficiary's directions as to the manner of such exercise or waiver. Trustee may, however, decline to follow Beneficiary's request or direction if Trustee shall be advised by counsel that the action or proceeding, or manner thereof, so directed may not lawfully be taken or waived.

5.2 Rights and Privileges of Trustee. To the extent that this Deed of Trust requires Trustor to indemnify Beneficiary or reimburse Beneficiary for any expenditures Beneficiary may incur, Trustee shall be entitled to the same indemnity and the same rights to reimbursement of expenses as Beneficiary, subject to such limitations and conditions as would apply in the case of Beneficiary. To the extent that this Deed of Trust negates or limits Beneficiary's liability as to any matter, Trustee shall be entitled to the same negation or limitation of liability. To the extent that Trustor, pursuant to this Deed of Trust, appoints Beneficiary as Trustor's attorney in fact for any purpose, Beneficiary or (when so instructed by Beneficiary) Trustee shall be entitled to act on Trustor's behalf without joinder or confirmation by the other.

5.3 Resignation or Replacement of Trustee. Trustee may resign by an instrument in writing addressed to Beneficiary, and Trustee may be removed at any time with or without cause (i.e., in Beneficiary's sole and absolute discretion) by an instrument in writing executed by Beneficiary. In case of the death, resignation, removal or disqualification of Trustee or if for any reason Beneficiary shall deem it desirable to appoint a substitute, successor or replacement Trustee to act instead of Trustee originally named (or in place of any substitute, successor or replacement Trustee), then Beneficiary shall have the right and is hereby authorized and empowered to appoint a successor, substitute or replacement Trustee, without any formality other than appointment and designation in writing executed by Beneficiary, which instrument shall be recorded in the Office of the Recorder of Clark County, Nevada. The law of the State of Nevada (including, without limitation, the Nevada Gaming Laws) shall govern the qualifications of any Trustee. The authority conferred upon Trustee by this Deed of Trust shall automatically extend to any and all other successor, substitute and replacement Trustee(s) successively until the obligations secured hereunder have been paid in full or the Trust Estate has been sold hereunder or released in accordance with the provisions of the Mortgage Notes Indenture and the other Indenture Documents. Beneficiary's written appointment and designation of any Trustee shall be full evidence of Beneficiary's right and authority to make the same and of all facts therein recited. No confirmation, authorization, approval or other action by Trustor shall be required in connection with any resignation or other replacement of Trustee.

5.4 Authority of Beneficiary. If Beneficiary is a banking corporation, state banking corporation or a national banking association and the instrument of appointment of any successor or replacement Trustee is executed on Beneficiary's behalf by an officer of such corporation, state banking corporation or national banking association, then such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of Beneficiary.

5.5 Effect of Appointment of Successor Trustee. Upon the appointment and designation of any successor, substitute or replacement Trustee, and subject to compliance with applicable Nevada Gaming Laws and other applicable laws, Trustee's entire estate and title in the Trust Estate shall vest in the designated successor, substitute or replacement Trustee. Such successor, substitute or replacement Trustee shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon Trustee. All references herein to Trustee shall be deemed

to refer to Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder.

5.6 Confirmation of Transfer and Succession. Upon the written request of Beneficiary or of any successor, substitute or replacement Trustee, any former Trustee ceasing to act shall execute and deliver an instrument transferring to such successor, substitute or replacement Trustee all of the right, title, estate and interest in the Trust Estate of Trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon Trustee, and shall duly assign, transfer and deliver all properties and moneys held by said Trustee hereunder to said successor, substitute or replacement Trustee.

5.7 Exculpation. Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or otherwise be responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence, willful misconduct or knowing violation of law. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law). Trustee shall be under no liability for interest on any moneys received by it hereunder.

5.8 Endorsement and Execution of Documents. Upon Beneficiary's written request, Trustee shall, without liability or notice to Trustor, execute, consent to, or join in any instrument or agreement in connection with or necessary to effectuate the purposes of the Mortgage Notes Indenture and the other Indenture Documents. Trustor hereby irrevocably designates Trustee as its attorney in fact to execute, acknowledge and deliver, on Trustor's behalf and in Trustor's name, all instruments or agreements necessary to implement any provision(s) of this Deed of Trust or to further perfect the lien created by this Deed of Trust on the Trust Estate. This power of attorney shall be deemed to be coupled with an interest and shall survive any disability of Trustor.

5.9 Multiple Trustees. If Beneficiary appoints multiple trustees, then any Trustee, individually, may exercise all powers granted to Trustee under this instrument, without the need for action by any other Trustee(s).

5.10 Terms of Trustee's Acceptance. Trustee accepts the trust created by this Deed of Trust upon the following terms and conditions:

(a) **Delegation.** Trustee may exercise any of its powers through appointment of attorney(s) in fact or agents.

(b) **Counsel.** Trustee may select and employ legal counsel (including any law firm representing Beneficiary). Trustor shall reimburse all reasonable legal fees and expenses that Trustee may thereby incur.

(c) **Security.** Trustee shall be under no obligation to take any action upon any Event of Default unless furnished security or indemnity, in form satisfactory to Trustee, against costs, expenses, and liabilities that Trustee may incur.

(d) **Costs and Expenses.** Trustor shall reimburse Trustee, as part of the Obligations secured hereunder, for all reasonable disbursements and expenses (including reasonable legal fees and expenses) incurred by reason of and as provided for in this Deed of Trust, including any of the foregoing incurred in Trustee's administering and executing the trust created by this Deed of Trust, in complying with all applicable Nevada Gaming Laws and performing Trustee's duties and exercising Trustee's powers under this Deed of Trust.

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(e) **Release.** Upon full and indefeasible payment and performance of the Obligations secured hereunder, Beneficiary shall request that Trustee release this Deed of Trust. Upon receipt of such request Trustee shall release this Deed of Trust to Trustor. Trustor shall pay all costs of recordation, if any.

ARTICLE SIX MISCELLANEOUS PROVISIONS

6.1 **Heirs, Successors and Assigns Included in Parties.** Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included, and subject to the limitations set forth in Section 1.9, all covenants and agreements contained in this Deed of Trust, by or on behalf of Trustor or Beneficiary shall bind and inure to the benefit of its heirs, successors and assigns, whether so expressed or not.

6.2 **Addresses for Notices, Etc.** Any notice, report, demand or other instrument authorized or required to be given or furnished under this Deed of Trust to Trustor or Beneficiary shall be deemed given or furnished (i) when addressed to the party intended to receive the same, at the address of such party set forth below, and delivered by hand at such address or (ii) three (3) days after the same is deposited in the United States mail as first class certified mail, return receipt requested, postage paid, whether or not the same is actually received by such party:

Beneficiary: Wells Fargo Bank, National Association
MAC N9303-110
Sixth & Marquette
Minneapolis, MN 55479
Attn.: Michael Slade

Trustor: Palo, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Legal Department

With a copy to: Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Attn: C. Kevin McGeehan

Trustee: Nevada Title Company
2500 North Buffalo, Suite 150
Las Vegas, Nevada 89128
Attn: Robbie Graham

6.3 **Change of Notice Address.** Any Person may change the address to which any such notice, report, demand or other instrument is to be delivered or mailed to that person, by furnishing written notice of such change to the other parties, but no such notice of change shall be effective unless and until received by such other parties.

6.4 **Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Deed of Trust are for convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

6.5 **Invalid Provisions to Affect No Others.** In the event that any of the covenants, agreements, terms or provisions contained herein or in the Notes, the Mortgage Notes Indenture or any other Indenture Document shall be invalid, illegal or unenforceable in any respect, the validity of the lien hereof and the remaining covenants, agreements, terms or provisions contained herein or in the Notes, the Mortgage Notes Indenture or any other Indenture Document shall be in no way affected, prejudiced or

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disturbed thereby. To the extent permitted by law, Trustor waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

6.6 **Changes and Priority Over Intervening Liens.** Neither this Deed of Trust nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Trustor and Beneficiary relating to this Deed of Trust shall be superior to the rights of the holder of any intervening lien or encumbrance.

6.7 **Estoppel Certificates.** Within ten (10) Business Days after Beneficiary's written request, Trustor shall from time to time execute a certificate, in recordable form (an "Estoppel Certificate"), stating, except to the extent it would be inaccurate to so state: (a) the current amount of the Obligations secured hereunder and all elements thereof, including principal, interest, and all other elements; (b) that Trustor has no defense, offset, claim, counterclaim, right of

recoupment, deduction, or reduction against any of the Obligations secured hereunder; (c) that neither the Mortgage Notes Indenture, this Deed of Trust nor any other Indenture Documents to which it is a party have been amended, whether orally or in writing; (d) that Trustor has no claims against Beneficiary of any kind; (e) that any power of attorney granted to Beneficiary is in full force and effect; and (f) such other matters relating to this Deed of Trust, the Mortgage Notes Indenture or any other Indenture Document to which it is a party and the relationship of Trustor and Beneficiary as Beneficiary shall request. In addition, the Estoppel Certificate shall set forth the reasons why it would be inaccurate to make any of the foregoing assurances.

6.8 Waiver of Setoff and Counterclaim. All Obligations shall be payable without setoff, counterclaim or any deduction whatsoever. Trustor hereby waives the right to assert a counterclaim (other than a compulsory counterclaim) in any action or proceeding brought against it by Beneficiary and/or any Second Mortgage Note Holder under the Indenture Documents, or arising out of or in any way connected with this Deed of Trust or the other Indenture Documents or the Obligations.

6.9 Governing Law. The Mortgage Notes Indenture and the Notes provide that they are governed by, and construed and enforced in accordance with, the laws of the State of New York. This Deed of Trust shall also be construed under and governed by the laws of the State of New York; provided, however, that (i) the terms and provisions of this Deed of Trust pertaining to the priority, perfection, enforcement or realization by Beneficiary of its respective rights and remedies under this Deed of Trust with respect to the Trust Estate shall be governed and construed and enforced in accordance with the internal laws of the State of Nevada (the "State") without giving effect to the conflicts-of-law rules and principles of the State; (ii) Trustor agrees that to the extent deficiency judgments are available under the laws of the State after a foreclosure (judicial or nonjudicial) of the Trust Estate, or any portion thereof, or any other realization thereon by Beneficiary or any Second Mortgage Note Holder under the Indenture Documents, Beneficiary or such Second Mortgage Note Holder, as the case may be, shall have the right to seek such a deficiency judgment against Trustor in the State; and (iii) Trustor agrees that if Beneficiary or any Second Mortgage Note Holder under the Indenture Documents obtains a deficiency judgment in another state against Trustor, then Beneficiary or such Second Mortgage Note Holder, as the case may be, shall have the right to enforce such judgment in the State to the extent permitted under the laws of the State, as well as in other states.

6.10 Required Notices. Trustor shall notify Beneficiary promptly of the occurrence of any of the following and shall immediately provide Beneficiary a copy of the notice or documents referred to: (i) receipt of notice from any Governmental Authority relating to all or any material part of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (ii) receipt of any notice from any tenant leasing all or any material portion of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iii) receipt of

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notice from the holder of any Permitted Lien relating to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iv) the commencement of any proceedings or the entry of any judgment, decree or order materially affecting all or any portion of the Trust Estate or which involve the potential liability of Trustor or its Affiliates in an amount in excess of \$25,000,000 (other than for personal injury actions and related property damage suits which are covered by such insurance); or (v) commencement of any judicial or administrative proceedings or the entry of any judgment, decree or order by or against or otherwise affecting Trustor or any Affiliate of Trustor, a material portion of the Trust Estate, or a material portion of the Personal Property, or any other action by any creditor or lessor thereof as a result of any default under the terms of any lease.

6.11 Reconveyance. Upon written request of Trustor when the Obligations secured hereby have been satisfied in full, Beneficiary shall cause Trustee to reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

6.12 Attorneys' Fees. Without limiting any other provision contained herein, Trustor agrees to pay all costs of Beneficiary or Trustee incurred in connection with the enforcement of this Deed of Trust, the Mortgage Notes Indenture or the other Indenture Documents to which it is a party, including without limitation all reasonable attorneys' fees whether or not suit is commenced, and including, without limitation, fees incurred in connection with any probate, appellate, bankruptcy, deficiency or any other litigation proceedings, all of which sums shall be secured hereby.

6.13 Late Charges By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to collect any late charge thereon or interest thereon at the interest rate on the Notes or as otherwise specified in the Mortgage Notes Indenture, if so provided, not then paid or its right either to require prompt payment when due of all other sums so secured or to declare default for failure to pay any amounts not so paid.

6.14 Cost of Accounting. Trustor shall pay to Beneficiary, for and on account of the preparation and rendition of any accounting, which Trustor may be entitled to require under any law or statute now or hereafter providing therefor, the reasonable costs thereof.

6.15 Right of Entry. Subject to compliance with applicable Nevada Gaming Laws, Beneficiary may at any reasonable time or times and on reasonable prior written notice to Trustor make or cause to be made entry upon and inspections of the Trust Estate or any part thereof in person or by agent.

6.16 Corrections. Trustor shall, upon request of Beneficiary or Trustee, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust (including, but not limited to, in the exhibits and schedules attached hereto) or in the execution or acknowledgement hereof, and shall execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Trustee to carry out more effectively the purposes of this Deed of Trust, to subject to the lien and security interest hereby created any of Trustor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.

6.17 Statute of Limitations. To the fullest extent allowed by the law, the right to plead, use or assert any statute of limitations as a plea or defense or bar of any kind, or for any purpose, to any debt, demand or obligation secured or to be secured hereby, or to any complaint or other pleading or proceeding filed, instituted or maintained for the purpose of enforcing this Deed of Trust or any rights hereunder, is hereby waived by Trustor.

6.18 Subrogation. Should the proceeds of any Note or advance made by Beneficiary or any Second Mortgage Note Holder under the Mortgage Notes Indenture, repayment of which is hereby secured, or any part thereof, or any amount paid out or advanced by Beneficiary or any Second Mortgage Note

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Holder under the Mortgage Notes Indenture, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior or superior lien or encumbrance upon the Trust Estate, or any part thereof, then, as additional security hereunder, Trustee, on behalf of Beneficiary, shall be subrogated to any and all rights, superior titles, liens, and equities owned or claimed by any owner or holder of said outstanding liens, charges, and indebtedness, however remote, regardless of whether said liens, charges, and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

6.19 **Joint and Several Liability.** All obligations of Trustor hereunder, if more than one, are joint and several. Recourse for deficiency after sale hereunder may be had against the property of Trustor, without, however, creating a present or other lien or charge thereon.

6.20 **Homestead.** Trustor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Trust Estate as against the collection of the Obligations, or any part hereof.

6.21 **Context.** In this Deed of Trust, whenever the context so requires, the neuter includes the masculine and feminine, and the singular including the plural, and vice versa.

6.22 **Time.** Time is of the essence of each and every term, covenant and condition hereof. Unless otherwise specified herein, any reference to "days" in this Deed of Trust shall be deemed to mean "calendar days."

6.23 **Interpretation.** As used in this Deed of Trust unless the context clearly requires otherwise: The terms "herein" or "hereunder" and similar terms without reference to a particular section shall refer to the entire Deed of Trust and not just to the section in which such terms appear; the term "lien" shall also mean a security interest, and the term "security interest" shall also mean a lien.

6.24 **Effect of NRS 107.030.** To the extent not inconsistent herewith, the provisions of NRS 107.030 (1), (2) (in amounts as hereinafter provided for), (3), (4) (with interest at the default rate provided for under the Mortgage Notes Indenture), (5), (6), (7) (reasonable), (8) and (9) are included herein by reference and made part of this Deed of Trust.

6.25 **Amendments.** This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought and only as permitted by the provisions of the Mortgage Notes Indenture.

6.26 **No Conflicts.** In the event that any of the provisions contained here conflict with the Mortgage Notes Indenture, the provisions contained in the Mortgage Notes Indenture shall prevail.

ARTICLE SEVEN POWER OF ATTORNEY

7.1 **Grant of Power.** Subject to compliance with applicable Nevada Gaming Laws, Trustor irrevocably appoints Beneficiary and any successor thereto as its attorney-in-fact, with full power and authority, including the power of substitution, exercisable only during the continuance of an Event of Default to act for Trustor in its name, place and stead as hereinafter provided:

7.1.1 **Possession and Completion.** To take possession of the Site and the Project, remove all employees, contractors and agents of Trustor therefrom, complete or attempt to complete the work of construction, and market, sell or lease the Site and the Project.

7.1.2 **Plans.** To make such additions, changes and corrections in the current Plans and Specifications as may be necessary or desirable, in Beneficiary's reasonable discretion, or as it deems proper to complete the Project.

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7.1.3 **Employment of Others.** To employ such contractors, subcontractors, suppliers, architects, inspectors, consultants, property managers and other agents as Beneficiary, in its discretion, deems proper for the completion of the Project, for the protection or clearance of title to the Site or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.4 **Security Guards.** To employ watchmen to protect the Site and the Project from injury.

7.1.5 **Compromise Claims.** To pay, settle or compromise all bills and claims then existing or thereafter arising against Trustor, which Beneficiary, in its discretion, deems proper for the protection or clearance of title to the Site or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.6 **Legal Proceedings.** To prosecute and defend all actions and proceedings in connection with the Site or the Project.

7.2 **Other Acts.** To execute, acknowledge and deliver all other instruments and documents in the name of Trustor that are necessary or desirable, to exercise Trustor's rights under all contracts concerning the Site or the Project, including, without limitation, under any Space Leases, and to do all other acts with respect to the Site or the Project that Trustor might do on its own behalf, as Beneficiary, in its reasonable discretion, deems proper.

ARTICLE EIGHT GUARANTOR PROVISIONS

8.1 **Absolute and Unconditional Obligations.** All rights of Beneficiary and all obligations of Trustor hereunder shall be absolute and unconditional irrespective of (i) any lack of validity, legality or enforceability of the Mortgage Notes Indenture, any Note, or any other Indenture Document, (ii) the failure of any Second Mortgage Note Holder or any holder of any of the Obligations to assert any claim or demand or to enforce any right or remedy against the Issuers, Trustor or any other Person (including any other guarantor of the Obligations) under the provisions of the Mortgage Notes Indenture, any Note, any other Indenture Document or otherwise or to exercise any right or remedy against any other guarantor of, or collateral securing, any of the Obligations, (iii) any change in the time, manner or place of payment of, or in any other term of, all of the Obligations, or any other extension or renewal of any Obligation, (iv) any reduction, limitation, impairment or termination of any of the Obligations for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to, and Trustor hereby waives any right to or claim of, any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason

of the invalidity, illegality, nongenuineness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, any Obligation, (v) any amendment to, rescission, waiver, or other modification of, or any consent to departure from, any of the terms of the Mortgage Notes Indenture, any Note or any other Indenture Document, (vi) any sale, exchange, release or surrender of, realization upon or other manner or order of dealing with any property by whomsoever pledged or mortgaged to secure or howsoever securing the Obligations or any liabilities or obligations (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof and/or any offset there against, (vii) the application of any sums by whomsoever paid or howsoever realized to any obligations and liabilities of the Issuers or any other Person to the Second Mortgage Note Holders under the Indenture Documents in the manner provided therein regardless of what obligations and liabilities remain unpaid, (viii) any action or failure to act in any manner referred to in this Deed of Trust which may deprive Trustor of its right to subrogation against the Issuers or any other Person to recover full indemnity for any payments or performances made pursuant to this Deed of Trust or of its right of contribution against any other party and (ix) any other circumstance which might otherwise constitute a defense available to, or a legal or equitable discharge of, the Issuers, any other Person, Trustor, any surety or any guarantor.

8.2 Waiver. Trustor hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including (i) any right to require Beneficiary or any other Second Mortgage Note Holder to proceed against the Issuers or any other Person or to proceed against or exhaust any security held by Beneficiary or any other Second Mortgage Note Holder at any time or to pursue any other remedy in Beneficiary's or any other Second Mortgage Note Holder's power before proceeding against Trustor, (ii) any defense that may arise by reason of the incapacity, lack of power or authority, death, dissolution, merger, termination or disability of the Issuers or any other Person or the failure of Beneficiary or any other Second Mortgage Note Holder to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of the Issuers or any other Person, (iii) demand, presentment, protest and notice of any kind except as provided herein, including notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of the Issuers, Beneficiary, any other Second Mortgage Note Holder, any endorser or creditor of the Issuers, Trustor or on the part of any other Person under this or any other instrument in connection with any obligation or evidence of indebtedness held by Beneficiary or any other Second Mortgage Note Holder as collateral or in connection with any Obligation, (iv) any defense based upon an election of remedies by Beneficiary or any other Second Mortgage Note Holder, including an election to proceed by non-judicial rather than judicial foreclosure, which destroys or otherwise impairs the subrogation rights of Trustor, the right of Trustor to proceed against the Issuers or any other Person for reimbursement, or both, (v) any defense based on any offset against any amounts which may be owed by any Person to Trustor for any reason whatsoever, (vi) any defense based on any act, failure to act, delay or omission whatsoever on the part of the Issuers or any other Person of the failure by the Issuers or any other Person to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the Indenture Documents, (vii) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal, provided, that, upon payment or performance in full of the Obligations, this Deed of Trust shall no longer be of any force or effect, (viii) any defense, setoff or counterclaim which may at any time be available to or asserted by the Issuers or any other Person against Beneficiary, any other Second Mortgage Note Holder or any other Person under the Indenture Documents, (ix) any duty on the part of Beneficiary or any other Second Mortgage Note Holder to disclose to Trustor any facts Beneficiary or any other Second Mortgage Note Holder may now or hereafter know about the Issuers or any other Person, regardless of whether Beneficiary or such Second Mortgage Note Holder have reason to believe that any such facts materially increase the risk beyond that which Trustor intends to assume, or have reason to believe that such facts are unknown to Trustor, or have a reasonable opportunity to communicate such facts to Trustor, since Trustor acknowledges that Trustor is fully responsible for being and keeping informed of the financial condition of the Issuers and any other Person liable for the Obligations and of all circumstances bearing on the risk of non-payment or non-performance of any obligations and liabilities hereby guaranteed, (x) the fact that Trustor may at any time in the future dispose of all or part of its direct or indirect interest in the Issuers or any other Person or otherwise cease to be an Affiliate of the Issuers or any other Person, as the case may be, (xi) any defense based on any change in the time, manner or place of any payment or performance under, or in any other term of, the Indenture Documents or any other amendment, renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of the Indenture Documents, (xii) any defense arising because of Beneficiary's or any other Second Mortgage Note Holder's election, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code, and (xiii) any defense based upon any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code. To the fullest extent permitted by NRS 40.485 (1) and (2), the provisions of NRS 40.430 are waived.

8.3 Net Worth Limitation. If, notwithstanding the representation and warranty set forth in Section 1.2(b) hereof or anything to the contrary herein, enforcement of the liability of Trustor under this Deed of Trust for the full amount of the Obligations would be an unlawful or voidable transfer under any applicable fraudulent conveyance or fraudulent transfer law or any comparable law, then the liability of Trustor hereunder shall be reduced to the highest amount for which such liability may then be enforced without giving rise to an unlawful or voidable transfer under any such law.

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QuickLinks

[DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING MADE BY PALO, LLC
ARTICLE FIVE RIGHTS AND RESPONSIBILITIES OF TRUSTEE; OTHER PROVISIONS RELATING TO TRUSTEE](#)

APNs: 162-16-212-001, 162-16-113-004, 162-16-113-005, 162-16-610-004, 162-16-610-005, 162-16-511-008, 162-16-510-001 through 006, inclusive, 162-16-511-009, 162-16-510-007 through 018, inclusive, 162-16-510-021 through 022, inclusive, 162-16-510-024 through 025, inclusive, 162-16-510-028 through 031, inclusive, 162-16-610-028 through 030, inclusive, 162-16-610-021 through 022, inclusive, 162-16-610-017 through 019, inclusive, 162-16-610-008 through 015, inclusive, 162-16-611-001 through 014, inclusive, 162-16-610-016, 162-16-610-007, 162-16-610-006, 162-16-511-002 and 162-16-511-003, 162-16-511-002, 162-16-511-003, 162-16-610-016, 162-16-610-007 and 162-16-610-006, 162-16-511-008 and 162-16-510-001 through 006, inclusive, 162-16-511-009, 162-16-510-007 through 018, inclusive, 162-16-510-021 through 022, inclusive, 162-16-510-024 through 025, inclusive, 162-16-510-028 through 031, inclusive, 162-16-610-028 through 030, inclusive, 162-16-610-021 through 022, inclusive, 162-16-610-017 through 019, inclusive, 162-16-610-008 through 015, inclusive, 162-16-611-001 through 014, inclusive, 162-16-511-002 and 162-16-511-003

Recording requested by and recorded counterparts should be returned to:

Sony Ben-Moshe, Esq.
Latham & Watkins
701 B Street, Suite 2100
San Diego, California 92101

Mail Property Tax Statements to:

Wynn Las Vegas, LLC
Legal Department
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109

**DEED OF TRUST, LEASEHOLD DEED OF TRUST,
ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

MADE BY

**WYNN LAS VEGAS, LLC,
a Nevada limited liability company,
as Trustor,**

to

**Nevada Title Company,
a Nevada corporation,
as Trustee,
for the benefit of**

**WELLS FARGO BANK, NATIONAL ASSOCIATION,
in its capacity as the Mortgage Notes Indenture Trustee,
as Beneficiary**

THIS INSTRUMENT IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS OF CLARK COUNTY, NEVADA UNDER THE NAMES OF WYNN LAS VEGAS, LLC AS "DEBTOR" AND WELLS FARGO BANK, NATIONAL ASSOCIATION AS "SECURED PARTY." TRUSTOR'S ORGANIZATIONAL NUMBER IS NEVADA FILE NUMBER LLC3904-2001.

THIS INSTRUMENT IS A "CONSTRUCTION MORTGAGE" AS THAT TERM IS DEFINED IN SECTION 104.9334(8) OF THE NEVADA REVISED STATUTES AND SECURES AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT UPON LAND.

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**DEED OF TRUST, LEASEHOLD DEED OF TRUST,
ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS DEED OF TRUST, LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (hereinafter called "**Deed of Trust**") is made and effective as of October 30, 2002, by WYNN LAS VEGAS, LLC, a Nevada limited liability company (together with all successors and assigns of the Trust Estate (as hereinafter defined), "**Trustor**"), whose address is 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109, to Nevada Title Company, a Nevada corporation, whose address is 2500 North Buffalo, Suite 150, Las Vegas, Nevada 89128, as Trustee ("**Trustee**"), for the benefit of WELLS FARGO BANK, NATIONAL ASSOCIATION ("**Beneficiary**"), in its capacity as the Mortgage Notes Indenture Trustee under that certain Indenture, dated as of even date herewith, among Trustor, Wynn Las Vegas Capital Corp., a Nevada corporation ("**Capital Corp.**"), Beneficiary and the other parties signatory thereto (as the same may be amended or modified from time to time, the "**Mortgage Notes Indenture**") pertaining to the 12% Mortgage Notes due 2010, issued by Trustor and Capital Corp. in the aggregate principal amount of \$370,000,000.

THIS INSTRUMENT SECURES FUTURE ADVANCES. THE MAXIMUM AMOUNT OF PRINCIPAL TO BE SECURED HEREBY IS \$370,000,000. THIS INSTRUMENT IS TO BE GOVERNED BY THE PROVISIONS OF NRS 106.300 THROUGH NRS 106.400 INCLUSIVE.

DEFINITIONS—As used in this Deed of Trust, the following terms have the meanings hereinafter set forth:

"**Accounts Receivable**" shall have the meaning set forth in Section 9-102 (NRS 104.9102) of the UCC for the term "account."

"**Appurtenant Rights**" means all and singular tenements, hereditaments, rights, reversions, remainders, development rights, privileges, benefits, easements (in gross or appurtenant), rights-of-way, licenses, gores or strips of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, and all appurtenances whatsoever and claims or demands of Trustor at law or in equity in any way belonging, benefiting, relating or appertaining to the Land, the Project, the Trustor, the Leased Premises, the airspace over the Land, the Improvements or any of the Trust Estate encumbered by this Deed of Trust, or which hereinafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Trustor, including, without limitation, the Appurtenant Rights more specifically described in *Schedule F* attached hereto and incorporated herein.

"**Bankruptcy**" means, with respect to any Person, that (i) a court having jurisdiction in the Trust Estate shall have entered a decree or order for relief in respect of such Person in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order has not been stayed; or any other similar relief shall have been granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against such Person, under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the Trust Estate for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over such Person, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of such Person, for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of such Person, and any such event described in this clause (ii) shall continue for 60 days unless dismissed, bonded or discharged; or (iii) such Person shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect or shall consent to the entry of an order for relief

in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or such Person shall make any assignment for the benefit of

creditors, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable or if the fair market value of its assets does not exceed its aggregate liabilities; or (iv) such Person shall, or the Board of Directors of such Person (or any committee thereof) shall, adopt any resolution or otherwise authorize any action to approve any of the actions referred to in clause (iii) above.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute thereto.

"Business Day" means any day that is not a Saturday, a Sunday or a day on which banking institutions in the State of Nevada or the City of New York are not required to be open.

"Deed of Trust" means this Deed of Trust as it may be amended, increased or modified from time to time.

"Disbursement Agreement" means that certain Master Disbursement Agreement dated as of even date herewith, among Trustor, Beneficiary, Deutsche Bank Trust Company Americas, as disbursement agent and administrative agent for the lenders under a credit agreement entered into in connection with the financing of the Project, and the other parties signatory thereto, as the same may hereafter be amended or modified in accordance with its terms and the terms of the Mortgage Notes Indenture.

"Driving Range Lease" means that certain Driving Range Lease dated as of October 21, 2002 between Valvino Lamore, LLC, a Nevada limited liability company as Landlord, and Trustor, as Tenant.

"Driving Range Leased Premises" means the real property and fixtures situated in the County of Clark, State of Nevada described in the Driving Range Lease and more specifically described in *Schedule B* attached hereto and incorporated herein.

"Employee Parking Lot Lease" means that certain Parking Facility Lease dated as of October 21, 2002 between Valvino Lamore, LLC, a Nevada limited liability company as Landlord, and Trustor, as Tenant.

"Employee Parking Lot Leased Premises" means the real property and fixtures situated in the County of Clark, State of Nevada described in the Employee Parking Lot Lease and more specifically described in *Schedule C* attached hereto and incorporated herein.

"Event of Default" has the meaning set forth in *Section 3.1* hereof.

"FF&E" means all furniture, fixtures, equipment, appurtenances and personal property now or in the future contained in, used in connection with, attached to, or otherwise useful or convenient to the use, operation, or occupancy of, or placed on, but unattached to, any part of the Site or Improvements whether or not the same constitutes real property or fixtures in the State of Nevada, including all removable window and floor coverings, all furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator and escalator plants, cooking facilities, vacuum cleaning systems, public address and communications systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings, fixtures, and building materials, all gaming and financial equipment, computer equipment, calculators, adding machines, gaming tables, video game and slot machines, and any other electronic equipment of every nature used or located on any part of the Site or Improvements, together with all Venetian blinds, shades, draperies, drapery and curtain rods, brackets, bulbs, cleaning apparatus, mirrors, lamps, ornaments, cooling apparatus and equipment, ranges and ovens, garbage disposals, dishwashers, mantels, and any and all such property which is at any time installed in, affixed to or placed upon the Site or Improvements.

"FF&E Financing Agreement" means any financing agreement entered into by Trustor (i) the proceeds of which are used by Trustor for the acquisition or lease of FF&E, (ii) pursuant to which Trustor grants to the lender or lessor thereunder a security interest in the FF&E so acquired or leased and (iii) which is permitted by the Mortgage Notes Indenture.

"Golf Course Lease" means that certain Golf Course Lease dated as of October 21, 2002 between on the one hand, Wynn Resorts Holdings, LLC, a Nevada limited liability company, and Palo, LLC, a Delaware limited liability company, as Landlord, and on the other hand, Trustor, as Tenant.

"Golf Course Leased Premises" means the real property and fixtures situated in the County of Clark, State of Nevada described in the Golf Course Lease and more specifically described in *Schedule D* attached hereto and incorporated herein.

"Governmental Authority" means any agency, authority, board, bureau, commission, department, office, public entity, or instrumentality of any nature whatsoever of the United States federal or foreign government, any state, province or any city or other political subdivision or otherwise, whether now or hereafter in existence, or any officer or official thereof, including, without limitation, any Nevada Gaming Authority.

"Guaranty" means that certain Guarantee and Collateral Agreement dated as of even date herewith by Trustor and the other parties thereto for the benefit of Beneficiary on behalf of the Second Mortgage Note Holders.

"Imposition" means any taxes, assessments, water rates, sewer rates, maintenance charges, other governmental impositions and other charges now or hereafter levied or assessed or imposed against the Trust Estate or any part thereof.

"Improvements" means (1) all the buildings, structures, facilities and improvements of every nature whatsoever now or hereafter situated on the Site or any real property encumbered hereby, and (2) all fixtures, machinery, appliances, goods, building or other materials, equipment, including without limitation all gaming equipment and devices, and all machinery, equipment, engines, appliances and fixtures for generating or distributing air, water, heat, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse or garbage; all wall-beds, wall-safes, built-in furniture and installations, shelving, lockers, partitions, doorstops, vaults, motors, elevators, dumb-waiters, awnings, window shades, Venetian blinds, light fixtures, fire hoses and brackets and boxes for the same, fire sprinklers, alarm, surveillance and security systems, computers, drapes, drapery rods and brackets, mirrors, mantels, screens, linoleum, carpets and carpeting, plumbing, bathtubs, sinks, basins, pipes, faucets, water closets, laundry equipment, washers, dryers, ice-boxes and heating units; all kitchen and restaurant equipment, including but not limited to silverware, dishes, menus, cooking utensils, stoves, refrigerators, ovens, ranges, dishwashers, disposals, water heaters, incinerators, furniture, fixtures and furnishings, communication systems, and equipment; all cocktail lounge supplies, including but not limited to bars, glassware, bottles and tables used in connection with the Site; all chaise lounges, hot tubs, swimming

pool heaters and equipment and all other recreational equipment (computerized and otherwise), beauty and barber equipment, and maintenance supplies used in connection with the Site; all amusement rides and attractions attached to the Site, all specifically designed installations and furnishings, and all furniture, furnishings and personal property of every nature whatsoever now or hereafter owned or leased by Trustor or in which Trustor has any rights or interest and located in or on, or attached to, or used or intended to be used or which are now or may hereafter be appropriated for use on or in connection with the operation of the Site or any real or personal property encumbered hereby or any other Improvements, or in connection with any construction being conducted or which may be conducted thereon, and all extensions, additions, accessions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing, and all of the right, title and interest of Trustor in and to

any such property, which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and improvements and a part of the real property hereby encumbered.

"Indemnity Agreement" means that certain Indemnity Agreement dated as of even date herewith by Trustor for the benefit of Beneficiary and certain other indemnified parties named therein.

"Indenture Documents" means, collectively, the Mortgage Notes Indenture, the Notes, the Indemnity Agreement, the Second Mortgage Notes Security Documents, the Guaranty and the Collateral Documents.

"Insolvent" means with respect to any person or entity, that such person or entity shall be deemed to be insolvent if it shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable and/or if the fair market value of its assets does not exceed its aggregate liabilities.

"Intangible Collateral" means (a) the rights to use all names and all derivations thereof now or hereafter used by Trustor in connection with the Site or Improvements, including, without limitation, the name "Le Reve", including any variations thereon, together with the goodwill associated therewith, and all names, logos, and designs used by Trustor, or in connection with the Site or in which Trustor has rights, with the exclusive right to use such names, logos and designs wherever they are now or hereafter used in connection with the Project (or in connection with the marketing of the Project), and any and all other trade names, trademarks or service marks, whether or not registered, now or hereafter used in the operation of the Project, including, without limitation, any interest as a lessee, licensee or franchisee, and, in each case, together with the goodwill associated therewith; (b) subject to the absolute assignment contained herein, the Rents; (c) any and all books, records, customer lists, concession agreements, supply or service contracts, licenses, permits, governmental approvals (to the extent such licenses, permits and approvals may be pledged under applicable law), signs, goodwill, casino and hotel credit and charge records, supplier lists, checking accounts, safe deposit boxes (excluding the contents of such deposit boxes owned by persons other than Trustor and its subsidiaries), cash, instruments, chattel papers, including inter-company notes and pledges, documents, unearned premiums, deposits, refunds, including but not limited to income tax refunds, prepaid expenses, rebates, tax and insurance escrow and impound accounts, if any, actions and rights in action, and all other claims, including without limitation condemnation awards and insurance proceeds, and all other contract rights and general intangibles resulting from or used in connection with the operation and occupancy of the Trust Estate and the Improvements and in which Trustor now or hereafter has rights; and (d) general intangibles, vacation license resort agreements or other time share license or right to use agreements, including without limitation all rents, issues, profits, income and maintenance fees resulting therefrom, whether any of the foregoing is now owned or hereafter acquired.

"Land" means the real property situated in the County of Clark, State of Nevada, more specifically described in *Schedule A* attached hereto and incorporated herein by reference, including any after acquired title thereto.

"Leased Premises" means, as the context may require, the Driving Range Leased Premises, the Employee Parking Lot Leased Premises, the Golf Course Leased Premises and/or the Office Building Leased Premises.

"Legal Requirements" means all applicable restrictive covenants, applicable zoning and subdivision ordinances and building codes, all applicable health and Environmental Laws and regulations, all applicable gaming laws and regulations, and all other applicable laws, ordinances, rules, regulations, judicial decisions, administrative orders, and other requirements of any Governmental Authority having jurisdiction over Trustor, the Trust Estate and/or any Affiliate of Trustor, in effect either at the time of execution of this Deed of Trust or at any time during the term hereof, including, without limitation, all Environmental Laws and Nevada Gaming Laws.

"Nevada Gaming License" means any gaming license necessary for the ownership, construction, maintenance, financing or operation of the Project, whether issued and/or required by Nevada Gaming Authorities, Nevada Gaming Laws or otherwise.

"Notes" means, collectively, those certain mortgage note(s) issued pursuant to the Mortgage Notes Indenture, as the same may be amended or replaced from time to time in accordance with its terms.

"NRS" means the Nevada Revised Statutes as in effect from time to time.

"Obligations" means the payment and performance of each covenant and agreement of Trustor contained in this Deed of Trust, the Mortgage Notes Indenture, the Notes, the Indemnity Agreement, the Guaranty and the other Indenture Documents.

"Office Building Lease" means that certain Office Building Lease dated as of October 21, 2002 between Valvino Lamore, LLC, a Nevada limited liability company as Landlord, and Trustor, as Tenant.

"Office Building Leased Premises" means the real property and fixtures situated in the County of Clark, State of Nevada described in the Office Building Lease and more specifically described in *Schedule E* attached hereto and incorporated herein.

"Permitted Dispositions" means (a) the sale, transfer, lease or other disposition of assets in the Trust Estate, in the ordinary course of business, of inventory held in the ordinary course of business (b) the dispositions set forth in *Section 1.10* hereof and (c) other sales, transfers, leases or other dispositions of assets in the

Trust Estate, including entering into Space Leases; *provided* that, in each case, all applicable provisions of the Indenture Documents are complied with.

"**Personal Property**" has the meaning set forth in *Section 1.12* hereof.

"**Proceeds**" has the meaning assigned to it under the UCC and, in any event, shall include but not be limited to (i) any and all proceeds of any insurance (including without limitation property casualty and title insurance), indemnity, warranty or guaranty payable from time to time with respect to any of the Trust Estate; (ii) any and all proceeds in the form of accounts, security deposits, tax escrows (if any), down payments (to the extent the same may be pledged under applicable law), collections, contract rights, documents, instruments, chattel paper, liens and security instruments, guarantees or general intangibles relating in whole or in part to the Project and all rights and remedies of whatever kind or nature Trustor may hold or acquire for the purpose of securing or enforcing any obligation due Trustor thereunder; (iii) any and all payments in any form whatsoever made or due and payable from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Trust Estate by any Governmental Authority; (iv) subject to the absolute assignment contained herein, the Rents or other benefits arising out of, in connection with or pursuant to any Space Lease of the Trust Estate; and (v) any and all other amounts from time to time paid or payable in connection with any of the Trust Estate; *provided, however*, that the Trustor is not authorized to dispose of any of the Trust Estate unless such disposition is a Permitted Disposition.

"**Project**" means the resort-hotel-casino-mall complex proposed to be constructed in Clark County, Nevada as described in the Plans and Specifications, as such Plans and Specifications may be amended pursuant to the Disbursement Agreement.

"**Rents**" means all rents, room revenues, income, receipts, issues, profits, revenues and maintenance fees, room, food and beverage revenues, license and concession fees, income, proceeds and other benefits to which Trustor may now or hereafter be entitled from the Site, the Improvements, the Space Leases or any property encumbered hereby or any business or other activity conducted by Trustor at the Site or the Improvements.

"**Site**" means the Land, the Appurtenant Rights and, if the context so requires, the Leased Premises.

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"**Space Leases**" means any and all leases, subleases, lettings, licenses, concessions, operating agreements, management agreements, and all other agreements affecting the Trust Estate that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, that give any person the right to conduct its business on, or otherwise use, operate or occupy, all or any portion of the Site or Improvements and any leases, agreements or arrangements permitting anyone to enter upon or use any of the Trust Estate to extract or remove natural resources of any kind, together with all amendments, extensions, and renewals of the foregoing entered into in compliance with this Deed of Trust, together with all rental, occupancy, service, maintenance or any other similar agreements pertaining to use or occupation of, or the rendering of services at the Site, the Improvements or any part thereof.

"**Space Lessee(s)**" means any and all tenants, licensees, or other grantees of the Space Leases and any and all guarantors, sureties, endorsers or others having primary or secondary liability with respect to such Space Leases.

"**Subject Leases**" means the Golf Course Lease, the Office Building Lease, the Driving Range Lease and the Employee Parking Lot Lease.

"**Tangible Collateral**" means all personal property, goods, equipment, supplies, building and other materials of every nature whatsoever and all other tangible personal property constituting a part or portion of the Project and/or used in the operation of the hotel, casino, restaurants, stores, parking facilities, observation tower and all other commercial operations on the Site or Improvements, including but not limited to communication systems, visual and electronic surveillance systems and transportation systems and not constituting a part of the real property subject to the real property lien of this Deed of Trust and including all property and materials stored therein in which Trustor has an interest and all tools, utensils, food and beverage, liquor, uniforms, linens, housekeeping and maintenance supplies, vehicles, fuel, advertising and promotional material, blueprints, surveys, plans and other documents relating to the Site or Improvements, and all construction materials and all furnishings, fixtures and equipment, including, but not limited to, all FF&E and all equipment and devices which are or are to be installed and used in connection with the operation of the Project, those items of furniture, fixtures and equipment which are to be purchased or leased by Trustor, machinery and any other item of personal property in which Trustor now or hereafter own or acquire an interest or right, and which are used or useful in the construction, operation, use and occupancy of the Project and all present and future right and interest of Trustor in and to any casino operator's agreement, license agreement or sublease agreement used in connection with the Site or the Improvements.

"**Title Insurer**" means Chicago Title Insurance Company.

"**Trust Estate**" means all of the property described in Granting Clauses (A) through (O) below, inclusive, and each item of property therein described, *provided, however*, that such term shall not include the property described in Granting Clause (Q) below.

"**UCC**" means the Uniform Commercial Code in effect in the State of Nevada from time to time, NRS chapters 104 and 104A.

The following terms shall have the meaning assigned to such terms in the Disbursement Agreement:

Bank Hotel/Casino Deed of Trust
Disbursement Agent
Environmental Laws
Financing Agreements
Nevada Gaming Authorities
Nevada Gaming Laws
Permitted Encumbrance

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Plans and Specifications
Project Lenders Intercreditor Agreement

**Second Mortgage Note Holders
Second Mortgage Notes Security Documents**

The following terms shall have the meaning assigned to such terms in the Mortgage Notes Indenture:

Affiliate
Collateral Documents
Lien
Permitted Liens
Person

In addition, any capitalized terms used in this Deed of Trust which are not otherwise defined herein shall have the meaning ascribed to such terms in the Disbursement Agreement and, if not defined therein, the meaning ascribed to such terms in the Mortgage Notes Indenture; *provided*, that upon termination of the Disbursement Agreement, any defined terms used herein having meanings given to such terms in the Disbursement Agreement shall continue to have the meanings given to such terms in the Disbursement Agreement immediately prior to such termination.

W I T N E S E T H:

IN CONSIDERATION OF TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION; THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, AND FOR THE PURPOSE OF SECURING in favor of Beneficiary (1) the due and punctual payment of the indebtedness evidenced by the Notes and the other Indenture Documents; (2) the performance of each covenant and agreement of Trustor contained in the Mortgage Notes Indenture, herein, the Disbursement Agreement and the other Indenture Documents; (3) the payment of such additional loans or advances as hereafter may be made to Trustor (individually or jointly and severally with any other Person) or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; *provided, however*, that any and all future advances by Beneficiary to Trustor made for the improvement, protection or preservation of the Trust Estate, together with interest at the rate applicable to overdue principal set forth in the Mortgage Notes Indenture, shall be automatically secured hereby unless such a note or instrument evidencing such advances specifically recites that it is not intended to be secured hereby and (4) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof or to protect the security hereof (including Protective Advances as such term is defined in *Section 4.2* hereof), together with interest thereon as herein provided (without limiting the generality of the protections afforded by NRS Chapter 106, funds disbursed that, in the reasonable exercise of Beneficiary's judgment, are needed to complete Improvements to the Land or to protect Beneficiary's security in the Trust Estate are to be deemed obligatory advances hereunder and will be added to the total indebtedness secured by this Deed of Trust and such indebtedness shall be increased accordingly), Trustor, in consideration of the premises, and for the purposes aforesaid, does hereby ASSIGN, BARGAIN, CONVEY, PLEDGE, RELEASE, HYPOTHECATE, WARRANT, AND TRANSFER WITH POWER OF SALE UNTO TRUSTEE IN TRUST FOR THE BENEFIT OF BENEFICIARY AND THE SECOND MORTGAGE NOTE HOLDERS each of the following:

(A) The Land and the Subject Leases;

(B) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Improvements;

(C) TOGETHER WITH all Appurtenant Rights;

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(D) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Tangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(E) TOGETHER WITH the Intangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(F) TOGETHER WITH (i) all the estate, right, title and interest of Trustor of, in and to all judgments and decrees, insurance proceeds, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of any of the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof, or to any Appurtenant Rights thereto, and Beneficiary is (subject to the terms hereof) hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittance therefor, and (subject to the terms hereof) to apply the same toward the payment of the indebtedness and other sums secured hereby, notwithstanding the fact that the amount owing thereon may not then be due and payable; (ii) all proceeds of any sales or other dispositions of the property or rights described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof whether voluntary or involuntary, provided, however, that the foregoing shall not be deemed to permit such sales, transfers, or other dispositions except as specifically permitted herein; and (iii) whether arising from any voluntary or involuntary disposition of the property described in Granting Clauses (A), (B), (C), (D) and (E), all Proceeds, products, replacements, additions, substitutions, renewals and accessions, remainders, reversions and after-acquired interest in, of and to such property;

(G) TOGETHER WITH the absolute assignment of any Space Leases or any part thereof that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, together with all of the following (including all "Cash Collateral" within the meaning of the Bankruptcy Law) arising from the Space Leases: (a) Rents (subject, however, to the aforesaid absolute assignment to Trustee for the benefit of Beneficiary and the conditional permission hereinbelow given to Trustor to collect the Rents), (b) all guarantees, letters of credit, security deposits, collateral, cash deposits, and other credit enhancement documents, arrangements and other measures with respect to the Space Leases, (c) all of Trustor's right, title, and interest under the Space Leases, including the following: (i) the right to receive and collect the Rents from the lessee, sublessee or licensee, or their successor(s), under any Space Lease(s) and (ii) the right to enforce against any tenants thereunder and otherwise any and all remedies under the Space Leases, including Trustor's right to evict from possession any tenant thereunder or to retain, apply, use, draw upon, pursue, enforce or realize upon any guaranty of any Space Lease; to terminate, modify, or amend the Space Leases; to obtain possession of, use, or occupy, any of the real or personal property subject to the Space Leases; and to enforce or exercise, whether at law or in equity or by any other means, all provisions of the Space Leases and all obligations of the tenants thereunder based upon (A) any breach by such tenant under the applicable Space Lease (including any claim that Trustor may have by reason of a termination, rejection, or disaffirmance of such Space Lease pursuant to any Bankruptcy Law) and (B) the use and occupancy of the premises demised, whether or not pursuant to the applicable Space Lease (including any claim for use and occupancy arising under landlord-tenant law of the State of Nevada or any Bankruptcy Law). Permission is hereby given to Trustor, so long as no Event of Default has occurred and is continuing hereunder, to collect and use the Rents, as they become due and payable, but not more than one (1) month

in advance thereof. Upon the occurrence of an Event of Default, the permission hereby given to Trustor to collect the Rents shall automatically terminate, but such permission shall be reinstated upon a cure or waiver of such Event of Default. Beneficiary shall have the right, at any time and from time to time, to notify any Space Lessee of the rights of Beneficiary as provided by this section;

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Notwithstanding anything to the contrary contained herein, the foregoing provisions of this Paragraph (G) shall not constitute an assignment for purposes of security but shall constitute an absolute and present assignment of the Rents to Beneficiary, subject, however, to the conditional license given to Trustor to collect and use the Rents as hereinabove provided; and the existence or exercise of such right of Trustor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Trustor;

(H) TOGETHER WITH all of Trustor's right, title and interest in and to any and all Plans and Specifications and all maps, plans, specifications, surveys, studies, tests, reports, data and drawings relating to the development of the Site or the Project and the construction of the Improvements, including, without limitation, all marketing plans, feasibility studies, soils tests, design contracts and all contracts and agreements of Trustor relating thereto including, without limitation, architectural, structural, mechanical and engineering plans and specifications, studies, data and drawings prepared for or relating to the development of the Site or the Project or the construction, renovation or restoration of any of the Improvements or the extraction of minerals, sand, gravel or other valuable substances from the Site and purchase contracts or any agreement granting Trustor a right to acquire any land situated within Clark County, Nevada;

(I) TOGETHER WITH, to the extent permitted by applicable law, all of Trustor's right, title, and interest in and to any and all licenses, permits, variances, special permits, franchises, certificates, rulings, certifications, validations, exemptions, filings, registrations, authorizations, consents, approvals, waivers, orders, rights and agreements (including, without limitation, options, option rights, contract rights now or hereafter obtained by Trustor from any Governmental Authority having or claiming jurisdiction over the Land, the FF&E, the Project, or any other element of the Trust Estate or providing access thereto, or the operation of any business on, at, or from the Site including, without limitation, any liquor or Nevada Gaming Licenses (except for any registrations, licenses, findings of suitability or approvals issued by the Nevada Gaming Authorities or any other liquor or gaming licenses which are non-assignable); *provided*, that upon an Event of Default hereunder or under the Mortgage Notes Indenture, if Beneficiary is not qualified under the Nevada Gaming Laws to hold such Nevada Gaming Licenses, then Beneficiary may designate an appropriately qualified third party to which an assignment of such Nevada Gaming Licenses can be made in compliance with the Nevada Gaming Laws;

(J) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to all water stock, water permits and other water rights relating to the Site;

(K) TOGETHER WITH all oil and gas and other mineral rights, if any, in or pertaining to the Site and all royalty, leasehold and other rights of Trustor pertaining thereto;

(L) TOGETHER WITH any and all monies and other property, real or personal, which may from time to time be subjected to the lien hereof by Trustor or by anyone on its behalf or with its consent, or which may come into the possession or be subject to the control of Trustee or Beneficiary pursuant to this Deed of Trust, the Mortgage Notes Indenture, the Second Mortgage Notes Security Documents or any other Indenture Document, including, without limitation, any Protective Advances (as defined in *Section 4.2* hereof) under this Deed of Trust; and all of Trustor's right, title, and interest in and to all extensions, improvements, betterments, renewals, substitutes for and replacements of, and all additions, accessions, and appurtenances to, any of the foregoing that Trustor may subsequently acquire or obtain by any means, or construct, assemble, or otherwise place on any of the Trust Estate, and all conversions of any of the foregoing; it being the intention of Trustor that all property hereafter acquired by Trustor and required by the Mortgage Notes Indenture, the Second Mortgage Notes Security Documents, this Deed of Trust or any other Indenture Document to be subject to the lien of this Deed of Trust or intended so to be shall forthwith upon the acquisition thereof by Trustor be subject to the lien of this Deed of Trust as if such property were now owned by Trustor and were specifically described in this

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Deed of Trust and granted hereby or pursuant hereto, and Trustee and Beneficiary are hereby authorized, subject to Nevada Gaming Laws and other applicable laws, to receive any and all such property as and for additional security for the obligations secured or intended to be secured hereby. Trustor agrees to take any action as may reasonably be necessary to evidence and perfect such liens or security interests, including, without limitation, the execution of any documents necessary to evidence and perfect such liens or security interests;

(M) TOGETHER WITH, to the extent permitted by applicable laws, any and all Accounts Receivable and all royalties, earnings, income, proceeds, products, rents, revenues, reversions, remainders, issues, profits, avails, production payments, and other benefits directly or indirectly derived or otherwise arising from any of the foregoing, all of which are hereby assigned to Beneficiary, who, except as otherwise expressly provided in this Deed of Trust (including the provisions of *Section 1.13* hereof), is authorized to collect and receive the same, to give receipts and acquittances therefor and to apply the same to the Obligations secured hereunder, whether or not then due and payable;

(N) TOGETHER WITH Proceeds of the foregoing property described in Granting Clauses (A) through (M);

(O) TOGETHER WITH Trustor's rights further to assign, sell, lease, encumber or otherwise transfer or dispose of the property described in Granting Clauses (A) through (N) inclusive, above, for debt or otherwise;

(P) TOGETHER WITH any right of Trustor to elect to terminate the Subject Leases or remain in possession of the Leased Premises pursuant to 11 U.S.C. section 365(h)(1) or any similar provision of applicable law and any possessory rights of Trustor in the Leased Premises pursuant to 11 U.S.C. section 365(h)(2) or any other similar provision of applicable law; and

(Q) EXPRESSLY EXCLUDING, HOWEVER, any assets expressly excluded from the definition of "Collateral" in the Mortgage Notes Indenture.

Trustor, for itself and its successors and assigns, covenants and agrees to and with Trustee that, at the time or times of the execution of and delivery of these presents or any instrument of further assurance with respect thereto, Trustor has good right, full power and lawful authority to assign, grant, convey, warrant, transfer, bargain or sell its interests in the Trust Estate in the manner and form as aforesaid, and that the Trust Estate is free and clear of all liens and

encumbrances whatsoever, except Permitted Liens, and Trustor shall warrant and forever defend the above-bargained property in the quiet and peaceable possession of Trustee and its successors and assigns against all and every person or persons lawfully or otherwise claiming or to claim the whole or any part thereof, except for Permitted Liens. Trustor agrees that any greater title to the Trust Estate hereafter acquired by Trustor during the term hereof shall be automatically subject hereto.

ARTICLE ONE COVENANTS OF TRUSTOR

The Beneficiary and the Second Mortgage Note Holders have been induced to enter into the Indenture Documents and to purchase the Notes, as the case may be, on the basis of the following material covenants, all agreed to by Trustor:

1.1 Performance of Indenture Documents. Trustor shall perform, observe and comply with each and every provision hereof, and with each and every provision contained in the Mortgage Notes Indenture and the other Indenture Documents and shall promptly pay to the Beneficiary or the Disbursement Agent, as applicable, when payment shall become due, the principal with interest thereon and all other sums required to be paid by Trustor under this Deed of Trust, the Mortgage Notes Indenture and the other Indenture Documents.

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1.2 General Representations, Covenants and Warranties. Trustor represents, covenants and warrants that: (a) Trustor has good and marketable title to an indefeasible fee estate in the Site (other than the Leased Premises) and a valid leasehold interest in the Leased Premises, free and clear of all encumbrances except Permitted Encumbrances, and that it has the right to hold, occupy and enjoy its interest in the Trust Estate, and has good right, full power and lawful authority to subject the Trust Estate to the Lien of this Deed of Trust and pledge the same as provided herein and Beneficiary may at all times peaceably and quietly enter upon, hold, occupy and enjoy the entire Trust Estate in accordance with the terms hereof; (b) Trustor is not Insolvent and no bankruptcy or insolvency proceedings are pending or contemplated by or, to the best of Trustor's knowledge, threatened against Trustor; (c) all costs arising from construction of any Improvements, the performance of any labor and the purchase of all Tangible Collateral and Improvements have been or shall be paid when due (subject to the provisions of the Disbursement Agreement, the Mortgage Notes Indenture and this Deed of Trust); (d) the Land has frontage on, and direct access for ingress and egress to dedicated street(s); (e) Trustor shall at all times conduct and operate the Trust Estate in a manner so as not to lose, or permit its affiliate to lose, the right to conduct gaming activities at the Project; (f) no material part of the Trust Estate has been damaged, destroyed, condemned or abandoned, other than those portions of the Trust Estate that (i) have been the subject of condemnation proceedings that have resulted in the conveyance of such portion of the Trust Estate to the Trustor or (ii) have been demolished in furtherance of the development of the Project as contemplated under the Disbursement Agreement; (g) as of the date hereof, no part of the Trust Estate is the subject of condemnation proceedings and Trustor has no knowledge of any contemplated or pending condemnation proceeding with respect to any portion of the Trust Estate; and (h) Trustor acknowledges and agrees that it presently may use, and in the past may have used, one or more of the trade or fictitious names, "Le Reve", "Wynn Collection", "Wynn Resorts" and "Desert Inn" and in each case variations thereof (collectively, the "**Enumerated Names**") in connection with the operation of the business at the Trust Estate, and Trustor further represents and warrants that the Enumerated Names are the only such trade or fictitious names Trustor has so used. For all purposes under this Deed of Trust it shall be deemed that the term "Trustor" includes all trade or fictitious names that Wynn Las Vegas, LLC (or any successor or assign thereof) now or hereafter uses, or has in the past used, including, without limitation, the Enumerated Names, with the same force and effect as if this Deed of Trust had been executed in all such names (in addition to "Wynn Las Vegas, LLC").

1.3 Compliance with Legal Requirements. Except as provided in the Mortgage Notes Indenture, Trustor shall promptly, fully, and faithfully comply in all material respects with all Legal Requirements and shall cause all portions of the Trust Estate and its use and occupancy to fully comply in all material respects with Legal Requirements at all times, whether or not such compliance requires work or remedial measures that are ordinary or extraordinary, foreseen or unforeseen, structural or nonstructural, or that interfere with the use or enjoyment of the Trust Estate.

1.4 Taxes. Except as otherwise permitted by the Mortgage Notes Indenture and the Disbursement Agreement, (a) Trustor shall pay all Impositions as they become due and payable and shall deliver to Beneficiary promptly upon Beneficiary's request, evidence satisfactory to Beneficiary that the Impositions have been paid or are not delinquent; (b) Trustor shall not suffer to exist, permit or initiate the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Land as a single lien, except as may be required by law; and (c) in the event of the passage of any law deducting from the value of real property for the purposes of taxation any lien thereon, or changing in any way the taxation of deeds of trust or obligations secured thereby for state or local purposes, or the manner of collecting such taxes and imposing a tax, either directly or indirectly, on this Deed of Trust, the Notes or the other Indenture Documents, Trustor shall pay all such taxes.

1.5 Insurance.

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(a) Hazard Insurance Requirements and Proceeds.

(1) *Hazard Insurance.* Trustor shall at its sole expense obtain for, deliver to, assign and maintain for the benefit of Beneficiary, during the term of this Deed of Trust, insurance policies insuring the Trust Estate and liability insurance policies, all in accordance with the requirements of the Mortgage Notes Indenture and the Disbursement Agreement (while in effect). Trustor shall pay promptly when due any premiums on such insurance policies and on any renewals thereof. In the event of the foreclosure of this Deed of Trust or any other transfer of title to the Trust Estate in partial or complete extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of Beneficiary in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

(2) *Handling of Proceeds.* All Proceeds from any insurance policies shall be collected, held, handled and disbursed in accordance with the provisions of the Mortgage Notes Indenture and the Disbursement Agreement (while in effect). All proceeds of insurance allocable to Trustor, as owner or lessee of the Site, and attributable to business interruption insurance shall be collected, held, handled and disbursed in accordance with the provisions of the Mortgage Notes Indenture and the Disbursement Agreement. Any such proceeds disbursed to Beneficiary shall be applied to pay amounts then due and payable under this Deed of Trust. The balance shall be retained by Beneficiary or its designee in an interest bearing or other investment account approved by Beneficiary, which account Trustor hereby pledges to Beneficiary to secure the Obligations. Disbursements

shall be permitted from such account to pay expenses reasonably incurred by Trustor in owning and operating the Trust Estate, as reasonably approved by Beneficiary.

(b) **Compliance with Insurance Policies.** Trustor shall not violate or permit to be violated any of the conditions or provisions of any policy of insurance required by the Mortgage Notes Indenture, the Disbursement Agreement (while in effect) or this Deed of Trust and Trustor shall so perform and satisfy the requirements of the companies writing such policies that, at all times, companies of good standing shall be willing to write and/or continue such insurance. Trustor further covenants to promptly send to Beneficiary all notices relating to any violation of such policies or otherwise affecting Trustor's insurance coverage or ability to obtain and maintain such insurance coverage.

1.6 Condemnation. Beneficiary is hereby authorized, at its option, to commence, appear in and prosecute in its own or Trustor's name any action or proceeding relating to any condemnation and to settle or compromise any claim in connection therewith, and Trustor hereby appoints Beneficiary as its attorney-in-fact to take any action in Trustor's name pursuant to Beneficiary's rights hereunder. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Trust Estate or any portion thereof, Trustor shall notify the Trustee and Beneficiary of the pendency of such proceedings. Trustor from time to time shall execute and deliver to Beneficiary all instruments requested by it to permit such participation; provided, however, that such instruments shall be deemed as supplemental to the foregoing grant of permission to Trustee and Beneficiary, and unless otherwise required, the foregoing permission shall, without more, be deemed sufficient to permit Trustee and/or Beneficiary to participate in such proceedings on behalf of Trustor. All such compensation awards, damages, claims, rights of action and Proceeds, and any other payments or relief, and the right thereto, are, whether paid to Beneficiary or Trustor or a third party trustee, included in the Trust Estate. Beneficiary, after deducting therefrom all its expenses, including reasonable attorneys fees, shall apply all Proceeds paid directly to it in accordance with the provisions of the Mortgage Notes Indenture. All Proceeds paid directly to the Trustor shall be applied, if received by Trustor prior to the Final Completion Date, in accordance with the Disbursement Agreement and, if received on or after the Final Completion Date, in accordance with the Mortgage Notes Indenture. To the extent that any condemnation proceeds are not required to be applied towards restoration of the improvements

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upon the Site, then Beneficiary shall have the right to apply said condemnation proceeds towards repayment of the Obligations. Trustor hereby waives any rights it may have under NRS 37.115, as amended or recodified from time to time.

1.7 Care of Trust Estate.

(a) Trustor shall preserve and maintain the Trust Estate in good condition and repair. Trustor shall not permit, commit or suffer to exist any waste, impairment or deterioration of the Trust Estate or of any part thereof that in any manner materially impairs Beneficiary's security hereunder and shall not take any action which will increase the risk of fire or other hazard to the Trust Estate or to any part thereof.

(b) Except for Permitted Dispositions, no material part of the Improvements or Tangible Collateral that are part of the Trust Estate shall be removed, demolished or materially altered, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld or delayed. Trustor shall have the right, without such consent, to remove and dispose of free from the lien of this Deed of Trust any part of the Improvements or Tangible Collateral that are part of the Trust Estate as from time to time may become worn out or obsolete or otherwise not useful in connection with the operation of the Trust Estate, provided that either (i) such removal or disposition does not materially affect the value of the Trust Estate or (ii) prior to or promptly following such removal, any such property shall be replaced with other property of substantially equal utility and of a value at least substantially equal to that of the replaced property when first acquired and free from any security interest of any other person (subject only to Permitted Liens), and by such removal and replacement Trustor shall be deemed to have subjected such replacement property to the lien of this Deed of Trust.

(c) Notwithstanding the foregoing provisions of this *Section 1.7*, the Trustor may develop the Project in the manner contemplated by the Disbursement Agreement, the Mortgage Notes Indenture and the other Indenture Documents.

1.8 Leases.

(a) Trustor represents, warrants and covenants that:

(i) as of the date hereof, Trustor has not entered into any Space Leases;

(ii) except for the assignment effected hereby and in the other Financing Agreements, Trustor has not executed any assignment or pledge of any of the Space Leases, the Rents, or of Trustor's right, title and interest in the same; and

(iii) this Deed of Trust does not and will not constitute a violation or default under any Space Lease, and is and shall at all times constitute a valid lien on Trustor's interests in the Space Leases.

(b) Trustor shall not enter into any Space Lease or any modifications or amendments to any Space Lease, either orally or in writing, unless such Space Lease complies with the requirements of the Mortgage Notes Indenture and the Second Mortgage Notes Security Documents.

(c) After an Event of Default, upon the request of Beneficiary Trustor shall deliver to Beneficiary executed copies of all Space Leases.

1.9 Further Encumbrance.

(a) Trustor covenants that at all times prior to the discharge of the Mortgage Notes Indenture and the Notes, except for Permitted Liens and Permitted Dispositions, Trustor shall neither make nor suffer to exist, nor enter into any agreement for, any sale, assignment, exchange, mortgage, transfer, Lien, hypothecation or encumbrance of all or any part of the Trust Estate, including,

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without limitation, the Rents. As used herein, "transfer" includes the actual transfer or other disposition, whether voluntary or involuntary, by law, or otherwise, except those transfers specifically permitted herein, provided, however, that "transfer" shall not include the granting of utility or other

beneficial easements with respect to the Trust Estate which have been or are granted by Trustor and are reasonably necessary to the construction, maintenance or operation of the Project.

(b) Any Permitted Lien consisting of the lien of a deed of trust which is junior to the lien of the Second Mortgage Notes Security Documents or any other Indenture Document (a "Subordinate Deed of Trust") shall be permitted hereunder so long as there shall have been delivered to Beneficiary, not less than thirty (30) days prior to the date thereof, a copy thereof which shall contain express covenants in form and substance satisfactory to Beneficiary to the effect that: (i) the Subordinate Deed of Trust is in all respects subject and subordinate to this Deed of Trust; (ii) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Trust Estate shall be named as a party defendant nor shall any action be taken with respect to the Trust Estate which would terminate any occupancy or tenancy of the Trust Estate, or any portion thereof, without the consent of Beneficiary; (iii) any Rents, if collected through a receiver or by the holder of the Subordinate Deed of Trust, shall be applied first to the obligations secured by this Deed of Trust, including principal and interest due and owing on or to become due and owing on the Notes or the other Indenture Documents, and then to the payment of maintenance expenses, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operation, and maintenance of the Trust Estate; and (iv) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust, prompt notice of the commencement thereof shall be given to Beneficiary.

(c) Trustor agrees that in the event the ownership of the Trust Estate or any part thereof becomes vested in a person other than Trustor, Beneficiary may, without notice to Trustor, deal in any way with such successor or successors in interest with reference to this Deed of Trust, the Notes, the other Indenture Documents and other Obligations hereby secured without in any way vitiating or discharging Trustor's or any guarantor's, surety's or endorser's liability hereunder or upon the obligations hereby secured. No sale of the Trust Estate and no forbearance to any person with respect to this Deed of Trust and no extension to any person of the time for payment of the Notes or other payment obligations under the Indenture Documents (whether principal and interest payments or otherwise), and other sums hereby secured given by Beneficiary shall operate to release, discharge, modify, change or affect the original liability of Trustor, or such guarantor, surety or endorser either in whole or in part.

(d) If Trustor shall fail to make any payment required to be made by it under any FF&E Financing Agreement, except where Trustor is contesting such payment in good faith, then the Beneficiary shall be entitled to make such payment on Trustor's behalf and any and all sums so expended by the Beneficiary shall be secured by this Deed of Trust and shall be repaid by Trustor upon demand, together with interest thereon at the interest at the rate applicable to overdue principal set forth in the Mortgage Notes Indenture from the date of advance.

1.10 **Partial Releases of Trust Estate.**

(a) Trustor may from time to time make a Permitted Disposition including, but not limited to, (i) transferring a portion of the Trust Estate (including any temporary taking) to any person legally empowered to exercise the power of eminent domain, or pursuant to dedication agreements that are now in effect or entered into in the future in connection with the development of the Project, (ii) granting utility easements reasonably necessary or desirable for the construction and/or

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operation of the Project, which grant or transfer is for the benefit of the Trust Estate, or (iii) transferring all or a portion of the Trust Estate as permitted pursuant to the Disbursement Agreement or the other Indenture Documents. In each such case, Beneficiary shall execute and deliver any instruments necessary or appropriate to effectuate or confirm any such transfer or grant, free from the lien of this Deed of Trust, *provided, however*, that Beneficiary shall execute a lien release or subordination agreement, as appropriate, for matters described in clauses (i) and (iii) above only if:

(A) Such transfer, grant or release is not prohibited by the Mortgage Notes Indenture and all conditions precedent contained in the Mortgage Notes Indenture for such transfer, grant or release, if any, shall have been satisfied;

(B) Beneficiary and Trustee shall have received a counterpart of the instrument pursuant to which such transfer, grant or release is to be made, and each instrument which Beneficiary or Trustee is requested to execute in order to effectuate or confirm such transfer, grant or release; and

(C) Beneficiary and Trustee shall have received an Officer's Certificate if required pursuant to the Mortgage Notes Indenture.

(b) Any consideration received for a transfer to any person empowered to exercise the right of eminent domain shall be subject to *Section 1.6* hereof.

1.11 **Further Assurances.**

(a) At its sole cost and without expense to Trustee or Beneficiary, and subject in all events to compliance with the Nevada Gaming Laws and other applicable Legal Requirements, Trustor shall do, execute, acknowledge and deliver any and all such further acts, deeds, conveyances, notices, requests for notices, financing statements, continuation statements, certificates, assignments, notices of assignments, agreements, instruments and further assurances, and shall mark any chattel paper, deliver any chattel paper or instruments to Beneficiary and take any other actions that are necessary, prudent, or reasonably requested by Beneficiary or Trustee to perfect or continue the perfection and first priority of Beneficiary's security interest in the Trust Estate, to protect the Trust Estate against the rights, claims, or interests of third persons other than holders of Permitted Liens or to effect the purposes of this Deed of Trust, including the security agreement and the absolute assignment of Rents contained herein, or for the filing, registering or recording thereof.

(b) Trustor shall forthwith upon the execution and delivery of this Deed of Trust, and thereafter from time to time, cause this Deed of Trust and each instrument of further assurance to be filed, indexed, registered, recorded, given or delivered in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the title of Trustee and/or Beneficiary to, the Trust Estate.

(c) Upon any modification of the boundaries of the Leased Premises (or any portion thereof), Trustor, at Trustor's expense, shall notify Beneficiary and amend this Deed of Trust to reflect an accurate description of the Leased Premises (or such portion thereof). In connection therewith, Trustor shall provide Beneficiary with such title insurance endorsements to Beneficiary's ALTA extended coverage Lender's Policy(ies) of Title Insurance as Beneficiary may reasonably request.

1.12 **Security Agreement and Financing Statements.** Trustor (as debtor) hereby grants to Beneficiary (as creditor and secured party) a present and future security interest in all Tangible Collateral, Intangible Collateral, FF&E, Improvements, all other personal property now or hereafter owned or leased by Trustor or

in which Trustor has or will have any interest, to the extent that such property constitutes a part of the Trust Estate (whether or not such items are stored on the premises or elsewhere), Proceeds of the foregoing comprising a portion of the Trust Estate and all products,

substitutions, and accessions therefor and thereto, subject to Beneficiary's rights to treat such property as real property as herein provided (collectively, the "**Personal Property**"). Trustor shall execute and/or deliver any and all documents and writings, including without limitation financing statements pursuant to the UCC, as may be necessary or prudent to preserve and maintain the priority of the security interest granted hereby on property which may be deemed subject to the foregoing security agreement or as Beneficiary may reasonably request, and shall pay to Beneficiary on demand any reasonable expenses incurred by Beneficiary in connection with the preparation, execution and filing of any such documents. Trustor hereby authorizes and empowers Beneficiary to file, on Trustor's behalf, all financing statements and refiling and continuations thereof as advisable to create, preserve and protect said security interest. Trustor acknowledges and agrees that it is not authorized to, and will not, authenticate or file, or authorize the filing of, any financing statements or other record with respect to the Personal Property (including any amendments thereto, or continuation or termination statements thereof), except as permitted by the Mortgage Notes Indenture. Trustor approves and ratifies any filing or recording of records made by or on behalf of Beneficiary in connection with the perfection of the security interest in favor of Beneficiary hereunder. This Deed of Trust constitutes both a real property deed of trust and a "security agreement," within the meaning of the UCC, and the Trust Estate includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Trust Estate. Trustor by executing and delivering this Deed of Trust has granted to Beneficiary, as security of the Obligations, a security interest in the Trust Estate.

(a) **Fixture Filing.** Without in any way limiting the generality of the immediately preceding paragraph or of the definition of the Trust Estate, this Deed of Trust constitutes a fixture filing under Sections 9-334 and 9-502 of the UCC (NRS 104.9334 and 104.9502). For such purposes, (i) the "debtor" is Trustor and its address is the address given for it in the initial paragraph of this Deed of Trust; (ii) the "secured party" is Beneficiary, and its address for the purpose of obtaining information is the address given for it in the initial paragraph of this Deed of Trust; (iii) the real estate to which the fixtures are or are to become attached is Trustor's interest in the Site; and (iv) the record owner of such real estate or interests therein is Trustor (with respect to the Land and as the lessor under the Subject Leases).

(b) **Remedies.** This Deed of Trust shall be deemed a security agreement as defined in the UCC and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall include any or all of (i) those prescribed herein, and (ii) those available under applicable law, and (iii) those available under the UCC, all at Beneficiary's sole election. In addition, a photographic or other reproduction of this Deed of Trust shall be sufficient as a financing statement for filing wherever filing may be necessary to perfect or continue the security interest granted herein.

(c) **Derogation of Real Property.** It is the intention of the parties that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in anyway derogating from or impairing the express declaration and intention of the parties hereto as hereinabove stated that everything used in connection with the production of income from the Trust Estate and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real property encumbered by this Deed of Trust irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. It is the intention of the parties that the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Trustor's interest as lessors in any present or future Space Lease or rights to Rents,

shall never be construed as in anyway altering any of the rights of Beneficiary as determined by this Deed of Trust or impugning the priority of Beneficiary's real property lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of Beneficiary in the event any court or judge shall at any time hold with respect to the matters set forth in the foregoing clauses (1), (2) and (3) that notice of Beneficiary's priority of interest to be effective against a particular class of persons, including but not limited to, the federal government and any subdivisions or entity of the federal government, must be filed in the UCC records.

(d) **Priority; Permitted Financing of Tangible Collateral.** All Personal Property of any nature whatsoever which is subject to the provisions of this security agreement shall be purchased or obtained by Trustor in its name and free and clear of any lien or encumbrance, except for Permitted Liens and the lien hereof, for use only in connection with the business and operation of the Project, and shall be and at all times remain free and clear of any lease or similar arrangement, chattel financing, installment sale agreement, security agreement and any encumbrance of like kind, so that Beneficiary's security interest shall attach to and vest in Trustor for the benefit of Beneficiary, with the priority herein specified, immediately upon the installation or use of the Personal Property at the Site and Trustor warrants and represents that Beneficiary's security interest in the Personal Property is a validly attached and binding security interest, properly perfected and prior to all other security interests therein except as otherwise permitted in this Deed of Trust. The foregoing shall not be construed as limiting Trustor's rights to transfer Personal Property pursuant to Permitted Dispositions or to obtain releases of Personal Property from the Lien of this Deed of Trust pursuant to *Section 1.10* hereof.

(e) **Preservation of Contractual Rights of Collateral.** Trustor shall, prior to delinquency, default, or forfeiture, perform all obligations and satisfy all material conditions required on its part to be satisfied to preserve its rights and privileges under any contract, lease, license, permit, or other authorization (i) under which it holds any Tangible Collateral or (ii) which constitutes part of the Intangible Collateral, except where Trustor is contesting such obligations in good faith.

(f) **Removal of Collateral.** Except for damaged or obsolete Tangible Collateral which is either no longer usable or which is removed temporarily for repair or improvement or removed for replacement on the Trust Estate with Tangible Collateral of similar function or as otherwise permitted herein, none of the Tangible Collateral shall be removed from the Trust Estate without Beneficiary's prior written consent.

(g) **Change of Name.** Trustor shall not change its corporate (or other entity) or business name, or do business within the State of Nevada under any name other than such name, or any trade name(s) other than those as to which Trustor gives prior written notice to Beneficiary of its intent to use such trade names, or any other business names (if any) specified in the financing statements delivered to Beneficiary for filing in connection with the execution hereof, without, in each case, providing Beneficiary with the additional financing statement(s) and any other similar documents deemed reasonably

necessary by Beneficiary to assure that its security interest remains perfected and of undiminished priority in all such Personal Property notwithstanding such name change.

1.13 Assignment of Leases and Rents. Subject to Nevada Gaming Laws and other applicable Legal Requirements, the assignment of Leases and Rents set out above in Granting Clause (G) shall constitute an absolute and present assignment to Beneficiary, subject to the license herein given to Trustor to collect the Rents, and shall be fully operative without any further action on the part of any party, and specifically Beneficiary shall be entitled upon the occurrence of an Event of Default hereunder to all Rents and to enter upon the Site and the Improvements to collect such Rents, provided, however, that Beneficiary shall not be obligated to take possession of the Trust Estate, or any portion thereof. The absolute assignment contained in Granting Clause (G) shall not be deemed to

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impose upon Beneficiary any of the obligations or duties of Trustor provided in any such Space Lease (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease in the event that any lessee shall have been joined as a party defendant in any action to foreclose this Deed of Trust and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Trust Estate or any part thereof).

1.14 Expenses.

(a) Trustor shall pay when due and payable all out-of-pocket costs, including without limitation, those reasonable appraisal fees, recording fees, taxes, abstract fees, title policy fees, escrow fees, attorneys' and paralegal fees, travel expenses, fees for inspecting architect(s) and engineer(s) and all other costs and expenses of every character which may hereafter be incurred by Beneficiary or any assignee of Beneficiary in connection with the preparation and execution of the Mortgage Notes Indenture, the Second Mortgage Notes Security Documents and the other Indenture Documents or instruments, agreements or documents of further assurance, the funding of the indebtedness secured hereby, and the enforcement of any of the foregoing. Other than costs associated with the enforcement of any of the foregoing, all such costs shall be itemized in reasonable detail; and

(b) Trustor shall, upon demand by Beneficiary, reimburse Beneficiary or any assignee of Beneficiary for all such reasonable expenses which have been incurred or which shall be incurred by it; and

(c) Trustor shall indemnify Beneficiary with respect to any transaction or matter in any way connected with any portion of the Trust Estate, this Deed of Trust, including any occurrence at, in, on, upon or about the Trust Estate (including any personal injury, loss of life, or property damage), or Trustor's use, occupancy, or operation of the Trust Estate, or the filing or enforcement of any mechanic's lien, or otherwise caused in whole or in part by any act, omission or negligence occurring on or at the Trust Estate, including failure to comply with any Legal Requirement or with any requirement of this Deed of Trust that applies to Trustor, except to the extent resulting from the gross negligence, fraud or willful misconduct of Trustee or Beneficiary. If Beneficiary is a party to any litigation as to which either Trustor is required to indemnify Beneficiary (or is made a defendant in any action of any kind against Trustor or relating directly or indirectly to any portion of the Trust Estate) then, at Beneficiary's option, Trustor shall undertake Beneficiary's defense, using counsel reasonably satisfactory to Beneficiary (and any settlement shall be subject to Beneficiary's consent, which consent shall not be unreasonably withheld), and in any case shall indemnify Beneficiary against such litigation. Trustor shall pay all reasonable costs and expenses, including reasonable legal costs, that Beneficiary pays or incurs in connection with any such litigation. Any amount payable under any indemnity in this Deed of Trust shall be a demand obligation, shall be added to, and become a part of, the secured obligations under this Deed of Trust, shall be secured by this Deed of Trust and shall bear interest at the interest rate specified in the Mortgage Notes Indenture. Such indemnity shall survive any release of this Deed of Trust and any foreclosure.

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1.15 Beneficiary's Cure of Trustor's Default. If Trustor defaults hereunder in the payment of any tax, assessment, lien, encumbrance or other Imposition, in its obligation to furnish insurance hereunder, or in the performance or observance of any other covenant, condition or term of this Deed of Trust or any other Financing Agreement or any FF&E Financing Agreement, Beneficiary may, but is not obligated to, to preserve its interest in the Trust Estate, perform or observe the same, and all payments made (whether such payments are regular or accelerated payments) and reasonable costs and expenses incurred or paid by Beneficiary in connection therewith shall become due and payable immediately. The amounts so incurred or paid by Beneficiary, together with interest thereon at the interest rate applicable to overdue principal set forth in the Mortgage Notes Indenture, from the date incurred until paid by Trustor, shall be added to the indebtedness and secured by the lien of this Deed of Trust. Beneficiary, is hereby empowered to enter and to authorize others to enter upon the Site or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Trustor or any person in possession holding under Trustor. No exercise of any rights under this Section 1.15 by Beneficiary shall cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

1.16 Use of Land. Trustor covenants that the Trust Estate shall be (i) used and operated in a manner consistent with the requirements of the Indenture Documents and (ii) open during such days and hours as are customarily observed by casino-hotels located in Las Vegas, Nevada, reasonably consistent with the provisions of the Mortgage Notes Indenture.

1.17 Compliance with Permitted Lien Agreements. Trustor shall comply with each and every material obligation contained in any agreement pertaining to a Permitted Lien.

1.18 Defense of Actions. Trustor shall appear in and defend any action or proceeding affecting or purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and shall pay all costs and expenses, including cost of title search and insurance or other evidence of title, preparation of survey, and reasonable attorneys' fees in any such action or proceeding in which Beneficiary or Trustee may appear or may be joined as a party and in any suit brought by Beneficiary based upon or in connection with this Deed of Trust or any other Indenture Document. Nothing contained in this section shall, however, limit the right of Beneficiary to appear in such action or proceeding with counsel of its own choice, either on its own behalf or on behalf of Trustor.

1.19 Affiliates.

(a) **Subject to Trust Deed.** Subject to compliance with the requirements of applicable Nevada Gaming Laws, Trustor shall cause all of its Affiliates in any way involved with the operation of the Trust Estate or the Project to observe the covenants and conditions of this Deed of Trust to the extent necessary to give the full intended effect to such covenants and conditions and to protect and preserve the security of Beneficiary hereunder.

(b) **Restriction on Use of Subsidiary or Affiliate.** Except as permitted under the Mortgage Notes Indenture, the Notes, the Second Mortgage Notes Security Documents or any other Indenture Document, Trustor shall not use any Affiliate in the operation of the Trust Estate or the Project if such use would in any way impair the security for the Notes or the other Indenture Documents or circumvent any covenant or condition of this Deed of Trust or of any other Indenture Document.

1.20 **Title Insurance.** Promptly after the execution of this Deed of Trust, Trustor shall cause to be delivered to Trustee at Trustor's expense, one or more ALTA extended coverage Lender's Policies of Title Insurance showing fee title to the real property situated in the County of Clark, State of Nevada, more specifically described in Schedule A attached hereto, vested in Trustor and the lien of this Deed of Trust to be a perfected lien, prior to any and all encumbrances other than Permitted Encumbrances

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(excluding, however, any such non-Permitted Encumbrances for which the Title Insurer has agreed to provide an endorsement or affirmative coverage protecting the lien of this Deed of Trust against such non-Permitted Encumbrances).

1.21 **Leasehold Estates.** Trustor represents, covenants and warrants: (a) that the Subject Leases are in full force and effect and unmodified; (b) Trustor will defend the leasehold estate under each Subject Lease for the entire remainder of the term set forth in each of the said Subject Leases against all and every Person or Persons lawfully claiming, or who may claim the same or any part thereof, subject to the payment of the rents in the Subject Leases reserved and subject to the performance and observance of all of the terms, covenants, conditions and warranties thereof; and (c) that there is no uncured default under any Subject Lease or in the performance of any of the terms, covenants, conditions or warranties thereof on the part of the lessor or the lessee to be observed and performed and that no state of facts exist under a Subject Lease which, with the lapse of time or giving of notice or both would constitute a default thereunder.

1.22 **Payment of Subject Leases Expenses.** The Trustor shall pay or cause to be paid on or prior to the date due all rents, additional rents and other charges and Impositions payable by the lessor or the lessee under the Subject Leases for which provision has not been made hereinbefore, when and as often as the same shall become due and payable.

1.23 **Trustor's Covenants with Respect to Subject Leases.**

(a) Trustor shall at all times promptly and faithfully keep and perform, or cause to be kept and performed, all the covenants and conditions contained in the Subject Leases to be kept and performed by it under the Subject Leases and in all respects conform to and comply with the terms and conditions of the Subject Leases. Trustor shall, within ten days after written demand from Beneficiary, deliver to Beneficiary proof of payment of all items that are required to be paid by Trustor under the Subject Leases, including, without limitation, rent, taxes, operating expenses and other charges. Trustor shall promptly deliver to Beneficiary copies of all notices given with respect to or which affect the Subject Leases including pleadings or notices of default given under the Subject Leases. Trustor further covenants that it shall not do or permit anything to occur or fail to occur which will impair or tend to impair the security of this Deed of Trust or will be grounds for declaring a forfeiture or termination of either Subject Lease, and upon any such failure as aforesaid, Trustor shall be subject to all of the rights and remedies granted Beneficiary in this Deed of Trust.

(b) Except as otherwise permitted in the Indenture Documents, Trustor shall not modify, extend or in any way alter the terms of the Subject Leases or cancel or surrender said Subject Leases or reject the Subject Leases in a case pending under the Bankruptcy Code, or waive, execute, condone or in anyway release or discharge the lessor thereunder of or from the obligations, covenants, conditions and agreements by said lessor to be done and performed; and Trustor does expressly release, relinquish and surrender unto Beneficiary all of its rights, power and authority to cancel, surrender, amend, modify or alter in any way the terms and provisions of the Subject Leases and any attempt on the part of Trustor to exercise any such right without the written approval and consent of Beneficiary thereto being first had and obtained shall constitute an Event of Default under the terms hereof and the other Indenture Documents and all Obligations and other sums secured hereby shall, at the option of Beneficiary, become due and payable forthwith. If Trustor becomes a debtor under the Bankruptcy Code, Trustor shall assume and assign the Subject Leases to Beneficiary, and it further agrees that it shall not object to any request by Beneficiary that the Subject Leases not be rejected, or that Beneficiary be authorized to assume Trustor's rights under the Subject Leases.

(c) Trustor shall deliver to Beneficiary an original executed copy of each Subject Lease, an estoppel certificate from the Lessor within ten (10) days of request by Beneficiary and in such

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form and content as shall be satisfactory to Beneficiary, as well as any and all documentary evidence received by it showing compliance by Trustor with the provisions of the Subject Leases.

(d) Trustor does hereby authorize and irrevocably appoint and constitute Beneficiary as its true and lawful attorney-in-fact, which appointment is coupled with an interest, in its name, place and stead, to, upon the occurrence and during the continuance of an Event of Default, take any and all actions deemed necessary or desirable by Beneficiary to perform and comply with all the obligations of Trustor under the Subject Leases, and to do and take upon the occurrence and during continuation of an Event of Default, but without any obligation so to do or take, any action which Beneficiary deems reasonably necessary to prevent or cure any default by Trustor under the Subject Leases, to enter into and upon the Site, the Project or the Improvements or any part thereof as provided in the Indenture Documents in order to prevent or cure any default of Trustor pursuant thereto, to the end that the rights of Trustor in and to the leasehold estate created by the Subject Leases shall be kept free from default.

(e) In the event of any failure by Trustor to perform or cause the performance of any covenant on the part of lessor or lessee to be observed and performed under the Subject Leases, the performance by Beneficiary on behalf of Trustor of the applicable Subject Lease covenant shall not remove or waive, as between Trustor and Beneficiary, the corresponding Event of Default under the terms hereof and any amount so advanced by Beneficiary or any costs incurred in connection therewith, with interest thereon at the interest rate applicable to overdue principal under the Mortgage Notes Indenture, shall constitute additional Obligations secured hereby and be immediately due and payable.

(f) To the extent permitted by law, the price payable by Trustor, or by any other party so entitled, in the exercise of the right of redemption, if any, shall include all rents paid and other sums advanced by Beneficiary, on behalf of Trustor, as lessee under the Subject Leases.

(g) Trustor shall use all reasonable efforts to enforce the obligations of the lessor under the Subject Leases in a commercially reasonable manner.

(h) No release or forbearance of any of Trustor's obligations under the Subject Leases by the lessor thereunder, shall release Trustor from any of its obligations under this Deed of Trust.

(i) The lien of this Deed of Trust shall attach to all of Trustor's rights and remedies at any time arising under or pursuant to section 365(h) of the Bankruptcy Law, including, without limitation, all of Trustor's rights to remain in possession of the Leased Premises. Trustor shall not elect to treat the Subject Leases as terminated under section 365(h)(1) of the Bankruptcy Law, and any such election shall be void.

(i) If pursuant to section 365(h)(2) of the Bankruptcy Law, Trustor shall seek to offset against the rent reserved in the Subject Leases the amount of any damages caused by the nonperformance by the lessor or any other party of any of their respective obligations thereunder after the rejection by the lessor or such other party of the Subject Leases under the Bankruptcy Law, then Trustor shall, prior to effecting such offset, notify Beneficiary of its intent to do so, setting forth the amount proposed to be so offset and the basis therefor. Beneficiary shall have the right to object to all or any part of such offset that, in the reasonable judgment of Beneficiary, would constitute a breach of the Subject Leases, and in the event of such objection, Trustor shall not effect any offset of the amounts found objectionable by Beneficiary. Neither Beneficiary's failure to object as aforesaid nor any objection relating to such offset shall constitute an approval of any such offset by Beneficiary.

(ii) If any action, proceeding, motion or notice shall be commenced or filed in respect of the lessor under the Subject Leases or any other party or in respect of the Subject Leases in connection with any case under the Bankruptcy Law, then Beneficiary shall have the option to

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intervene in any such litigation with counsel of Beneficiary's choice. Beneficiary may proceed in its own name in connection with any such litigation, and Trustor agrees to execute any and all powers, authorizations, consents or other documents required by Beneficiary in connection therewith.

(iii) Trustor shall, after obtaining knowledge thereof, promptly notify Beneficiary of any filing by or against the lessor or any other party with an interest in the Leased Premises of a petition under the Bankruptcy Law. Trustor shall promptly deliver to Beneficiary, following receipt, copies of any and all notices, summonses, pleadings, applications and other documents received by Trustor in connection with any such petition and any proceedings relating thereto.

(iv) If there shall be filed by or against Trustor a petition under the Bankruptcy Law, and Trustor, as lessee under the Subject Leases, shall determine to reject the Subject Leases pursuant to section 365(a) of the Bankruptcy Law, then Trustor shall give Beneficiary a notice of the date on which Trustor shall apply to the bankruptcy court for authority to reject the Subject Leases (such notice to be no later than twenty (20) days prior to such date). Beneficiary shall have the right, but not the obligation, to serve upon Trustor at any time prior to the date on which Trustor shall so apply to the bankruptcy court a notice stating that Beneficiary demands that Trustor assume and assign the Subject Leases to Beneficiary pursuant to section 365 of the Bankruptcy Law. If Beneficiary shall serve upon Trustor the notice described in the preceding sentence, to the extent permitted by law Trustor shall not seek to reject the Subject Leases and shall comply with the demand provided for in the preceding sentence. In addition, effective upon the entry of an order for relief with respect to Trustor under the Bankruptcy Law, Trustor hereby assigns and transfers to Beneficiary a non-exclusive right to apply to the bankruptcy court under section 365(d)(4) of the Bankruptcy Law for an order extending the period during which the Subject Leases may be rejected or assumed; and shall (a) promptly notify Beneficiary of any default by Trustor in the performance or observance of any of the terms, covenants or conditions on the part of Trustor to be performed or observed under the Subject Leases and of the giving of any written notice by the lessor thereunder to Trustor of any such default, and (b) promptly cause a copy of each written notice given to Trustor by the lessor under the Subject Leases to be delivered to Beneficiary. Beneficiary may rely on any notice received by it from any such lessor of any default by Trustor under the Subject Leases and may take such action as may be permitted by law to cure such default even though the existence of such default or the nature thereof shall be questioned or denied by Trustor or by any Person on its behalf.

(k) Beneficiary shall have the right upon notice to Trustor to participate in the adjustment and settlement of any insurance proceeds and in the determination of any condemnation award under the Subject Leases to the extent and in the manner provided in the Subject Leases.

1.24 Rejection of Subject Leases.

To the extent applicable, if the lessor under the Subject Leases rejects or disaffirms the Subject Leases or purports or seeks to disaffirm the Subject Leases pursuant to any Bankruptcy Law, then:

(a) To the extent permitted by law, Trustor shall remain in possession of the Leased Premises demised under the Subject Leases and shall perform all acts reasonably necessary for Trustor to remain in such possession for the unexpired term of such Subject Leases (including all renewals), whether the then existing terms and provisions of such Subject Leases require such acts or otherwise; and

(b) All the terms and provisions of this Deed of Trust and the Lien created by this Deed of Trust shall remain in full force and effect and shall extend automatically to all of Trustor's rights

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and remedies arising at any time under, or pursuant to, Section 365(h) of the Bankruptcy Code, including all of Trustor's rights to remain in possession of the Leased Premises.

2.1 *Interaction with Mortgage Notes Indenture.*

(a) **Incorporation by Reference.** All terms, covenants, conditions, provisions and requirements of the Mortgage Notes Indenture are incorporated by reference in this Deed of Trust.

(b) **Conflicts.** In the event of any conflict or inconsistency between the provisions of this Deed of Trust and those of the Mortgage Notes Indenture or the Disbursement Agreement, the provisions of the Mortgage Notes Indenture or the Disbursement Agreement, as applicable, shall govern.

2.2 **Other Collateral.** This Deed of Trust is one of a number of security agreements to secure the debt delivered by or on behalf of Trustor pursuant to the Mortgage Notes Indenture and the other Indenture Documents and securing the Obligations secured hereunder. All potential junior Lien claimants are placed on notice that, under any of the Indenture Documents (including a separate future unrecorded agreement between Trustor and Beneficiary), other collateral for the Obligations secured hereunder (*i.e.*, collateral other than the Trust Estate) may, under certain circumstances, be released without a corresponding reduction in the total principal amount secured by this Deed of Trust. Such a release would decrease the amount of collateral securing the same indebtedness, thereby increasing the burden on the remaining Trust Estate created and continued by this Deed of Trust. No such release shall impair the priority of the lien of this Deed of Trust. By accepting its interest in the Trust Estate, each and every junior Lien claimant shall be deemed to have acknowledged the possibility of, and consented to, any such release. Nothing in this paragraph shall impose any obligation upon Beneficiary.

2.3 **Subordination to Bank Deed of Trust.** Notwithstanding any other provision hereof, this Deed of Trust, including, without limitation, the security interest granted herein, the rights, power and remedies of the Trustee and the Beneficiary and the obligations of Trustor set forth herein, shall, to the extent provided in the Project Lenders Intercreditor Agreement, be subject and subordinate to the Bank Hotel/Casino Deed of Trust.

ARTICLE THREE DEFAULTS

3.1 **Event of Default.** The term "Event of Default," wherever used in this Deed of Trust, shall mean any of (i) one or more of the events of default listed in the Mortgage Notes Indenture (ii) so long as the Disbursement Agreement is in effect, one or more of the events of default listed in the Disbursement Agreement (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) or (iii) if any "borrower" (as that term is defined in NRS 106.310) who may send a notice pursuant to NRS 106.380(1), (x) delivers, sends by mail or otherwise gives, or purports to deliver, send by mail or otherwise give, to a beneficiary under this Deeds of Trust (A) any notice of an election to terminate the operation of this Deed of Trust as security for any secured obligation, including, without limitation, any obligation to repay any "future advance" (as defined in NRS 106.320) of "principal" (as defined in NRS 106.345), or (B) any other notice pursuant to NRS 106.380(1), (y) records a statement pursuant to NRS 106.380(3), or (z) causes this Deed of Trust, any secured obligation, or any Secured Party to be subject to NRS 106.380(2), 106.380(3) or 106.400.

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ARTICLE FOUR REMEDIES

4.1 **Acceleration of Maturity.** If an Event of Default occurs, Beneficiary may (except that such acceleration shall be automatic if the Event of Default is caused by Trustor's Bankruptcy), in accordance with the Mortgage Notes Indenture, declare the Notes and other indebtedness under the Indenture Documents and all indebtedness or sums secured hereby, to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become due and payable without demand, presentment, notice or other requirements of any kind (all of which Trustor waives) notwithstanding anything in this Deed of Trust or any other Indenture Document or applicable law to the contrary.

4.2 **Protective Advances.** If Trustor fails to make any payment or perform any other obligation under the Notes, the Mortgage Notes Indenture or any other Financing Agreement, then without thereby limiting Beneficiary's other rights or remedies, waiving or releasing any of Trustor's obligations, or imposing any obligation on Beneficiary, Beneficiary may either advance any amount owing or perform any or all actions that Beneficiary considers necessary or appropriate to cure such default. All such advances shall constitute "Protective Advances" and shall bear interest thereon at the interest rate applicable to overdue principal set forth in the Mortgage Notes Indenture from the date incurred until paid by Trustor. No sums advanced or performance rendered by Beneficiary shall cure, or be deemed a waiver of any Event of Default.

4.3 **Institution of Equity Proceedings.** If an Event of Default occurs, Beneficiary may institute an action, suit or proceeding in equity for specific performance of this Deed of Trust, the Notes, or any other Indenture Document, all of which shall be specifically enforceable by injunction or other equitable remedy. Trustor waives any defense based on laches or any applicable statute of limitations.

4.4 *Beneficiary's Power of Enforcement.*

(a) If an Event of Default occurs, Beneficiary shall be entitled, at its option and in its sole and absolute discretion, to prepare and record on its own behalf, or to deliver to Trustee for recording, if appropriate, written declaration of default and demand for sale and written Notice of Breach and Election to Sell (NRS 107.080(3)) (or other statutory notice) to cause the Trust Estate to be sold to satisfy the obligations hereof, and in the case of delivery to Trustee, Trustee shall cause said notice to be filed for record.

(b) After the lapse of such time as may then be required by law following the recordation of said Notice of Breach and Election to Sell, and notice of sale having been given as then required by law, including compliance with any applicable Nevada Gaming Laws, Trustee without demand on Trustor, shall sell the Trust Estate or any portion thereof at the time and place fixed by it in said notice, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder, of cash in lawful money of the United States payable at the time of sale. Trustee may, for any cause it deems expedient, postpone the sale of all or any portion of said property until it shall be completed and, in every case, notice of postponement shall be given by public announcement thereof at the time and place last appointed for the sale and from time to time thereafter Trustee may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall execute and deliver to the purchaser its Deed, Bill of Sale, or other instrument conveying said property so sold, but without any covenant or warranty, express or implied. The recitals in such instrument of conveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale.

such sale to payment of all sums expended under the terms hereof not then repaid, with accrued interest at the rate applicable to overdue principal set forth in the Mortgage Notes Indenture to the payment of all other sums then secured hereby and the remainder, if any, to the person or persons legally entitled thereto as provided in NRS 40.462.

(d) Subject to compliance with applicable Nevada Gaming Laws, if any Event of Default occurs, Beneficiary may, either with or without entry or taking possession of the Trust Estate, and without regard to whether or not the indebtedness and other sums secured hereby shall be due and without prejudice to the right of Beneficiary thereafter to bring an action or proceeding to foreclose or any other action for any default existing at the time such earlier action was commenced, proceed by any appropriate action or proceeding: (1) to enforce payment of the Notes or other payment obligations under the Indenture Documents (whether principal and interest payments or otherwise), to the extent permitted by law, or the performance of any term hereof or any other right; (2) to foreclose this Deed of Trust in any manner provided by law for the foreclosure of mortgages or deeds of trust on real property and to sell, as an entirety or in separate lots or parcels, the Trust Estate or any portion thereof pursuant to the laws of the State of Nevada or under the judgment or decree of a court or courts of competent jurisdiction, and Beneficiary shall be entitled to recover in any such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees in such amount as shall be awarded by the court; (3) to exercise any or all of the rights and remedies available to it under the Indenture Documents; and (4) to pursue any other remedy available to it. Beneficiary shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Beneficiary may determine.

(e) The remedies described in this *Section 4.4* may be exercised with respect to all or any portion of the Personal Property, either simultaneously with the sale of any real property encumbered hereby or independent thereof. Beneficiary shall at any time be permitted to proceed with respect to all or any portion of the Personal Property in any manner permitted by the UCC. Trustor agrees that Beneficiary's inclusion of all or any portion of the Personal Property (and all personal property that is subject to a security interest in favor, or for the benefit, of Beneficiary) in a sale or other remedy exercised with respect to the real property encumbered hereby, as permitted by the UCC, is a commercially reasonable disposition of such property.

4.5 Beneficiary's Right to Enter and Take Possession, Operate and Apply Income.

(a) Subject to compliance with applicable Nevada Gaming Laws, if an Event of Default occurs, (i) Trustor, upon demand of Beneficiary, shall forthwith surrender to Beneficiary the actual possession and, if and to the extent permitted by law, Beneficiary itself, or by such officers or agents as it may appoint, may enter and take possession of all the Trust Estate including the Personal Property, without liability for trespass, damages or otherwise, and may exclude Trustor and its agents and employees wholly therefrom and may have joint access with Trustor to the books, papers and accounts of Trustor; and (ii) Trustor shall pay monthly in advance to Beneficiary on Beneficiary's entry into possession, or to any receiver appointed to collect the Rents, all Rents then due and payable.

(b) If Trustor shall for any reason fail to surrender or deliver the Trust Estate, the Personal Property or any part thereof after Beneficiary's demand, Beneficiary may obtain a judgment or decree conferring on Beneficiary or Trustee the right to immediate possession or requiring Trustor to deliver immediate possession of all or part of such property to Beneficiary or Trustee and Trustor hereby specifically consents to the entry of such judgment or decree. Trustor shall pay to Beneficiary or Trustee, upon demand, all reasonable costs and expenses of obtaining such judgment or decree and reasonable compensation to Beneficiary or Trustee, their attorneys and

agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Deed of Trust.

(c) Subject to compliance with applicable Nevada Gaming Laws, upon every such entering upon or taking of possession, Beneficiary or Trustee may hold, store, use, operate, manage and control the Trust Estate and conduct the business thereof, and, from time to time in its sole and absolute discretion and without being under any duty to so act:

(1) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;

(2) insure or keep the Trust Estate insured;

(3) manage and operate the Trust Estate and exercise all the rights and powers of Trustor in their name or otherwise with respect to the same;

(4) enter into agreements with others to exercise the powers herein granted Beneficiary or Trustee, all as Beneficiary or Trustee from time to time may determine; and, subject to the absolute assignment of the Leases and Rents to Beneficiary, Beneficiary or Trustee may collect and receive all the Rents, including those past due as well as those accruing thereafter; and shall apply the monies so received by Beneficiary or Trustee in such priority as Beneficiary may determine to (1) the payment of interest and principal due and payable on the Notes or the other Indenture Documents, (2) the deposits for taxes and assessments and insurance premiums due, (3) the cost of insurance, taxes, assessments and other proper charges upon the Trust Estate or any part thereof; (4) the compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary or Trustee; and (5) any other charges or costs required to be paid by Trustor under the terms hereof; and

(5) rent or sublet the Trust Estate or any portion thereof for any purpose permitted by this Deed of Trust.

Beneficiary or Trustee shall surrender possession of the Trust Estate and the Personal Property to Trustor only when all that is due upon such interest and principal, tax and insurance deposits, and all amounts under any of the terms of the Mortgage Notes Indenture or this Deed of Trust, shall have been paid and all defaults made good. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.6 Leases. Beneficiary is authorized to foreclose this Deed of Trust subject to the rights of any tenants of the Trust Estate, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights shall not be, nor be asserted by Trustor to be, a defense to any proceedings instituted by Beneficiary to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Trust Estate, or any portion thereof. Unless otherwise agreed by Beneficiary in writing, all Space Leases executed subsequent to the date hereof, or any part thereof, shall be subordinate and inferior to the lien of this Deed of Trust; provided, however that (i) in accordance with the terms of the Mortgage Notes Indenture, Beneficiary may be required to execute a non-disturbance and attornment agreement in connection with certain Space Leases; and (ii) from time to time Beneficiary may execute and record among the land records of the jurisdiction where this Deed of Trust is recorded, subordination statements with respect to such of said Space Leases as Beneficiary may designate in its sole discretion, whereby the Space Leases so designated by Beneficiary shall be made superior to the lien of this Deed of Trust for the term set forth in such subordination statement. From and after the recordation of such subordination statements, and for the respective periods as may be set forth therein, the Space Leases therein referred to shall be superior to the lien of this Deed of Trust and shall not be affected by any foreclosure hereof. All such Space Leases shall contain a provision to the effect that the Trustor and Space Lessee recognize the

right of Beneficiary to elect and to effect such subordination of this Deed of Trust and consents thereto.

4.7 Purchase by Beneficiary. Upon any foreclosure sale (whether judicial or nonjudicial), Beneficiary may bid for and purchase the property subject to such sale and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

4.8 Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws. Trustor agrees to the full extent permitted by law that if an Event of Default occurs, neither Trustor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust or the absolute sale of the Trust Estate or any portion thereof or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof, and Trustor for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Trust Estate marshalled upon any foreclosure of the lien hereof and agrees that Trustee or any court having jurisdiction to foreclose such lien may sell the Trust Estate in part or as an entirety.

4.9 Receiver. If an Event of Default occurs, Beneficiary, to the extent permitted by law and subject to compliance with all applicable Nevada Gaming Laws, and without regard to the value, adequacy or occupancy of the security for the indebtedness and other sums secured hereby, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Trust Estate and to collect all Rents and apply the same as the court may direct, and such receiver may be appointed by any court of competent jurisdiction upon application by Beneficiary. Beneficiary may have a receiver appointed without notice to Trustor or any third party, and Beneficiary may waive any requirement that the receiver post a bond. Beneficiary shall have the power to designate and select the Person who shall serve as the receiver and to negotiate all terms and conditions under which such receiver shall serve. Any receiver appointed on Beneficiary's behalf may be an Affiliate of Beneficiary. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Deed of Trust. The right to enter and take possession of and to manage and operate the Trust Estate and to collect all Rents, whether by a receiver or otherwise, shall be cumulative to any other right or remedy available to Beneficiary under this Deed of Trust or the other Indenture Documents or otherwise available to Beneficiary and may be exercised concurrently therewith or independently thereof. Beneficiary shall be liable to account only for such Rents (including, without limitation, security deposits) actually received by Beneficiary, whether received pursuant to this section or any other provision hereof. Notwithstanding the appointment of any receiver or other custodian, Beneficiary shall be entitled as pledgee to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Deed of Trust to, Beneficiary.

4.10 Suits to Protect the Trust Estate. Beneficiary shall have the power and authority to institute and maintain any suits and proceedings as Beneficiary, in its sole and absolute discretion, may deem advisable (a) to prevent any impairment of the Trust Estate by any acts which may be unlawful or in violation of this Deed of Trust, (b) to preserve or protect its interest in the Trust Estate, or (c) to restrain the enforcement of or compliance with any legislation or other Legal Requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Beneficiary's interest.

4.11 Proofs of Claim. In the case of any receivership, Insolvency, Bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Trustor, or, to the extent the same would result in an Event of Default hereunder, any Subsidiary, or any guarantor, co-maker or

endorser of any of Trustor's obligations, its creditors or its property, Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim or other documents as it may deem to be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Trustor under the Notes, the Second Mortgage Notes Security Documents or any other Indenture Document, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Trustor after such date.

4.12 Trustor to Pay the Notes on Any Default in Payment; Application of Monies by Beneficiary.

(a) In case of a foreclosure sale of all or any part of the Trust Estate and of the application of the proceeds of sale to the payment of the sums secured hereby, Beneficiary shall be entitled to enforce payment from Trustor of any additional amounts then remaining due and unpaid and to recover judgment against Trustor for any portion thereof remaining unpaid, with interest at the rate applicable to overdue principal as set forth in the Mortgage Notes Indenture.

(b) Trustor hereby agrees to the extent permitted by law, that no recovery of any judgment by Beneficiary or other action by Beneficiary and no attachment or levy of any execution upon any Property of Trustor by Beneficiary (other than a foreclosure of the entire Trust Estate hereunder) shall in any way affect the Lien and security interest of this Deed of Trust upon the Trust Estate or any part thereof or any Lien, rights, powers or remedies of Beneficiary hereunder, but such Lien, rights, powers and remedies shall continue unimpaired as before.

(c) Any monies collected or received by Beneficiary under this *Section 4.12* shall be first applied to the payment of reasonable compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary, and the balance remaining shall be applied to the payment of amounts due and unpaid under the Notes and the other Indenture Documents.

(d) The provisions of this section shall not be deemed to limit or otherwise modify the provisions of any guaranty of the indebtedness evidenced by the Notes or the other Indenture Documents.

4.13 Delay or Omission; No Waiver. No delay or omission of Beneficiary or any Mortgage Note Holder to exercise any right, power or remedy upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Beneficiary whether contained herein or in the other Indenture Documents or otherwise available to Beneficiary may be exercised from time to time and as often as may be deemed expedient by Beneficiary.

4.14 No Waiver of One Default to Affect Another. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If Beneficiary or the required percentage of the Second Mortgage Note Holders (as determined pursuant to the Mortgage Notes Indenture), to the extent applicable under the Mortgage Notes Indenture, (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Notes, the Mortgage Notes Indenture, this Deed of Trust, the Disbursement Agreement or any other Indenture Document; (d) releases any part of the Trust Estate from the lien or security interest of this Deed of Trust or any other instrument securing the Notes or the other Indenture Documents; (e) consents to the filing of any map, plat or replat of the Site (to the extent such consent is required); (f) consents to the granting of any easement on the Site (to the extent such consent is required); or (g) makes or consents to any agreement changing the terms of this Deed of Trust or any other Indenture Document subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability of Trustor under the Notes, this Deed of Trust or any other Indenture Document or otherwise, or any subsequent purchaser of the Trust Estate or any part thereof or any maker, co-signer,

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surety or guarantor. No such act or omission shall preclude Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by Beneficiary, shall the lien or security interest of this Deed of Trust be altered thereby, except to the extent expressly provided in any releases, maps, easements or subordinations described in clause (d), (e), (f) or (g) above of this Section 4.14. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Trust Estate, Beneficiary, without notice to any person, firm or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Trust Estate or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder, or waiving its right to declare such sale or transfer an Event of Default as provided herein. Notwithstanding anything to the contrary contained in this Deed of Trust or any other Indenture Document, (i) in the case of any non-monetary Event of Default, Beneficiary may continue to accept payments due hereunder without thereby waiving the existence of such or any other Event of Default and (ii) in the case of any monetary Event of Default, Beneficiary may accept partial payments of any sums due hereunder without thereby waiving the existence of such Event of Default if the partial payment is not sufficient to completely cure such Event of Default.

4.15 Discontinuance of Proceedings; Position of Parties Restored. If Beneficiary shall have proceeded to enforce any right or remedy under this Deed of Trust by foreclosure, entry of judgment or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Beneficiary, then and in every such case Trustor and Beneficiary shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Beneficiary shall continue as if no such proceedings had occurred or had been taken.

4.16 Remedies Cumulative. No right, power or remedy, including without limitation remedies with respect to any security for the Notes or any other Indenture Document, conferred upon or reserved to Beneficiary by this Deed of Trust or any other Indenture Document is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or any other Indenture Document, now or hereafter existing at law, in equity or by statute, and Beneficiary shall be entitled to resort to such rights, powers, remedies or security as Beneficiary shall in its sole and absolute discretion deem advisable.

4.17 Interest After Event of Default. If an Event of Default shall have occurred and is continuing, all sums outstanding and unpaid under the Notes, this Deed of Trust and the other Indenture Documents shall, at Beneficiary's option, bear interest at the rate applicable to overdue principal set forth in the Mortgage Notes Indenture until such Event of Default has been cured. Trustor's obligation to pay such interest shall be secured by this Deed of Trust.

4.18 Foreclosure; Expenses of Litigation. If Trustee forecloses, reasonable attorneys' fees for services in the supervision of said foreclosure proceeding shall be allowed to the Trustee and Beneficiary as part of the foreclosure costs. In the event of foreclosure of the lien hereof, there shall be allowed and included as additional indebtedness all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after foreclosure sale or entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and guarantees, and similar data and assurances with respect to title as Beneficiary may deem reasonably advisable either to prosecute such suit or to evidence to a bidder at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Trust Estate or any portion thereof. All expenditures and expenses of the nature in this section mentioned, and such expenses and fees as may be incurred in the protection

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of the Trust Estate and the maintenance of the lien and security interest of this Deed of Trust, including the fees of any attorney employed by Beneficiary in any litigation or proceeding affecting this Deed of Trust or any other Indenture Document, the Trust Estate or any portion thereof, including, without limitation, civil, probate, appellate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Trustor, with interest thereon at the rate applicable to overdue principal set forth in the Mortgage Notes Indenture, and shall be secured by this Deed of Trust. Trustee waives its right to any statutory fee in connection with any judicial or nonjudicial foreclosure of the lien hereof and agrees to accept a reasonable fee for such services.

4.19 **Deficiency Judgments.** If after foreclosure of this Deed of Trust or Trustee's sale hereunder, there shall remain any deficiency with respect to any amounts payable under the Notes, this Deed of Trust or the other Indenture Documents or any amounts secured hereby, and Beneficiary shall institute any proceedings to recover such deficiency or deficiencies, all such amounts shall continue to bear interest at the rate applicable to overdue principal set forth in the Mortgage Notes Indenture. Trustor waives any defense to Beneficiary's recovery against Trustor of any deficiency after any foreclosure sale of the Trust Estate. Trustor expressly waives any defense or benefits that may be derived from any statute granting Trustor any defense to any such recovery by Beneficiary. In addition, Beneficiary and Trustee shall be entitled to recovery of all of their reasonable costs and expenditures (including without limitation any court imposed costs) in connection with such proceedings, including their reasonable attorneys' fees, appraisal fees and the other costs, fees and expenditures referred to in Section 4.18 above. This provision shall survive any foreclosure or sale of the Trust Estate, any portion thereof and/or the extinguishment of the lien hereof.

4.20 **Waiver of Jury Trial.** Beneficiary and Trustor each waive any right to have a jury participate in resolving any dispute whether sounding in contract, tort or otherwise arising out of, connected with, related to or incidental to the relationship established between them in connection with the Notes, this Deed of Trust or any other Indenture Document. Any such disputes shall be resolved in a bench trial without a jury.

4.21 **Exculpation of Beneficiary.** The acceptance by Beneficiary of the assignment contained herein with all of the rights, powers, privileges and authority created hereby shall not, prior to entry upon and taking possession of the Trust Estate by Beneficiary, be deemed or construed to make Beneficiary a "mortgagee in possession"; nor thereafter or at any time or in any event obligate Beneficiary to appear in or defend any action or proceeding relating to the Space Leases, the Rents or the Trust Estate, or to take any action hereunder or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under any Space Lease or to assume any obligation or responsibility for any security deposits or other deposits except to the extent such deposits are actually received by Beneficiary, nor shall Beneficiary, prior to such entry and taking, be liable in any way for any injury or damage to person or property sustained by any Person in or about the Trust Estate.

ARTICLE FIVE RIGHTS AND RESPONSIBILITIES OF TRUSTEE; OTHER PROVISIONS RELATING TO TRUSTEE

Notwithstanding anything to the contrary in this Deed of Trust, Trustor and Beneficiary agree as follows.

5.1 **Exercise of Remedies by Trustee.** To the extent that this Deed of Trust or applicable law, including all applicable Nevada Gaming Laws, authorizes or empowers, or does not require approval for, Beneficiary to exercise any remedies set forth in Article Four hereof or otherwise, or perform any acts in connection therewith, Trustee (but not to the exclusion of Beneficiary unless so required under the law of the State of Nevada) shall have the power to exercise any or all such remedies, and to

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perform any acts provided for in this Deed of Trust in connection therewith, all for the benefit of Beneficiary and on Beneficiary's behalf in accordance with applicable law of the State of Nevada. In connection therewith, Trustee: (a) shall not exercise, or waive the exercise of, any of Beneficiary's remedies (other than any rights of Trustee to any indemnity or reimbursement), except at Beneficiary's request, and (b) shall exercise, or waive the exercise of, any or all of Beneficiary's remedies at Beneficiary's request, and in accordance with Beneficiary's directions as to the manner of such exercise or waiver. Trustee may, however, decline to follow Beneficiary's request or direction if Trustee shall be advised by counsel that the action or proceeding, or manner thereof, so directed may not lawfully be taken or waived.

5.2 **Rights and Privileges of Trustee.** To the extent that this Deed of Trust requires Trustor to indemnify Beneficiary or reimburse Beneficiary for any expenditures Beneficiary may incur, Trustee shall be entitled to the same indemnity and the same rights to reimbursement of expenses as Beneficiary, subject to such limitations and conditions as would apply in the case of Beneficiary. To the extent that this Deed of Trust negates or limits Beneficiary's liability as to any matter, Trustee shall be entitled to the same negation or limitation of liability. To the extent that Trustor, pursuant to this Deed of Trust, appoints Beneficiary as Trustor's attorney in fact for any purpose, Beneficiary or (when so instructed by Beneficiary) Trustee shall be entitled to act on Trustor's behalf without joinder or confirmation by the other.

5.3 **Resignation or Replacement of Trustee.** Trustee may resign by an instrument in writing addressed to Beneficiary, and Trustee may be removed at any time with or without cause (i.e., in Beneficiary's sole and absolute discretion) by an instrument in writing executed by Beneficiary. In case of the death, resignation, removal or disqualification of Trustee or if for any reason Beneficiary shall deem it desirable to appoint a substitute, successor or replacement Trustee to act instead of Trustee originally named (or in place of any substitute, successor or replacement Trustee), then Beneficiary shall have the right and is hereby authorized and empowered to appoint a successor, substitute or replacement Trustee, without any formality other than appointment and designation in writing executed by Beneficiary, which instrument shall be recorded in the Office of the Recorder of Clark County, Nevada. The law of the State of Nevada (including, without limitation, the Nevada Gaming Laws) shall govern the qualifications of any Trustee. The authority conferred upon Trustee by this Deed of Trust shall automatically extend to any and all other successor, substitute and replacement Trustee(s) successively until the obligations secured hereunder have been paid in full or the Trust Estate has been sold hereunder or released in accordance with the provisions of the Indenture Documents. Beneficiary's written appointment and designation of any Trustee shall be full evidence of Beneficiary's right and authority to make the same and of all facts therein recited. No confirmation, authorization, approval or other action by Trustor shall be required in connection with any resignation or other replacement of Trustee.

5.4 **Authority of Beneficiary.** If Beneficiary is a banking corporation, state banking corporation or a national banking association and the instrument of appointment of any successor or replacement Trustee is executed on Beneficiary's behalf by an officer of such corporation, state banking corporation or national banking association, then such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of Beneficiary.

5.5 **Effect of Appointment of Successor Trustee.** Upon the appointment and designation of any successor, substitute or replacement Trustee, and subject to compliance with applicable Nevada Gaming Laws and other applicable laws, Trustee's entire estate and title in the Trust Estate shall vest in the designated successor, substitute or replacement Trustee. Such successor, substitute or replacement Trustee shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon Trustee. All references herein to Trustee shall be deemed

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to refer to Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder.

5.6 Confirmation of Transfer and Succession. Upon the written request of Beneficiary or of any successor, substitute or replacement Trustee, any former Trustee ceasing to act shall execute and deliver an instrument transferring to such successor, substitute or replacement Trustee all of the right, title, estate and interest in the Trust Estate of Trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon Trustee, and shall duly assign, transfer and deliver all properties and moneys held by said Trustee hereunder to said successor, substitute or replacement Trustee.

5.7 Exculpation. Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or otherwise be responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence, willful misconduct or knowing violation of law. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law). Trustee shall be under no liability for interest on any moneys received by it hereunder.

5.8 Endorsement and Execution of Documents. Upon Beneficiary's written request, Trustee shall, without liability or notice to Trustor, execute, consent to, or join in any instrument or agreement in connection with or necessary to effectuate the purposes of the Indenture Documents. Trustor hereby irrevocably designates Trustee as its attorney in fact to execute, acknowledge and deliver, on Trustor's behalf and in Trustor's name, all instruments or agreements necessary to implement any provision(s) of this Deed of Trust or to further perfect the lien created by this Deed of Trust on the Trust Estate. This power of attorney shall be deemed to be coupled with an interest and shall survive any disability of Trustor.

5.9 Multiple Trustees. If Beneficiary appoints multiple trustees, then any Trustee, individually, may exercise all powers granted to Trustee under this instrument, without the need for action by any other Trustee(s).

5.10 Terms of Trustee's Acceptance. Trustee accepts the trust created by this Deed of Trust upon the following terms and conditions:

(a) **Delegation.** Trustee may exercise any of its powers through appointment of attorney(s) in fact or agents.

(b) **Counsel.** Trustee may select and employ legal counsel (including any law firm representing Beneficiary). Trustor shall reimburse all reasonable legal fees and expenses that Trustee may thereby incur.

(c) **Security.** Trustee shall be under no obligation to take any action upon any Event of Default unless furnished security or indemnity, in form satisfactory to Trustee, against costs, expenses, and liabilities that Trustee may incur.

(d) **Costs and Expenses.** Trustor shall reimburse Trustee, as part of the Obligations secured hereunder, for all reasonable disbursements and expenses (including reasonable legal fees and expenses) incurred by reason of and as provided for in this Deed of Trust, including any of the foregoing incurred in Trustee's administering and executing the trust created by this Deed of Trust, in complying with all applicable Nevada Gaming Laws and performing Trustee's duties and exercising Trustee's powers under this Deed of Trust.

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(e) **Release.** Upon full and indefeasible payment and performance of the Obligations secured hereunder, Beneficiary shall request that Trustee release this Deed of Trust. Upon receipt of such request Trustee shall release this Deed of Trust to Trustor. Trustor shall pay all costs of recordation, if any.

ARTICLE SIX MISCELLANEOUS PROVISIONS

6.1 Heirs, Successors and Assigns Included in Parties. Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included, and subject to the limitations set forth in Section 1.9, all covenants and agreements contained in this Deed of Trust, by or on behalf of Trustor or Beneficiary shall bind and inure to the benefit of its heirs, successors and assigns, whether so expressed or not.

6.2 Addresses for Notices, Etc. Any notice, report, demand or other instrument authorized or required to be given or furnished under this Deed of Trust to Trustor or Beneficiary shall be deemed given or furnished (i) when addressed to the party intended to receive the same, at the address of such party set forth below, and delivered by hand at such address or (ii) three (3) days after the same is deposited in the United States mail as first class certified mail, return receipt requested, postage paid, whether or not the same is actually received by such party:

Beneficiary: Wells Fargo Bank, National Association
MAC N9303-110
Sixth & Marquette
Minneapolis, MN 55479
Attn.: Michael Slade

Trustor: Wynn Las Vegas, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Legal Department

With a copy to: Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Attn: C. Kevin McGeehan

Trustee: Nevada Title Company
2500 North Buffalo, Suite 150

6.3 Change of Notice Address. Any Person may change the address to which any such notice, report, demand or other instrument is to be delivered or mailed to that person, by furnishing written notice of such change to the other parties, but no such notice of change shall be effective unless and until received by such other parties.

6.4 Headings. The headings of the articles, sections, paragraphs and subdivisions of this Deed of Trust are for convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

6.5 Invalid Provisions to Affect No Others. In the event that any of the covenants, agreements, terms or provisions contained herein or in the Notes, the Mortgage Notes Indenture or any other Indenture Document shall be invalid, illegal or unenforceable in any respect, the validity of the lien hereof and the remaining covenants, agreements, terms or provisions contained herein or in the Notes, the

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Mortgage Notes Indenture or any other Indenture Document shall be in no way affected, prejudiced or disturbed thereby. To the extent permitted by law, Trustor waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

6.6 Changes and Priority Over Intervening Liens. Neither this Deed of Trust nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Trustor and Beneficiary relating to this Deed of Trust shall be superior to the rights of the holder of any intervening lien or encumbrance.

6.7 Estoppel Certificates. Within ten (10) Business Days after Beneficiary's written request, Trustor shall from time to time execute a certificate, in recordable form (an "Estoppel Certificate"), stating, except to the extent it would be inaccurate to so state: (a) the current amount of the Obligations secured hereunder and all elements thereof, including principal, interest, and all other elements; (b) that Trustor has no defense, offset, claim, counterclaim, right of recoupment, deduction, or reduction against any of the Obligations secured hereunder; (c) that none of the Indenture Documents have been amended, whether orally or in writing; (d) that Trustor has no claims against Beneficiary of any kind; (e) that any power of attorney granted to Beneficiary is in full force and effect; and (f) such other matters relating to this Deed of Trust or any other Indenture Document and the relationship of Trustor and Beneficiary as Beneficiary shall request. In addition, the Estoppel Certificate shall set forth the reasons why it would be inaccurate to make any of the foregoing assurances.

6.8 Waiver of Setoff and Counterclaim; Other Waivers. All amounts due under this Deed of Trust, the Notes and the other Indenture Documents shall be payable without setoff, counterclaim or any deduction whatsoever. Trustor hereby waives the right to assert a counterclaim (other than a compulsory counterclaim) in any action or proceeding brought against it by Beneficiary and/or any Second Mortgage Note Holder under the Indenture Documents, or arising out of or in any way connected with this Deed of Trust or the other Indenture Documents or the Obligations.

6.9 Governing Law. The Mortgage Notes Indenture and the Notes provide that they are governed by, and construed and enforced in accordance with, the laws of the State of New York. This Deed of Trust shall also be construed under and governed by the laws of the State of New York; provided, however, that (i) the terms and provisions of this Deed of Trust pertaining to the priority, perfection, enforcement or realization by Beneficiary of its respective rights and remedies under this Deed of Trust with respect to the Trust Estate shall be governed and construed and enforced in accordance with the internal laws of the State of Nevada (the "State") without giving effect to the conflicts-of-law rules and principles of the State; (ii) Trustor agrees that to the extent deficiency judgments are available under the laws of the State after a foreclosure (judicial or nonjudicial) of the Trust Estate, or any portion thereof, or any other realization thereon by Beneficiary or any Second Mortgage Note Holder under the Indenture Documents, Beneficiary or such Second Mortgage Note Holder, as the case may be, shall have the right to seek such a deficiency judgment against Trustor in the State; and (iii) Trustor agrees that if Beneficiary or any Second Mortgage Note Holder under the Indenture Documents obtains a deficiency judgment in another state against Trustor, then Beneficiary or such Second Mortgage Note Holder, as the case may be, shall have the right to enforce such judgment in the State to the extent permitted under the laws of the State, as well as in other states.

6.10 Required Notices. Trustor shall notify Beneficiary promptly of the occurrence of any of the following and shall immediately provide Beneficiary a copy of the notice or documents referred to: (i) receipt of notice from any Governmental Authority relating to all or any material part of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (ii) receipt of any notice from any tenant leasing all or any material portion of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iii) receipt of

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notice from the holder of any Permitted Lien relating to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iv) the commencement of any proceedings or the entry of any judgment, decree or order materially affecting all or any portion of the Trust Estate or which involve the potential liability of Trustor or its Affiliates in an amount in excess of \$25,000,000 (other than for personal injury actions and related property damage suits which are covered by such insurance); or (v) commencement of any judicial or administrative proceedings or the entry of any judgment, decree or order by or against or otherwise affecting Trustor or any Affiliate of Trustor, a material portion of the Trust Estate, or a material portion of the Personal Property, or any other action by any creditor or lessor thereof as a result of any default under the terms of any lease.

6.11 Reconveyance. Upon written request of Trustor when the Obligations secured hereby have been satisfied in full, Beneficiary shall cause Trustee to reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

6.12 Attorneys' Fees. Without limiting any other provision contained herein, Trustor agrees to pay all costs of Beneficiary or Trustee incurred in connection with the enforcement of this Deed of Trust, the Notes or the other Indenture Documents, including without limitation all reasonable attorneys' fees whether or not suit is commenced, and including, without limitation, fees incurred in connection with any probate, appellate, bankruptcy, deficiency or any other litigation proceedings, all of which sums shall be secured hereby.

6.13 **Late Charges.** By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to collect any late charge thereon or interest thereon at the interest rate on the Notes or as otherwise specified in the Mortgage Notes Indenture, if so provided, not then paid or its right either to require prompt payment when due of all other sums so secured or to declare default for failure to pay any amounts not so paid.

6.14 **Cost of Accounting.** Trustor shall pay to Beneficiary, for and on account of the preparation and rendition of any accounting, which Trustor may be entitled to require under any law or statute now or hereafter providing therefor, the reasonable costs thereof.

6.15 **Right of Entry.** Subject to compliance with applicable Nevada Gaming Laws, Beneficiary may at any reasonable time or times and on reasonable prior written notice to Trustor make or cause to be made entry upon and inspections of the Trust Estate or any part thereof in person or by agent.

6.16 **Corrections.** Trustor shall, upon request of Beneficiary or Trustee, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust (including, but not limited to, in the exhibits and schedules attached hereto) or in the execution or acknowledgement hereof, and shall execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Trustee to carry out more effectively the purposes of this Deed of Trust, to subject to the lien and security interest hereby created any of Trustor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.

6.17 **Statute of Limitations.** To the fullest extent allowed by the law, the right to plead, use or assert any statute of limitations as a plea or defense or bar of any kind, or for any purpose, to any debt, demand or obligation secured or to be secured hereby, or to any complaint or other pleading or proceeding filed, instituted or maintained for the purpose of enforcing this Deed of Trust or any rights hereunder, is hereby waived by Trustor.

6.18 **Subrogation.** Should the proceeds of any Note or advance made by Beneficiary or any Second Mortgage Note Holder under the Mortgage Notes Indenture to Trustor, repayment of which is hereby secured, or any part thereof, or any amount paid out or advanced by Beneficiary or any Second

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Mortgage Note Holder under the Mortgage Notes Indenture, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior or superior lien or encumbrance upon the Trust Estate, or any part thereof, then, as additional security hereunder, Trustee, on behalf of Beneficiary, shall be subrogated to any and all rights, superior titles, liens, and equities owned or claimed by any owner or holder of said outstanding liens, charges, and indebtedness, however remote, regardless of whether said liens, charges, and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

6.19 **Joint and Several Liability.** All obligations of Trustor hereunder, if more than one, are joint and several. Recourse for deficiency after sale hereunder may be had against the property of Trustor, without, however, creating a present or other lien or charge thereon.

6.20 **Homestead.** Trustor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Trust Estate as against the collection of the Obligations, or any part hereof.

6.21 **Context.** In this Deed of Trust, whenever the context so requires, the neuter includes the masculine and feminine, and the singular including the plural, and vice versa.

6.22 **Time.** Time is of the essence of each and every term, covenant and condition hereof. Unless otherwise specified herein, any reference to "days" in this Deed of Trust shall be deemed to mean "calendar days."

6.23 **Interpretation.** As used in this Deed of Trust unless the context clearly requires otherwise: The terms "herein" or "hereunder" and similar terms without reference to a particular section shall refer to the entire Deed of Trust and not just to the section in which such terms appear; the term "lien" shall also mean a security interest, and the term "security interest" shall also mean a lien.

6.24 **Effect of NRS 107.030.** To the extent not inconsistent herewith, the provisions of NRS 107.030 (1), (2) (in amounts as hereinabove provided for), (3), (4) (with interest at the default rate provided for under the Mortgage Notes Indenture), (5), (6), (7) (reasonable), (8) and (9) are included herein by reference and made part of this Deed of Trust.

6.25 **Amendments.** This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought and only as permitted by the provisions of the Mortgage Notes Indenture.

6.26 **No Conflicts.** In the event that any of the provisions contained here conflict with the Mortgage Notes Indenture, the provisions contained in the Mortgage Notes Indenture shall prevail.

ARTICLE SEVEN POWER OF ATTORNEY

7.1 **Grant of Power.** Subject to compliance with applicable Nevada Gaming Laws, Trustor irrevocably appoints Beneficiary and any successor thereto as its attorney-in-fact, with full power and authority, including the power of substitution, exercisable only during the continuance of an Event of Default to act for Trustor in its name, place and stead as hereinafter provided:

7.1.1 **Possession and Completion.** To take possession of the Site and the Project, remove all employees, contractors and agents of Trustor therefrom, complete or attempt to complete the work of construction, and market, sell or lease the Site and the Project.

7.1.2 **Plans.** To make such additions, changes and corrections in the current Plans and Specifications as may be necessary or desirable, in Beneficiary's reasonable discretion, or as it deems proper to complete the Project.

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7.1.3 **Employment of Others.** To employ such contractors, subcontractors, suppliers, architects, inspectors, consultants, property managers and other agents as Beneficiary, in its discretion, deems proper for the completion of the Project, for the protection or clearance of title to the Site or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.4 **Security Guards.** To employ watchmen to protect the Site and the Project from injury.

7.1.5 **Compromise Claims.** To pay, settle or compromise all bills and claims then existing or thereafter arising against Trustor, which Beneficiary, in its discretion, deems proper for the protection or clearance of title to the Site or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.6 **Legal Proceedings.** To prosecute and defend all actions and proceedings in connection with the Site or the Project.

7.2 **Other Acts.** To execute, acknowledge and deliver all other instruments and documents in the name of Trustor that are necessary or desirable, to exercise Trustor's rights under all contracts concerning the Site or the Project, including, without limitation, under any Space Leases, and to do all other acts with respect to the Site or the Project that Trustor might do on its own behalf, as Beneficiary, in its reasonable discretion, deems proper.

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IN WITNESS WHEREOF, Trustor has executed this Deed of Trust, Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing as of the day and year first above written.

TRUSTOR:

WYNN LAS VEGAS, LLC,
a Nevada limited liability company,

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein

Title: *Senior Vice President, General Counsel and Secretary*

QuickLinks

[DEED OF TRUST, LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING MADE BY WYNN LAS VEGAS, LLC](#)

PARENT GUARANTY

This PARENT GUARANTY, dated as of October 30, 2002, is made by WYNN RESORTS, LIMITED, a Nevada corporation ("*Wynn Resorts*"), in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, in its capacity as the Mortgage Notes Indenture Trustee (in such capacity, the "*Mortgage Notes Indenture Trustee*"), for the registered holders (the "*Holder*s") of the 12% mortgage notes due 2010 (the "*Notes*") issued by Wynn Las Vegas, LLC, a Nevada limited liability company ("*Wynn Las Vegas*"), and Wynn Las Vegas Capital Corp., a Nevada corporation (together with Wynn Las Vegas, the "*Note Issuers*"), in the aggregate principal amount of \$370,000,000 under that certain Indenture, dated as of even date herewith (as amended, supplemented or otherwise modified from time to time, the "*Indenture*"), among the Note Issuers, the Mortgage Notes Indenture Trustee and certain other parties signatory thereto.

RECITALS:

WHEREAS, pursuant to the Indenture, the Holders have agreed to purchase the Notes upon the terms and subject to the conditions set forth therein;

WHEREAS, Wynn Resorts indirectly owns 100% of the Capital Stock of each of the Note Issuers;

WHEREAS, the proceeds of the Notes issued under the Indenture will be used in part to enable the Note Issuers to make valuable transfers to one or more other Persons, each of which are directly or indirectly wholly-owned Subsidiaries of Wynn Resorts;

WHEREAS, Wynn Resorts will derive substantial direct and indirect benefit from the purchase of the Notes by the Holders under the Indenture; and

WHEREAS, it is a condition precedent to the obligation of the Holders to purchase the Notes under the Indenture that Wynn Resorts shall have executed and delivered this Agreement to the Mortgage Notes Indenture Trustee for the ratable benefit of the Holders;

NOW, THEREFORE, in consideration of the premises and to induce the Mortgage Notes Indenture Trustee and the Holders to enter into the Indenture and purchase the Notes, as the case may be, Wynn Resorts hereby agrees with the Mortgage Notes Indenture Trustee, for the ratable benefit of the Holders, as follows:

SECTION 1. DEFINED TERMS

1.1. *Definitions*. Any capitalized terms used in this Agreement which are not otherwise defined herein shall have the respective meanings ascribed to such terms in the Indenture. The following terms shall have the following meanings:

"*Agreement*": this Parent Guaranty, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"*Disbursement Agreement*": that certain Master Disbursement Agreement, dated as of October 30, 2002, among the Note Issuers, the Mortgage Notes Indenture Trustee and the other parties signatory thereto, as the same may hereafter be amended or modified in accordance with its terms and the terms of the Indenture.

"*Excluded Assets*": any Capital Stock held by Wynn Resorts, other than the Capital Stock of Valvino Lamore, LLC, or any other Restricted Entity.

"*Issuer Obligations*": with respect to each Note Issuer, the collective reference to the payment and performance by such Note Issuer of each covenant and agreement of such Note Issuer contained in the Indenture, the Notes, each Collateral Document to which such Note Issuer is a party and each other document related thereto to which such Note Issuer is a party.

"*Other Guarantors*": collectively, any Person who guaranties the Issuer Obligations for the benefit of the Mortgage Notes Indenture Trustee other than Wynn Resorts.

"*Secured Parties*": collectively, the Mortgage Notes Indenture Trustee and the Holders.

"*Wynn Put Agreement*": the Agreement, dated as of June 13, 2002, among Stephen A. Wynn and Wynn Resorts, relating to the Buy-Sell Agreement, dated as of June 13, 2002, among Stephen A. Wynn, Kazuo Okada, Aruze USA and Aruze Corp.

1.2. *Other Definitional Provisions*. (a) The words "hereof", "herein", "hereto" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and Schedule references are to this Agreement unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(c) The expressions "payment in full," "paid in full" and any other similar terms or phrases when used herein with respect to the Issuer Obligations shall mean the unconditional, final and irrevocable payment in full, in immediately available funds, of all of the Issuer Obligations.

SECTION 2. GUARANTEE

2.1. *Guarantee*.

(a) Wynn Resorts hereby unconditionally and irrevocably, guaranties to the Mortgage Notes Indenture Trustee, for the ratable benefit of the Secured Parties and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by each Note Issuer when due (whether at the stated maturity, by acceleration or otherwise) of the Issuer Obligations.

(b) The guarantee contained in this Section 2 shall remain in full force and effect until payment in full of all Issuer Obligations, notwithstanding that from time to time during the term of the Indenture the Note Issuers may be free from any Issuer Obligations.

(c) No payment made by either Note Issuer, Wynn Resorts, any Other Guarantor or any other Person or received or collected by any Secured Party from either Note Issuer, Wynn Resorts, any Other Guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Issuer Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of Wynn Resorts hereunder which shall, notwithstanding any such payment (other than any payment made by Wynn Resorts in respect of the Issuer Obligations or any payment received or collected from Wynn Resorts in respect of the Issuer Obligations), remain liable for the Issuer Obligations up to the maximum liability of Wynn Resorts hereunder until the Issuer Obligations are paid in full.

2.2. *Rights of Reimbursement, Contribution and Subrogation.*

(a) In case any payment is made on account of the Issuer Obligations by Wynn Resorts or is received or collected on account of the Obligations from Wynn Resorts or its property, Wynn Resorts may be entitled, subject to and upon payment in full of the Issuer Obligations, (A) to demand and enforce reimbursement for the full amount of such payment from the Note Issuers and (B) to demand and enforce contribution in respect of such payment from each Other Guarantor which has not paid its fair share of such payment, as necessary to ensure that (after giving effect to any enforcement of reimbursement rights provided hereby) Wynn Resorts and each Other Guarantor pays its fair share of the unreimbursed portion of such payment.

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(b) If and whenever (after payment in full of the Issuer Obligations) any right of reimbursement or contribution becomes enforceable by Wynn Resorts against any Other Guarantor as described in Section 2.2(a) or otherwise, Wynn Resorts may be entitled, subject to and upon payment in full of the Issuer Obligations, to be subrogated (equally and ratably with all Other Guarantors entitled to reimbursement or contribution from Wynn Resorts or any Other Guarantor as described in this Section 2.2) to any security interest that may then be held by the Mortgage Notes Indenture Trustee upon any Collateral granted to it pursuant to the Collateral Documents. Such right of subrogation shall be enforceable solely against the Other Guarantors, and not against the Secured Parties, and neither the Mortgage Notes Indenture Trustee nor any other Secured Party shall have any duty whatsoever to warrant, ensure or protect any such right of subrogation or to obtain, perfect, maintain, hold, enforce or retain any Collateral for any purpose related to any such right of subrogation. If subrogation is demanded by Wynn Resorts, then (after payment in full of the Issuer Obligations) the Mortgage Notes Indenture Trustee shall deliver to Wynn Resorts, or to a representative of Wynn Resorts or of the guarantors of the Issuer Obligations generally, at the expense of Wynn Resorts, an instrument satisfactory to the Mortgage Notes Indenture Trustee transferring, on a quitclaim basis without any recourse, representation, warranty or obligation whatsoever, whatever security interest the Mortgage Notes Indenture Trustee then may hold in whatever Collateral may then exist that was not previously released or disposed of by the Mortgage Notes Indenture Trustee.

(c) All rights and claims arising under this Section 2.2 or based upon or relating to any other right of reimbursement, indemnification, contribution or subrogation that may at any time arise or exist in favor of Wynn Resorts as to any payment on account of the Issuer Obligations made by it or received or collected from its property shall be fully subordinated in all respects to the prior payment in full of all of the Issuer Obligations. Until payment in full of the Issuer Obligations, Wynn Resorts shall not demand or receive any collateral security, payment or distribution whatsoever (whether in cash, property or securities or otherwise) on account of any such right or claim. If any such payment or distribution is made or becomes available to Wynn Resorts in any bankruptcy case or receivership, insolvency or liquidation proceeding, such payment or distribution shall be delivered by the Person making such payment or distribution directly to the Mortgage Notes Indenture Trustee, for application to the payment of the Issuer Obligations. If any such payment or distribution is received by Wynn Resorts, it shall be held by Wynn Resorts in trust, as trustee of an express trust for the benefit of the Secured Parties, and shall forthwith be transferred and delivered by Wynn Resorts to the Mortgage Notes Indenture Trustee, in the exact form received and, if necessary, duly endorsed.

(d) The obligations of Wynn Resorts under this Agreement, including its liability for the Issuer Obligations, are not contingent upon the validity, legality, enforceability, collectibility or sufficiency of any right of reimbursement, contribution or subrogation arising under this Section 2.2. The invalidity, insufficiency, unenforceability or uncollectibility of any such right shall not in any respect diminish, affect or impair any such obligation or any other claim, interest, right or remedy at any time held by any Secured Party against Wynn Resorts or its property. The Secured Parties make no representations or warranties in respect of any such right and shall have no duty to assure, protect, enforce or ensure any such right or otherwise relating to any such right.

(e) Wynn Resorts reserves any and all other rights of reimbursement, contribution or subrogation at any time available to it as against any Other Guarantor, but (i) the exercise and enforcement of such rights shall be subject to Section 2.2(d) and (ii) neither the Mortgage Notes Indenture Trustee nor any other Secured Party shall ever have any duty or liability whatsoever in respect of any such right, except as provided in Section 2.2(c).

(f) Wynn Resorts waives any right or claims of right to cause a marshalling of either Note Issuer's, Wynn Resorts' or any Other Guarantor's assets or to proceed against Wynn Resorts, either Note Issuer or any Other Guarantor in any particular order, including, but not limited to, any right arising out of Nevada Revised Statutes 40.430.

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2.3. *Amendments, etc. with respect to the Issuer Obligations.* Wynn Resorts shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Other Guarantor and without notice to or further assent by any such guarantor, any demand for payment of any of the Issuer Obligations made by any Secured Party may be rescinded by such Secured Party and any of the Issuer Obligations continued, and the Issuer Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, increased, extended, amended, modified, accelerated, compromised, waived, surrendered or released by any Secured Party, and the Indenture, the Notes and the Collateral Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Mortgage Notes Indenture Trustee (or the requisite Holders under the Indenture or all Holders, as the case may be) may deem advisable from time to time, and any collateral security, guarantee or right of offset at any time held by any Secured Party for the payment of the Issuer Obligations may be sold, exchanged, waived, surrendered or released. No Secured Party shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Issuer Obligations or for the guarantee contained in this Section 2 or any property subject thereto.

2.4. *Guarantee Absolute and Unconditional.* Wynn Resorts waives any and all notice of the creation, renewal, extension or accrual of any of the Issuer Obligations and notice of or proof of reliance by any Secured Party upon the guarantee contained in this Section 2 or acceptance of the guarantee contained in this Section 2; the Issuer Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or

waived, in reliance upon the guarantee contained in this Section 2; and all dealings between either Note Issuer and Wynn Resorts or any of the Other Guarantors, on the one hand, and the Secured Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Section 2. Wynn Resorts waives diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon either Note Issuer, Wynn Resorts or any of the Other Guarantors. Wynn Resorts understands and agrees that the guarantee contained in this Section 2 shall be construed as a continuing, absolute and unconditional guarantee of payment and performance without regard to (a) the validity or enforceability of the Indenture, the Notes or any Collateral Document, any of the Issuer Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by any Secured Party, (b) any defense, set-off or counterclaim (other than a defense of payment or performance hereunder) which may at any time be available to or be asserted by either Note Issuer or any other Person against any Secured Party, or (c) any other circumstance whatsoever (with or without notice to or knowledge of either Note Issuer or Wynn Resorts) which constitutes, or might be construed to constitute, an equitable or legal discharge of either Note Issuer for the Issuer Obligations, or of Wynn Resorts under the guarantee contained in this Section 2, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against Wynn Resorts, any Secured Party may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against either Note Issuer, any Other Guarantor or any other Person or against any collateral security or guarantee for the Issuer Obligations or any right of offset with respect thereto, and any failure by any Secured Party to make any such demand, to pursue such other rights or remedies or to collect any payments from either Note Issuer, any Other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of either Note Issuer, any Other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve Wynn Resorts of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of any Secured Party against Wynn Resorts. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

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2.5. *Reinstatement.* The guarantee contained in this Section 2 shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Issuer Obligations is rescinded or must otherwise be restored or returned by any Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Note Issuer, Wynn Resorts or any Other Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, either Note Issuer, Wynn Resorts or any Other Guarantor or any substantial part of its property, or otherwise, all as though such payments had not been made.

2.6. *Payments.* Wynn Resorts hereby guarantees that payments hereunder will be paid to the Mortgage Notes Indenture Trustee without set-off or counterclaim in Dollars in immediately available funds at the Corporate Trust Office of the Trustee.

SECTION 3. SECURITY INTERESTS

3.1. *Restriction on Grant of Security Interest.* Wynn Resorts hereby agrees that it shall not grant any security interests in any of its assets or properties (other than a security interest in favor of the Mortgage Notes Indenture Trustee for the benefit of the Holders and security interests granted in Excluded Assets or assets or properties that individually or in the aggregate have a fair market value of less than \$10,000,000) in favor of any Person to secure (i) any Indebtedness of any of its Affiliates, (ii) any Guarantee by Wynn Resorts of Indebtedness of any of its Affiliates, or (iii) any Indebtedness incurred by Wynn Resorts (any such grant of security interest, a "*Granted Security Interest*"), unless:

(a) Wynn Resorts concurrently executes and delivers to the Mortgage Notes Indenture Trustee a security agreement in substantially the form of the security agreement related to the Granted Security Interest (a "*Parent Security Agreement*") and thereby grants a perfected, enforceable security interest in those assets or properties in favor of the Mortgage Notes Indenture Trustee for the benefit of the Holders to secure the obligations of Wynn Resorts pursuant to this Agreement; and

(b) subject to the Intercreditor Agreements, the security interest described in clause (a) above ranks senior to or is *pari passu* with the Granted Security Interest.

3.2. *Further Assurances.* Wynn Resorts shall execute and deliver such additional instruments, certificates or documents, and take all such actions as may be reasonably required from time to time in order to (a) carry out more effectively the purposes of this Agreement and the Parent Security Agreement (if any), (b) create, grant, perfect and maintain the validity, effectiveness, perfection and priority of the Parent Security Agreement (if any) and the Liens created, or intended to be created, thereby (if any), (c) ensure that this Agreement and the Liens created or purported to be created under the Parent Security Agreement (if any) have the ranking required under this Agreement; and (d) ensure that any of the rights granted or intended to be granted to the Mortgage Notes Indenture Trustee under this Agreement or the Parent Security Agreement (if any) or under any other instrument executed in connection therewith or granted to Wynn Resorts thereunder or under any other instrument executed in connection therewith are protected and enforced. Upon the exercise by the Mortgage Notes Indenture Trustee or any Holder of any power, right, privilege or remedy under this Agreement or the Parent Security Agreement which requires any consent, approval, recording, qualification or authorization of any governmental authority, Wynn Resorts shall execute and deliver all applications, certifications, instruments and other documents and papers that may be required from Wynn Resorts for such governmental consent, approval, recording, qualification or authorization.

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SECTION 4. SEPARATENESS

Wynn Resorts hereby agrees that, for so long as there continues to be any outstanding Issuer Obligations, it shall comply with each of the following:

(a) Wynn Resorts shall not conduct business in the name of either Note Issuer, or any of the Restricted Entities, any of their Restricted Subsidiaries or the Completion Guarantor (collectively, the "*Wynn Group Members*"), nor shall it refer to any of the Wynn Group Members as a division, department or other subdivision of Wynn Resorts that is not recognized as a separate and distinct legal entity under applicable law. Wynn Resorts shall have separate stationery, invoices and checks in its own name and shall observe all organizational formalities. Wynn Resorts shall not refer to employees of a Wynn Group Member as employees of Wynn Resorts or of any Affiliate of Wynn Resorts that is not a Wynn Group Member. Wynn Resorts shall maintain arms'-length relationships with the Wynn Group Members, except for management fees, distributions and other specific transactions, to the extent expressly permitted by the Indenture, the Notes or the Collateral Documents. Wynn Resorts shall maintain adequate capital in light of its contemplated business purpose, transactions and liabilities. Wynn

Resorts shall not commingle its funds with those of the Wynn Group Entities, and in all transactions involving the Wynn Group Entities and Wynn Resorts, the separate funds of each of the Wynn Group Members and Wynn Resorts shall be clearly traceable. The assets of Wynn Resorts shall remain identifiably separate from those of the Wynn Group Members such that there will be no material difficulty in segregating the assets of the Wynn Group Members from those of Wynn Resorts.

(b) Wynn Resorts shall not hold out the Wynn Group Members to be other than legal entities separate and distinct from Wynn Resorts, and Wynn Resorts shall not hold out that the assets of the Wynn Group Members are available to satisfy the liabilities of Wynn Resorts. In any communications with creditors of Wynn Resorts that refer in any way directly or indirectly to the assets, liabilities, operations or results from operations of the Wynn Group Members, Wynn Resorts shall ensure that such communications accurately describe the separate existence of the Wynn Group Members and the fact that the assets of the Wynn Group Members are not available to satisfy the liabilities of Wynn Resorts.

(c) Wynn Resorts shall maintain books, records and accounts separate and apart from each of the Wynn Group Members. In any consolidated financial statements of Wynn Resorts that refer to assets, liabilities, operations or results from operations of the Wynn Group Members, Wynn Resorts shall, in footnotes or otherwise, describe the assets, liabilities, operations and results from operations of the Wynn Group Members separately from those of Wynn Resorts and further shall note that (i) each Wynn Group Member is organized as a legal entity separate and distinct from Wynn Resorts, (ii) there is no agreement or other arrangement or relationship under which or pursuant to which the assets of a Wynn Group Member have been pledged or otherwise made available to satisfy the obligations of Wynn Resorts or any of its Affiliates that are not Wynn Group Members, and (iii) each Wynn Group Member has issued or guaranteed indebtedness that is secured by Liens on substantially all of the assets of said Wynn Group Member (except as otherwise permitted by the terms of the Indenture, the Notes or the Collateral Documents).

(d) In addition to the foregoing, Wynn Resorts shall not take any other action that would reasonably be expected to call into question the separate identity of each Wynn Group Member from Wynn Resorts, or to create or increase any risk that the assets of any Wynn Group Member will be consolidated with those of Wynn Resorts or any other Person (other than another Wynn Group Member) under applicable federal or state bankruptcy or insolvency law.

SECTION 5. WYNN PUT AGREEMENT

Wynn Resorts hereby agrees that it shall not amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, or otherwise fail to enforce, or

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terminate or abandon, any of the provisions of the Wynn Put Agreement, if such amendment, modification, waiver or other change, failure to enforce, termination or abandonment (individually or collectively with all such amendments, modifications, waivers and other changes, failures to enforce, terminations or abandonments taken as a whole) would (a) have a material adverse affect on the ability of either Note Issuer, or any Restricted Entity or any of their Restricted Subsidiaries to develop, construct or operate the Project, (b) cause the Completion Date to occur or result in that date occurring after the Scheduled Completion Deadline (as defined in the Disbursement Agreement), (c) materially impair the rights or remedies of the Holders under the Indenture, the Notes or the Collateral Documents, or (d) materially impair the development, use or operation of the Project. Notwithstanding the provisions of this Agreement, in no event shall Wynn Resorts be required, by reason of this Agreement or the Parent Security Agreement (if any), to become a Restricted Entity or otherwise to become subject to the restrictive covenants or other terms of the Indenture.

SECTION 6. MISCELLANEOUS

6.1. *Amendments in Writing.* None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with the terms of the Indenture.

6.2. *Notices.* All notices, requests and demands to or upon the Mortgage Notes Indenture Trustee or Wynn Resorts hereunder shall be effected in the manner provided for in Section 13.02 of the Indenture; *provided* that any such notice, request or demand to or upon Wynn Resorts shall be addressed to Wynn Resorts at its notice address set forth below:

Wynn Resorts, Limited
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attention: Ron Kramer
Telephone: (702) 733-4444
Facsimile: (702) 791-0167

6.3. *No Waiver by Course of Conduct; Cumulative Remedies.* No Secured Party shall by any act (except by a written instrument pursuant to Section 6.1), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which such Secured Party would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

6.4. *Enforcement Expenses; Indemnification.* (a) Wynn Resorts agrees to pay or reimburse each Secured Party for all its costs and expenses incurred in collecting against Wynn Resorts under the guarantee contained in Section 2 or otherwise enforcing or preserving any rights under this Agreement, including, without limitation, the fees and disbursements of counsel to each Secured Party and of counsel to the Mortgage Notes Indenture Trustee.

(b) Wynn Resorts agrees to pay, and to save the Secured Parties harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement to the extent the Note Issuers would be required to do so pursuant to Section 7.07 of the Indenture.

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(c) The agreements in this Section 6.4 shall survive repayment of the Issuer Obligations and all other amounts payable under the Indenture, the Notes and the Collateral Documents.

6.5. *Successors and Assigns.* This Agreement shall be binding upon the successors and assigns of Wynn Resorts and shall inure to the benefit of the Secured Parties and their successors and assigns; *provided*, that Wynn Resorts may not assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Mortgage Notes Indenture Trustee.

6.6. *Set-Off.* Wynn Resorts hereby irrevocably authorizes each Secured Party at any time and from time to time while an Event of Default shall have occurred and be continuing, without notice to Wynn Resorts or any Other Guarantor, any such notice being expressly waived by Wynn Resorts, to set-off and appropriate and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Secured Party to or for the credit or the account of Wynn Resorts, or any part thereof in such amounts as such Secured Party may elect, against and on account of the obligations and liabilities of Wynn Resorts to such Secured Party hereunder and claims of every nature and description of such Secured Party against Wynn Resorts, in any currency, whether arising hereunder or otherwise, as such Secured Party may elect, whether or not any Secured Party has made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured. Each Secured Party shall notify Wynn Resorts promptly of any such set-off and the application made by such Secured Party of the proceeds thereof, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Secured Party under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which such Secured Party may have.

6.7. *Representations and Warranties.* Wynn Resorts hereby represents and warrants as follows: (a) Wynn Resorts has the requisite corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder and under the Parent Security Agreement (if any), (b) the execution, delivery and performance by Wynn Resorts of this Agreement and the Parent Security Agreement (if any) have been duly approved by all necessary corporate action of Wynn Resorts and no other corporate proceedings on the part of Wynn Resorts are necessary to consummate the transactions contemplated by this Agreement and the Parent Security Agreement (if any), (c) this Agreement has been duly executed and delivered by Wynn Resorts, and (d) this Agreement is (and, upon the execution and delivery thereof by Wynn Resorts, the Parent Security Agreement will be) the legal, valid and binding obligations of Wynn Resorts, enforceable against Wynn Resorts in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

6.8. *Counterparts.* This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

6.9. *Severability.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

6.10. *Section Headings.* The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

6.11. *Integration.* This Agreement represents the agreement of Wynn Resorts, the Mortgage Notes Indenture Trustee and the other Secured Parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by any Secured Party relative to subject matter hereof and thereof not expressly set forth or referred to herein.

6.12. **GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

6.13. *Submission to Jurisdiction; Waivers.* Wynn Resorts hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement, the Indenture and the other Collateral Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to Wynn Resorts at its address referred to in Section 6.2 or at such other address of which the Mortgage Notes Indenture Trustee shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

6.14. *Acknowledgments.* Wynn Resorts hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement;

(b) no Secured Party has any fiduciary relationship with or duty to Wynn Resorts arising out of or in connection with this Agreement, and the relationship between Wynn Resorts, on the one hand, and the Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or otherwise exists by virtue of the transactions contemplated hereby among the Secured Parties or between Wynn Resorts and the Secured Parties.

6.15. *Releases*. At such time as the Notes and the other Issuer Obligations shall have been paid in full, this Agreement and all obligations (other than those expressly stated to survive such termination) of the Mortgage Notes Indenture Trustee and Wynn Resorts hereunder shall terminate, all without delivery of any instrument or performance of any act by any party. At the request and sole expense of Wynn Resorts following any such termination, the Mortgage Notes Indenture Trustee shall execute and deliver to Wynn Resorts such documents as Wynn Resorts shall reasonably request to evidence such termination.

6.16. WAIVER OF JURY TRIAL. WYNN RESORTS AND THE MORTGAGE NOTES INDENTURE TRUSTEE HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT, THE NOTES OR ANY COLLATERAL DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

IN WITNESS WHEREOF, each of the undersigned has caused this Parent Guaranty to be duly executed and delivered as of the date first above written.

WYNN RESORTS, LIMITED,
a Nevada corporation,

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: *Chief Executive Officer*

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Mortgage Notes Indenture Trustee

By: /s/ MICHAEL G. SLADE

Name: Michael G. Slade

Title: *Corporate Trust Officer*

QuickLinks

[PARENT GUARANTY](#)

AGREEMENT REGARDING PROVISION OF WATER AND USE OF WATER

This Agreement Regarding the Provision and Use of Water (the "**Agreement**") is entered into effective this 21st day of October, 2002, by and among Desert Inn Improvement Company, a Nevada corporation ("**DIIC**"), Wynn Resorts Holdings, LLC, a Nevada limited liability company ("**Holdings**") and Wynn Las Vegas, LLC, a Nevada limited liability company ("**Wynn Las Vegas**") (Holdings and Wynn Las Vegas shall be collectively referred to herein as ("**Wynn**"). The DIIC and Wynn are collectively referred to herein as the "Parties."

This Agreement is entered into with reference to the following facts:

- A. DIIC is the current owner of water rights (collectively, the "**Water Rights**") corresponding to Certificate Numbers 4731, 4765, 4766, 7827, 7828, 7829, and 7830 (collectively, the "**Certificates**"), whose designated place of use has historically been and currently is the property commonly known as the Desert Inn Golf Course, which is substantially of the land more particularly described on *Exhibit A* attached hereto and incorporated herein by this reference (the "**Golf Course Land**").
- B. DIIC holds a certificate of public convenience and necessity from the Public Utilities Commission of Nevada (the "**PUCN**"), under which DIIC is allowed to supply water within a specific geographic area ("**Designated Area**").
- C. Holdings is the current owner of the Golf Course Land.
- D. Wynn Las Vegas is the tenant, and Holdings and Palo, LLC ("**Palo**") are the landlord, under that certain Lease dated October 21, 2002 (the "**Wynn Las Vegas Lease**"), pursuant to which Wynn Las Vegas is leasing that certain real property located in the County of Clark, State of Nevada, more particularly described in the Wynn Las Vegas Lease (the "**Wynn Las Vegas Land**") from Holdings and Palo on the terms and conditions contained in the Wynn Las Vegas Lease. The Wynn Las Vegas Land includes the Golf Course Land.
- E. DIIC and Wynn desire to reaffirm that DIIC will continue to supply water to the Golf Course Land to the extent of the Water Rights, and to the extent the Golf Course Land is included in the Designated Area, unless and until DIIC and Wynn modify this Agreement in writing.
- F. DIIC and Wynn further acknowledge that the Golf Course Land has been the appropriate place of use relative to the Water Rights, and the owner of the Golf Course Land has allowed the Water Rights to be used on the Golf Course Land.

NOW, THEREFORE, the DIIC and Wynn agree as follows:

1. Except to the extent required to do otherwise by the PUCN, DIIC hereby agrees to continue to provide water to the Golf Course Land to the extent of the Water Rights, and to the extent the Golf Course Land is included in the Designated Area, and to apply the Water Rights to the place of use designated on the Certificates. Except to the extent required to do otherwise by the PUCN, DIIC shall not diminish, restrict, or cease to provide water to the Golf Course Land to the extent of the Water Rights, and shall not limit in any fashion the application of the Water Rights to beneficial use on the Golf Course Land.

2. Except to the extent required to do otherwise by the PUCN, DIIC shall continue to provide water to the Golf Course Land on the same terms and conditions as the water is currently being provided to the Golf Course Land.

3. DIIC and Wynn acknowledge that they intend by this Agreement to continue the status quo with respect to the provision of water from the Water Rights to the Golf Course Land.

4. This Agreement including the attached exhibits constitutes the entire agreement between the parties relating to the subject matter hereof. Any amendment to this Agreement will be of no force and effect unless it is in a writing signed by authorized representatives of DIIC and Wynn. Both parties contributed to the drafting of this document. This Agreement shall not be construed against either party solely due to that party's participation in the drafting. Each party hereto has entered into this Agreement based solely on the covenants and agreements set forth herein and not on the basis of any representation, warranty, covenant, agreement, promise, statement, undertaking or arrangement made by or on behalf of the other party and not expressly set forth herein.

5. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

6. In any action, proceeding, or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs and expenses incurred by the prevailing party in the action, proceeding or arbitration.

7. A waiver by any party of a breach of any of the covenants, conditions or agreements under this Agreement made or to be performed by any other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

8. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

9. Any number of counterparts of this Agreement may be executed. Each counterpart will be deemed to be an original instrument and all counterparts taken together will constitute one agreement.

IN WITNESS WHEREOF, DIIC, Holdings and Wynn Las Vegas have executed this Agreement as of the date and year first above written.

"DIIC"

DESERT INN IMPROVEMENT CO.,
a Nevada corporation

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein
Title: *Senior Vice President, General Counsel and Secretary*

"HOLDINGS"

WYNN RESORTS HOLDINGS, LLC,
a Nevada limited liability company

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein
Title: *Senior Vice President, General Counsel and Secretary*

By: Wynn Resorts Limited,
a Nevada corporation,
its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein
Title: *Senior Vice President, General Counsel and Secretary*

"WYNN LAS VEGAS"

WYNN LAS VEGAS, LLC,
a Nevada limited liability company

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts Limited,
a Nevada corporation,
its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein
Title: *Senior Vice President, General Counsel and Secretary*

QuickLinks

[AGREEMENT REGARDING PROVISION OF WATER AND USE OF WATER](#)

APN 162-16-610-016, 162-16-610-007
and 162-16-610-006,
A portion of 162-16-511-009
162-16-510-007 through 018, inclusive,
162-16-510-021 through 022, inclusive,
162-16-510-024 through 025, inclusive,
162-16-510-028 through 031, inclusive,
162-16-610-028 through 030, inclusive,
162-16-610-021 through 022, inclusive,
162-16-610-017 through 019, inclusive,
162-16-610-008 through 015, inclusive, and
162-16-611-001 through 014, inclusive
162-16-511-002
162-16-511-003

Recording requested by and when recorded mail to:
Schreck Brignone
300 South Fourth Street, Suite 1200
Las Vegas, Nevada 89101
Attn: L.T. Jones, Esquire

Mail tax bills to:
Wynn Resorts Holdings, LLC
3145 Las Vegas Boulevard South,
Las Vegas, Nevada 89109
Attention: Legal Department

AGREEMENT RE USE OF REAL PROPERTY

This Agreement re Use of Real Property ("Agreement") made as of this 21st day of October, 2002 by and between **DESERT INN IMPROVEMENT CO.**, a Nevada corporation ("DIIC"), **WYNN RESORTS HOLDINGS, LLC** a Nevada limited liability company ("Holdings") and **WYNN LAS VEGAS, LLC** ("Wynn Las Vegas") (Holdings and Wynn Las Vegas shall be collectively referred to herein as "Wynn"), with reference to the following facts:

RECITALS

Holdings is the owner of certain real property located in Clark County, Nevada, more particularly described in Exhibit "A" attached hereto ("Holdings' Property").

Wynn Las Vegas is the tenant, and Holdings is the landlord, under that certain Lease dated October 21, 2002 (the "Wynn Las Vegas Lease"), pursuant to which Wynn Las Vegas is leasing the Holdings' Property from Holdings and is intending to develop the Holdings' Property into a golf course, all on the terms and conditions contained in the Wynn Las Vegas Lease.

DIIC is the owner of certain real property located within and surrounded by Holdings' Property, which property is more particularly described on Exhibit "B" attached hereto, and all rights of access to such property (collectively, the "DIIC Property").

Wynn has requested that DIIC enter into an agreement regarding the use of the DIIC Property and grant to Wynn a license with respect to the DIIC Property, as provided herein.

DIIC desires to enter into the agreement regarding the use and licensing of the DIIC Property on the terms and conditions herein set forth.

AGREEMENT

NOW, THEREFORE, for consideration each to the other paid and in consideration of the actions and agreements set forth in this Agreement, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties hereto act and agree as follows:

1. *Covenant Regarding Use of DIIC Property.* By these presents, DIIC does hereby covenant and agree to use the DIIC Property for only the following purposes (such covenant and agreement being referred to herein as the "Use Covenant"):

- a. Any use that is consistent with the use made of the portion of Holding's Property that surrounds the DIIC Property;
- b. The use being made of the DIIC Property on the date of this Agreement; or
- c. Any other use to which the Public Utilities Commission of the State of Nevada (the "PUC") requires DIIC to put the DIIC Property, but only during such period of time as the PUC shall impose such requirement.

2. *License.* DIIC hereby grants to Wynn a license (the "**License**") to enter upon the DIIC Property and to permit its invitees and guests to enter upon the DIIC Property to use the DIIC Property in a manner consistent with the use made of the portion of Holding's Property that surrounds the DIIC Property, including,

without limitation, as a portion of a golf course operated on the Holdings' Property; *provided, however*, that DIIC shall retain the right to use the DIIC Property in any manner required by the PUC during any period of time that the PUC imposes such requirement, and to use the DIIC Property as necessary for the present or future performance of its duties to provide water service to the public.

3. *Use Covenant and License Running with the Land.* The Use Covenant and License shall run with the land, does touch and concern the same, is intended to and does burden the DIIC Property and benefits the Holdings' Property. The Use Covenant and License and the covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, including, without limitation, all subsequent owners of either DIIC Property or the Holdings' Property, and all persons claiming under them, including, without limitation, in the case of Holdings' Property, Wynn Las Vegas as tenant under the Wynn Las Vegas Lease. Each person or entity hereafter at any time granted or conveyed an interest in or to any part or portion of either Holdings' Property or the DIIC Property shall be deemed to undertake performance and compliance with all the terms, covenants and conditions of this Agreement and the Use Covenant and License imposed hereby on the DIIC Property, and such persons or entities shall in like manner receive the benefits of the Use Covenant and License and the terms, covenants and conditions of this Agreement, to the same extent as if such persons or entities were original parties hereto.

4. *Term.* The Use Covenant and the License shall remain in effect until a termination is recorded, executed by the parties or their successors-in-interest. Provided, however, that the Use Covenant and License may not be terminated prior to reconveyance of the deeds of trust encumbering the Holdings' Property and recorded in the Official Records of Clark County, Nevada on or about the date hereof.

5. *No Dedication.* Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the DIIC Land to the general public or for any public use or purpose whatsoever, it being the intention of the parties hereto and their successors and assigns that nothing in this Agreement, expressed or implied, shall confer upon any person other than the parties hereto, and their successors and assigns, any rights or remedies under or by reason of this Agreement.

6. *Governing Law.* The laws of the State of Nevada applicable to contracts made in that State, without giving effect to its conflict of law rules, shall govern the validity, construction, performance and

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effect of this Agreement. Venue in any action to enforce this Agreement shall lie in a state or federal court of competent jurisdiction in Clark County, Nevada. Each party consents to the jurisdiction of such court.

7. *Attorneys' Fees.* Unless otherwise specifically provided for herein, each party hereto shall bear its own attorneys' fees incurred in the negotiation and preparation of this Agreement and any related documents. In the event that any action or proceeding is instituted to interpret or enforce the terms and provisions of this Agreement, however, the prevailing party shall be entitled to its costs and attorneys' fees, in addition to any other relief it may obtain or be entitled to.

8. *Entire Agreement.* This Agreement sets forth the entire understanding of the parties, and supersedes all previous agreements, negotiations, memoranda, and understandings, whether written or oral, with respect to its subject matter.

9. *Authority to Execute/Record.* Each person executing this Agreement represents and warrants that it is duly authorized to execute this Agreement by the party on whose behalf it is so executing. Any party may record this Agreement against DIIC Property and the Holdings' Property in the official public records of Clark County, Nevada.

10. *Additional Documents.* Each party covenants and agrees to execute and deliver to the other such further documents or instruments as may reasonably be required to fully effectuate the manifest intent of the parties and the transactions contemplated hereby.

11. *Modifications.* This Agreement shall not be modified, amended or changed in any manner unless in writing executed by the parties hereto.

12. *Waivers.* No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver, and no waiver shall be binding unless evidenced by an instrument in writing and executed by the party making the waiver.

13. *Severability.* If any term, provision, covenant or condition of this Agreement, or any application thereof, should be held by an arbitrator or a court of competent jurisdiction to be invalid, void or unenforceable, that provision shall be deemed severable and all provisions, covenants, and conditions of this Agreement, and all applications thereof not held invalid, void or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

14. *Section Headings.* The section headings herein are inserted only for convenience of reference and shall in no way define, limit or prescribe the scope or intent of any provisions of this Agreement.

15. *Exhibits.* Each exhibit referred to herein and attached hereto is an integral part of this Agreement and is incorporated herein by this reference.

16. *Counterparts.* This Agreement may be executed in multiple counterparts, which together shall constitute one and the same document.

[Signatures appear on following page.]

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IN WITNESS WHEREOF, the undersigned have hereunto affixed their signatures on the day and year set forth above.

"DIIC"
DESERT INN IMPROVEMENT CO.,
a Nevada corporation

"HOLDINGS"
WYNN RESORTS HOLDINGS, LLC,
a Nevada limited liability company

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein
Title: Senior Vice President, General Counsel & Secretary

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein
Title: Senior Vice President, General Counsel & Secretary

By: Wynn Resorts Limited,
a Nevada corporation,
its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein
Title: Senior Vice President, General Counsel & Secretary

"WYNN LAS VEGAS"
WYNN LAS VEGAS, LLC, a Nevada
limited liability company

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein
Title: Senior Vice President, General Counsel & Secretary

By: Wynn Resorts Limited,
a Nevada corporation,
its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein
Title: Senior Vice President, General Counsel & Secretary

STATE OF NEVADA }
COUNTY OF CLARK }ss.

This instrument was acknowledged before me on this _____ day of October, 2002 by _____ of Wynn Resorts, Limited, sole member of Valvino Lamore, LLC, sole member of of Wynn Resorts Holdings, LLC.

NOTARY PUBLIC in and for said County and State

STATE OF NEVADA }
COUNTY OF CLARK }ss.

This instrument was acknowledged before me on this _____ day of October, 2002 by _____ of Wynn Resorts, Limited, sole member of Valvino Lamore, LLC, sole member of Desert Inn Water Company, LLC, sole member of Desert Inn Improvement Co.

NOTARY PUBLIC in and for said County and State

STATE OF NEVADA }
COUNTY OF CLARK }ss.

This instrument was acknowledged before me on this _____ day of October, 2002 by _____ of Wynn Resorts, Limited, sole member of Valvino

NOTARY PUBLIC in and for said County and State

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EXHIBIT "A"

DESCRIPTION OF HOLDINGS' PROPERTY

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EXHIBIT "B"

DESCRIPTION OF DIIC PROPERTY

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QuickLinks

[Exhibit 10.2](#)

LEASE AGREEMENT
between
VALVINO LAMORE, LLC,
Landlord
and
WYNN LAS VEGAS, LLC,
Tenant
Dated October 21, 2002

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LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is entered into as of the 21st day of October, 2002 by and between **Valvino Lamore, LLC**, a Nevada limited liability company ("Landlord"), and **Wynn Las Vegas, LLC**, a Nevada limited liability company ("Tenant").

WITNESSETH:

WHEREAS, Landlord owns good and marketable title in and to the parcel of real property described on Exhibit "A" attached hereto (the "Landlord's Property"), including a building and other improvements located and/or to be constructed thereon and therein (the "Building") as shown on Exhibit "B" attached hereto;

WHEREAS, Landlord desires to lease to Tenant and Tenant desires to lease from Landlord the Building, on a triple net basis, upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the terms, covenants, conditions and provisions hereinafter set forth and other good and valuable consideration, it is hereby mutually agreed by and between Landlord and Tenant as follows:

SECTION 1 DEMISED PREMISES

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Building located on the real property described on Exhibit "C" attached hereto, together with all and singular improvements, and any appurtenant rights, privileges and/or easements plus all fixtures, equipment and property located therein or thereon (the "Premises"). Landlord reserves to itself the use of the roof, exterior walls and the area above and below the Premises together with the right to install, maintain, use, repair and replace pipes, ducts, conduits, wires and structural elements now or in the future leading through the Premises and which serve the Building, except that such rights shall not materially interfere with Tenant's right to visibility, ingress, egress and operations.

SECTION 2 TERM

2.1 This Lease shall be effective and the term of the Lease (the "Lease Term") and payment of Rent (as defined in Section 3.1 hereof) shall commence on October 21st 2002 (the "Commencement Date") and shall continue for a period of thirty (30) years (the "Initial Term") thereafter unless terminated earlier as elsewhere herein provided. Following the date (the "Lien Release Date") of the release of Landlord's Property from the lien or liens of that certain First Trust Deed (as defined and described on *Schedule I* attached hereto) and that certain Second Trust Deed (as defined and described on *Schedule I* attached hereto) (collectively, the "Deeds of Trust"), Tenant may terminate this Lease on thirty (30) days' written notice to Landlord.

2.2 In the event Tenant is not then in default of its obligations hereunder beyond any applicable cure period and this Lease has not previously been terminated, after the expiration of the Initial Lease Term, the Lease Term shall continue on a month-to-month basis, upon the same terms and conditions as are set forth in this Lease. At any time during any such extension of the Initial Lease Term, either party may terminate the Lease by delivering written notice to the other party no later than ten (10) days prior to the expiration of any thirty (30) day extension period. In the event that such notice is not given within such time period, the Lease shall continue in effect.

2.3 Upon the expiration or sooner termination of the Lease Term, Tenant shall, at its sole cost and expense, within fifteen (15) days after receipt of written notice, remove all personal property and trade fixtures which Tenant has installed or placed on the Premises ("Tenant's Property") from the

Premises and repair all damage thereto resulting from such removal, and Tenant shall thereupon surrender the Premises in the same condition as on the Commencement Date, reasonable wear and tear excepted, broom clean. In the event Tenant fails to remove any of Tenant's Property as provided herein, Landlord may, but is not obligated to, at Tenant's expense, remove all of such property not so removed and repair all damage to the Premises resulting from such removal, and Landlord shall have no responsibility to Tenant for any loss or damage to Tenant's Property caused by, or resulting from, such removal or otherwise. In the event any amount due Landlord pursuant to this Lease has not been paid at the expiration or termination of this Lease, Landlord shall have the right to sell or dispose of Tenant's Property as Landlord so chooses as partial satisfaction of the amount past due.

SECTION 3 RENT

3.1 During the Lease Term, Tenant shall pay as monthly Base Rent for the Premises the sum of One Dollar (\$1.00) per month (the "Base Rent"). The Base Rent shall be due and payable in advance on the first (1st) day of each month during the Lease Term.

3.2 In addition to Base Rent, Tenant shall reimburse Landlord, as "Additional Rent", for all costs ("Operating Costs") incurred by Landlord in connection with the maintenance, repair, replacement, operation and cleaning of the Building, including costs for sewage, janitorial, waste disposal, refuse removal, security and mailroom services. Tenant shall pay Additional Rent, in equal monthly installments with the Base Rent, based on Landlord's good faith estimate of the Operating Costs. After the end of each calendar year, Landlord shall deliver to Tenant Landlord's good faith estimate of the Operating Costs for the following year and a statement, in reasonable detail, of the actual Operating Costs incurred by Landlord during the preceding calendar year. Upon receipt of such statement, there shall be an adjustment between Landlord and Tenant, with payment to Landlord or credit given to Tenant, as the case may be, to reflect the actual Operating Costs.

3.3 The term "Rent" shall mean Base Rent and Additional Rent. All Rent and other monies required to be paid by Tenant hereunder shall be paid to Landlord without deduction or offset, prior notice or demand, in lawful money of the United States of America, at the Building or at such other place as Landlord may from time to time designate in writing.

3.4 If Tenant fails to pay, when due and payable, any Rent or any other amounts or charges to be paid by Tenant hereunder within ten (10) days after written notice from Landlord that the amount is past due, such unpaid amounts shall bear interest from the due date thereof to the date of payment at a rate equal to the prime rate of interest last ascertained by the Commissioner of Financial Institutions of the State of Nevada pursuant to Section 99.040 of the Nevada Revised Statutes, plus five (5) percentage points (the "Default Rate").

SECTION 4 GAMING

Landlord acknowledges that Tenant and its Affiliates (defined below) shall apply for gaming licenses and that such licenses are of vital importance to Tenant's business. In this regard, Landlord agrees to comply with all reasonable requests made by Tenant for information concerning Landlord's background, which may include, without limitation, completion by Landlord of Tenant's standard form of Corporate Background Questionnaire and/or Personal Background Questionnaire, as appropriate. Tenant may immediately terminate this Agreement in the event that (a) Landlord fails to comply with information requests as set forth in the foregoing sentence; or (b) Tenant determines, in its sole discretion, that continued association with Landlord would jeopardize any gaming license held or pursued by Tenant or any of its Affiliates.

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SECTION 5 FINANCING

Landlord may obtain loans from time to time from third parties to finance acquisition and development of Landlord's and its Affiliates' real property, including the Premises. For purposes of this Lease, an "Affiliate" of a party shall mean any person or entity (a) that is owned or controlled by the party, (b) that owns or controls the party, (c) that is owned or controlled by a person or entity that owns or controls the party, (d) that owns or controls an Affiliate of the party, or (e) that is owned or controlled by an Affiliate of the party. As used in this definition, the words "owns" or "owned" refer to the ownership of twenty percent (20%) or more of the equity interest in the person or entity so owned, regardless of the manner of ownership. Also, as used in this definition, ownership or control may be direct or indirect. By its execution of this Lease, Tenant (i) acknowledges and consents to Landlord's collateral assignment of its rights hereunder to its and its Affiliates' lenders, including the beneficiaries under the Deeds of Trust (collectively, "Lenders"); (ii) acknowledges and affirms Tenant's agreement to attorn performance obligations to the benefit of Lenders in the same manner as it would with respect to Landlord if any such Lender exercises its rights under any collateral assignment from Landlord; and (iii) agrees to execute such separate consents and acknowledgements to and of Landlord's collateral assignment of this Lease to such third party Lenders. A Lender or its successor which acquires the Premises (through foreclosure on Landlord's Property or deed in lieu of foreclosure) shall not disturb Tenant's lease of the Premises and shall respect Tenant's rights under this Lease.

SECTION 6 USE OF PREMISES; EXCLUSIVITY

6.1 The Premises are leased to Tenant solely for use as business and administrative offices and uses related thereto. Tenant shall not use or suffer to be used the Premises, or any portion thereof, for any other purpose or purposes whatsoever, without Landlord's prior written consent, which consent shall not be unreasonably withheld.

6.2 Tenant shall not permit or suffer anything to be done, or kept upon the Premises which will obstruct or interfere with the rights of Landlord, nor will Tenant commit or permit any nuisance on the Premises or commit or suffer any immoral or illegal act to be committed thereon. Tenant shall not, without Landlord's prior written approval:

6.2.1 Do or permit anything to be done in or about the Premises, which will in any way affect fire or other insurance upon the Building, or any of its contents, or which shall in any way conflict with any law, ordinance, rule or regulation affecting the occupancy or use of the Premises;

6.2.2 Operate or permit to be operated on the Premises, any coin or token-operated vending machines or similar devices unless for the sole use of Tenant's employees on the Premises; or

6.2.3 Use the Premises or any portion thereof as living quarters or sleeping quarters.

6.3 Tenant shall not use the Premises for the generation, storage, manufacture, production, releasing, discharge, or disposal or any Hazardous Substance (defined below) or allow or suffer any other entity or person to do so. "Hazardous Substance" shall mean any flammable or related material and any other substance or material defined or designated as a hazardous or toxic substance, material or waste by a governmental law, order, regulation or ordinance presently in effect or as amended or promulgated in the future and shall include, without limitation: (a) those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances" or "solid waste" in CERCLA, RCRA, and the Hazardous Materials Transportation Act, 40 U.S.C. §§ 1801 *et seq.*, and in the regulations promulgated pursuant to said laws; (b) those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302

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and amendments thereto); (c) such other substances, materials and wastes which are or become regulated under applicable local, state or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state or local laws or regulations; and (d) any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls or (iv) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* (33 U.S.C. 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. 1317).

6.3.1 Tenant shall protect, indemnify and hold harmless Landlord, its partners, members, managers, employees, agents, successors and assigns, the Building and the property in general from and against any and all claims, losses, damages, costs, expenses, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind (including, without limitation, attorneys' fees and costs at trial and on appeal) directly or indirectly arising out of or attributable to, in whole or in part, the breach of any of the covenants, representations and warranties of this Section 6.3, or the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, from or about the Premises. The foregoing indemnity shall further apply to any residual contamination on, under, from or about the Premises, the Building or the property in general, or affecting any natural resources arising in connection with the use, generation, manufacture, production, handling, storage, transport, discharge or disposal of any such Hazardous Substance, and irrespective of whether any of such activities were or will be undertaken in accordance with environmental laws or other applicable laws, regulations, codes and ordinances.

6.3.2 Landlord reserves the right to request appropriate governmental officials to inspect the Premises, from time to time, in order to determine Tenant's compliance herewith.

6.4 Tenant shall, at all times during the Lease Term, comply with all governmental rules, regulations, ordinances, statutes and laws, now or hereafter in effect pertaining to the Building, the Premises or Tenant's use thereof.

6.5 Tenant hereby covenants and agrees that it, its agents, employees, servants, contractors, subtenants and licensees shall abide by any and all reasonable rules and regulations as Landlord may, from time to time, adopt for the safety, care and cleanliness of the Premises or the Building.

6.6 Tenant shall not erect any signs, posters, billboards, or other advertising device to be displayed to the public (collectively "Signs") without the prior written consent of Landlord. If prior written consent is obtained, Tenant agrees that Tenant will erect any and all Signs at Tenant's sole cost.

6.7 Tenant shall not use the name "Desert Inn" or any other name that Landlord shall use to refer to the Building, or its business in the Building, from time to time or any derivation thereof (the "Landlord's Name") in connection with, or as part of, Tenant's business, without the prior written consent of Landlord. In the event that Landlord allows Tenant to use the Landlord's Name in advertising, such use shall be deemed a nonexclusive license or privilege only, which confers no property rights therein, and such license or privilege may be revoked by Landlord at any time, in which event Tenant shall immediately cease the use of the Landlord's Name. Landlord's permission to use the Landlord's Name shall not be deemed to abridge the right of Landlord to grant or license the use of the Landlord's Name to any other person at any other time. Tenant shall have no right to use any Landlord owned or licensed trademarks or copyrights without the prior written consent of Landlord. Any rights to use Landlord's owned or licensed trademarks or copyrights on Tenant's merchandise shall be nonexclusive and the subject of a separate agreement.

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SECTION 7 ALTERATIONS AND IMPROVEMENTS

Tenant shall be responsible, at its sole cost and expense, for all decorating, fixturing, furnishing and equipping of the Premises subject to Landlord's prior written approval, which approval shall not be unreasonably withheld or delayed. Tenant shall not make any alterations, improvements or changes ("Improvements") in or to the Premises without the prior written approval of Landlord, which approval shall not be unreasonably withheld or delayed. Any Improvements shall be at the sole cost and expense of Tenant. Landlord may require Tenant, at Tenant's sole cost and expense, to furnish a bond, or other security satisfactory to Landlord, to assure diligent and faithful performance of any work to be performed by Tenant. Any Improvements shall be made promptly, in good and workmanlike manner by duly licensed union contractors and in compliance with all insurance requirements and with all applicable permits, authorizations, building regulations, zoning laws and all other governmental rules, regulations, ordinances, statutes and laws, now or hereafter in effect, pertaining to the Premises or Tenant's use thereof. Tenant shall remove all Improvements, at Tenant's sole cost and expense, upon termination of this Lease and to surrender the Premises in the same condition as they were in prior to the making of any or all such Improvements, ordinary wear and tear excepted. Notwithstanding the above, Tenant shall have the right to remove any trade fixtures installed by Tenant upon the Premises.

SECTION 8 PARKING

Tenant, its agents, employees, servants, contractors, subtenants, licensees, customers and business invitees shall have the nonexclusive right to access and use the parking structure (the "Parking Facility") currently located on the north side of Landlord's Property, as shown on Exhibit "B", subject to such rules and regulations as Landlord may from time to time impose and consistent with Tenant's rights in the Parking Facility pursuant to that certain Parking Facility Lease between the parties dated of even date herewith. In addition, Landlord hereby grants Tenant, its employees, invitees and patrons a non-exclusive license to (a) traverse Landlord's Property in order to travel between the Building and the Parking Facility along sidewalks and pathways designated from Landlord from time to time and (b) to drive in, through, and out of the Parking Facility.

SECTION 9 TAXES

9.1 Tenant will, at Tenant's own cost and expense, bear, pay, and discharge prior to delinquency, all real estate taxes, assessments, sewer rents, water rents and charges, duties, impositions, license and permit fees, charges for public utilities of any kind, payments and other charges of every kind and nature whatsoever, ordinary or extraordinary, foreseen or unforeseen, general or special (all of which are hereinafter collectively referred to as "Impositions"), which shall, pursuant to present or future law or otherwise, during the Lease Term, have been or be levied, charged, assessed, or imposed upon, or become due and payable out of or for, or become or have become a lien on the Premises, the Building and any Improvements; it being the intention of the parties hereto that the rents reserved herein shall be received and enjoyed by Landlord as a net sum free from all such Impositions. Provided, however, that for such part of the Lease Term, if any, as the Premises is not separately assessed but is included as part of Landlord's Property for computation of real property taxes and assessments, or is separately assessed but the taxes attributable thereto are billed to Landlord, then Tenant's share of taxes shall be an amount equal to twenty five percent (25%) of the total assessments for Landlord's Property; provided further that following the release of the liens of the Deeds of Trust, Landlord and Tenant shall either create a tax

parcel for the Premises separate from the remainder of Landlord's Property, or equitably adjust the percentage of property taxes payable by Tenant for the Premises following adjustments in assessments for Landlord's Property attributable to construction or demolition activity

on Landlord's Property other than the Premises. All taxes payable by Tenant hereunder shall be paid to Landlord, as the case may be, on the later of (a) ten (10) days before such tax becomes delinquent or (b) ten (10) days after Landlord, or the taxing authority, notifies Tenant that a payment is due. Subject to any reimbursement due from Tenant as provided herein, Landlord shall be responsible for timely payment of all assessments on Landlord's Property. In the event Landlord fails to timely pay any such assessment, Tenant may, but is not obligated to pay such assessment directly to the taxing authority and pursue reimbursement of Landlord's share of such assessment from Landlord. Upon the termination of this Lease, Landlord shall promptly reimburse Tenant for any Impositions paid by Tenant attributable to the period of time following such termination. All Impositions shall be prorated on the basis of a 365-day year.

9.2 Tenant shall be liable for and shall pay before delinquency (and, upon five (5) days of written demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of the payment thereof) all Impositions of whatsoever kind or nature, and penalties and interest thereon, if any, levied against any personal property of Tenant of whatsoever kind and to whomsoever belonging situated or installed in or upon the Premises, whether or not affixed to the realty.

9.3 Tenant shall pay when due all taxes, assessments or fees for which Tenant is liable and which arise directly or indirectly from Tenant's operations at the Premises including without limitation all sales and use taxes. Within five (5) days of written demand from Landlord, Tenant shall furnish Landlord evidence satisfactory to Landlord of the timely payment of any such tax, assessment or fee.

9.4 Whenever Landlord shall receive any statement or bill for any tax, payable in whole or in part by Tenant as additional rent, or shall otherwise be required to make any payment on account thereof, except as otherwise provided herein, Tenant shall pay the amount due hereunder within ten (10) days after demand therefor accompanied by delivery to Tenant of a copy of such tax statement, if any.

SECTION 10 UTILITIES

The parties acknowledge that this Lease is intended to be a fully net Lease and that, except as expressly provided in this Lease, Tenant shall be responsible for the payment of all utilities consumed at the Building, including but not limited to water, electricity, gas and telephone, together with any taxes thereon and, to the extent that they are contracted by Tenant, or are paid separately by Tenant, the same shall not constitute Operating Costs under this Lease. Tenant shall contract with and pay, directly to the appropriate supplier, the cost of all such utilities and services supplied to the Building.

SECTION 11 MAINTENANCE AND REPAIRS

11.1 Landlord agrees to keep in good order, condition and repair the foundations, exterior walls, floor and roof of the Building, including cleaning, removal of trash, dirt and debris, sweeping and janitorial services, electrical, mechanical, plumbing, lighting of the Building and service corridors, repair and replacement of sprinkler systems, HVAC, directional signs and other markers and pest extermination, except for reasonable wear and tear and except for any damage thereto caused by any act or negligence of Tenant or its agents, employees, servants, contractors, subtenants or licensees. Further, Landlord acknowledges and agrees that Landlord's security department and security officers are responsible for providing security services in and to the Premises.

11.2 Landlord shall not be obligated to perform any service or to repair or maintain any structure or facility except as provided in this Section 11 and Section 14 of this Lease unless caused by the negligence of Landlord, its agents, customers or contractors. Landlord shall not be obligated to provide any service or maintenance or to make any repairs pursuant to this Lease when such service, maintenance or repair is made necessary because of the negligence or misuse of Tenant, Tenant's

agents, employees, servants, contractors, subtenants or licensees. Landlord reserves the right to stop any service when Landlord reasonably deems such stoppage necessary, whether by reason of accident or emergency, or for repairs or Improvements or otherwise. Landlord shall not be liable under any circumstances for loss or injury however occurring, through or in connection with or incident to any stoppage of such services, provided, however, that Rent and other charges hereunder shall be abated during the period that Tenant cannot open for business due to such stoppage. Landlord shall have no responsibility or liability for failure to supply any services or maintenance or to make any repairs when prevented from doing so by any cause beyond Landlord's reasonable control unless caused by the negligence of Landlord, its agents, customers, or contractors. Landlord shall not be obligated to inspect the Premises and shall not be obligated to make any repairs or perform any maintenance hereunder unless first notified of the need thereof in writing by Tenant, or unless actually known to Landlord. Landlord shall not be liable for any loss or damage to persons or property sustained by Tenant or other persons, which may be caused by the Building or the Premises, or any appurtenances thereto, being out of repair or by bursting or leakage of any water, gas, sewer or steam pipe, or by theft, or by any act or neglect of any tenant or occupant of the Building, or of any other person.

11.3 Except as provided for elsewhere herein, Tenant shall keep and maintain in good order, condition and repair (including any such replacement and restoration as is required for that purpose) the Premises and every part thereof and any and all appurtenances thereto wherever located, including, without limitation, the exterior and interior portion of all doors, door checks, windows, plate glass, all plumbing and sewage facilities within the Premises that exclusively service the Building, fixtures, walls, floors, ceilings and all interior lighting. Tenant shall also keep and maintain in good order, condition and repair (including any such replacement and restoration as is required for that purpose) any Improvements, special equipment, furnishings, fixtures or facilities installed by it on the Premises. Tenant shall store all trash and garbage in containers located where designated by Landlord and so as not to be visible or create a nuisance to guests, customers and business invitees of the Building, and so as not to create or permit any health or fire hazard.

SECTION 12 LIENS

12.1 Tenant, at all times, whether by bond or otherwise, shall keep Landlord, the Building, the Premises, the leasehold estate created by this Lease, and any trade fixtures, equipment or personal property within the Premises, free and clear from any claim, lien or encumbrance (other than personal property, consensual security interests for lines of credit or inventory financing or purchase money liens in connection with the acquisition of any personal property, in each case in the ordinary course of Tenant's business), tax lien or levy, mechanic's lien, attachment, garnishment or encumbrance arising directly or indirectly from any obligation, action or inaction of Tenant whatsoever, except to the extent permitted under Sections 17 and 18 below and except for "Permitted Liens" as defined in the Credit Agreement (as that term is defined in the First Trust Deed) and the Mortgage Notes Indenture (as that term is defined in the Second Trust Deed).

12.2 Tenant shall, within ten (10) business days of the filing of any lien that is not permitted under Section 12.1 above, either pay or satisfy the same in full and procure the discharge thereof or commence an action to discharge the same, fully bond such lien, and diligently prosecute such action, or shall cause Tenant's contractor to do the same.

SECTION 13 INSURANCE

13.1 Landlord and Tenant are covered under the same policies of comprehensive public liability insurance and all-risk, commercial property insurance. The parties each agree to pay its respective share of such insurance cost.

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13.2 If at any time during the Lease Term Tenant ceases to be covered by common insurance with Landlord, Tenant will, at its sole cost and expense, maintain in full force and effect:

(a) a policy of comprehensive public liability insurance issued by an insurance carrier approved by Landlord, insuring against loss, damage or liability for injury or death to persons and loss or damage to property occurring from any cause whatsoever in connection with the Premises or Tenant's use thereof. Landlord shall be named as an additional insured under each such policy of insurance;

(b) a standard form of all-risk, commercial property insurance with extended coverage insurance covering leasehold improvements, furniture, fixtures and equipment, and personal property located in or on the Premises whether owned by Landlord or Tenant, and the personal property of others in Tenant's possession in, upon or about the Premises. Such insurance shall be in an amount equal to the current replacement value of the property required to be insured. Tenant and Landlord, as their interests may appear, shall be the named insureds under each such policy of insurance; and

(c) During any period of any construction on the Premises, Tenant shall maintain (i) course of construction and builder's risk insurance on an "all risks" basis, including materials in storage and while in transit, and (ii) worker's compensation and employer's liability insurance for any person working on such construction who is employed by Tenant or any general contractor and/or any construction contractor.

13.3 A certificate issued by the insurance carrier for each policy of insurance required to be maintained by Tenant under Section 13.2 above, if any, or a copy of each such policy, shall be delivered to Landlord on or before the Commencement Date and thereafter, as to policy renewals, within thirty (30) days prior to the expiration of the terms of each such policy. Each of said certificates of insurance and each such policy of insurance shall be from an insurer and in a form and substance satisfactory to Landlord, shall expressly evidence insurance coverage as required by this Lease and shall contain an endorsement or provision requiring not less than thirty (30) days written notice to Landlord and all other named insureds prior to the cancellation, diminution in the perils insureds against, or reduction of the amount of coverage of, the particular policy in question. In addition to the foregoing certificates, Tenant shall at all times during the Lease Term maintain (either through common insurance with Landlord or otherwise), at Tenant's sole cost and expense, workers' compensation coverage evidencing coverage at Nevada statutory limits.

13.4 Tenant shall not use or occupy, or permit the Premises to be used or occupied, in a manner that will make void any insurance then in force.

13.5 Landlord and Tenant hereby waive any and all rights of recovery from the other party and its officers, agents and employees for any loss or damage, including consequential loss or damage, caused by any peril or perils (including negligent acts) that are caused by or result from risks insured against under any form of insurance policy.

13.6 Each policy of insurance provided for in this Section 13 shall contain an express waiver of any and all rights of subrogation thereunder whatsoever against the other party, its officers, directors, agents and employees. All such policies shall be written as primary policies and not contributing with or in excess of the coverage, if any, which Landlord may carry. Notwithstanding any other provision contained in this Section 13 or elsewhere in this Lease, the amounts of all insurance required hereunder to be paid by Tenant shall be not less than an amount sufficient to prevent Landlord from becoming a co-insurer. The limits of the public liability insurance required to be maintained by Tenant under this Lease shall in no way limit or diminish Tenant's liability under Section 15 hereof and such limits shall be subject to increase at any time and from time to time during the Lease Term if Landlord, in the exercise of reasonable discretion, deems such an increase necessary for its adequate

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protection; provided, however, Landlord may not exercise its right under this sentence more frequently than one time every two years during the Lease Term.

13.7 All of the provisions of this Section 13 are subject to, and shall be modified as reasonably necessary to be consistent with, the requirements of the Credit Agreement and the Mortgage Notes Indenture.

SECTION 14 DESTRUCTION OF PREMISES; CONDEMNATION

14.1 During the period prior to the earlier to occur of the expiration of the Initial Lease Term or the Lien Release Date, should the Premises or any portion thereof be destroyed by any cause whatsoever ("Damaged") and provided that restoration is permitted under the Credit Agreement and the Mortgage Notes

Indenture, Tenant shall restore the Premises. After the earlier to occur of the expiration of the Initial Lease Term or the Lien Release Date, should the Premises be Damaged, Tenant may elect to either terminate this Lease or restore the Premises by delivery of written notice to Landlord within thirty (30) days after the casualty event giving rise to the Damage. If Tenant fails to give timely notice of Tenant's election, Tenant shall be deemed to have elected to terminate and this Lease shall terminate at the end of the calendar month following the calendar month in which such casualty event shall have occurred. If Tenant is required or elects to restore the Premises, the following provisions shall apply: After any such casualty and during the reconstruction period, Rent shall continue to accrue and be payable as if such event of destruction had not occurred. Tenant shall reconstruct the Damaged Improvements with all reasonable diligence (allowing for adjustment and collection of insurance proceeds, licensing, permitting, and approvals) and as often as any structures subsequently constructed on the Premises or any part thereof shall be Damaged. No Damage to any building or Improvements on the Premises by fire, windstorm, or any other casualty shall entitle Tenant to violate any of the provisions of this Lease. Landlord hereby agrees to assign to Tenant any insurance proceeds otherwise payable to Landlord, whether payable solely to Landlord or jointly to Landlord and Tenant, subject to reasonable and third party customary construction control procedures, so long as Tenant uses such proceeds solely to repair or rebuild the Damaged buildings or Improvements.

14.2 INTENTIONALLY OMITTED

14.3 Notwithstanding the foregoing provisions, in the event the Premises or any portion thereof shall be Damaged by fire or other casualty due to the fault, negligence or willful misconduct of Tenant, its agents, employees, servants, contractors, subtenants, licensees, customers or business invitees, then this Lease shall not terminate, the Damage shall be repaired by Tenant, and there shall be no apportionment or abatement of any Rent.

14.4 All insurance proceeds payable under any fire and extended coverage risk insurance covering the Premises and maintained by Landlord shall be payable to Landlord in the event of Damage, and Tenant shall have no interest therein, except to the extent of such insurance separately carried by Tenant. Tenant shall in no case be entitled to compensation for damages on account of any annoyance or inconvenience in making repairs under any provision of this Lease. Except to the extent provided for in this Section 14, neither the Rent payable by Tenant nor any of Tenant's other obligations under any provision of this Lease shall be affected by any Damage.

14.5 Should the whole of the Premises be condemned or taken by a competent authority for any public or quasi-public purpose, then this Lease shall terminate upon such taking. If such portion of the Premises is condemned or taken such that the remaining portion thereof will not be reasonably adequate for the operation of Tenant's business after Landlord completes such repairs or alterations as Landlord elects to make, either Landlord or Tenant shall have the option to terminate this Lease by notifying the other party hereto of such election in writing within twenty (20) days after such taking. If by such condemnation and taking a portion of the Premises is taken and the remaining part thereof is

suitable for the purposes for which Tenant has leased the Premises, this Lease shall continue in full force and effect, but the Rent and all other charges hereunder shall be reduced in an amount equal to that proportion of such charges which the square footage of the portion taken bears to the total square feet of the Premises, and Rent and other charges shall be suspended during any period of time that Tenant is closed for business. In the event a partial taking does not terminate this Lease, Landlord, at Landlord's expense, shall repair the damage to the Premises with reasonable dispatch and restore it as nearly as reasonably possible to its condition immediately before the taking. If any part of the Building shall be taken or appropriated so as to materially and adversely affect the ability of Tenant's subtenants, customers and/or invitees to reach the Premises, Tenant shall have the right, at its option to terminate this Lease by notifying the other party within twenty (20) days of such taking.

14.6 For the purposes hereof, a deed in lieu of condemnation shall be deemed a taking.

SECTION 15 INDEMNIFICATION

15.1 Each party ("Indemnitor") hereby covenants and agrees to indemnify, defend, save and hold the other party ("Indemnitee"), the Premises and the leasehold estate created by this Lease free, clear and harmless from any and all liability, loss, costs, expenses (including attorneys' fees), judgments, claims, liens and demands of any kind whatsoever in connection with, arising out of, or by reason of any act, omission, or negligence of Indemnitor, its agents, employees, servants, contractors, subtenants or licensees while in, upon, about, or in any way connected with, the Premises or the Building or arising from any accident, injury or damage, howsoever and by whomsoever caused, to any person or property whatsoever, occurring in, upon, about or in any way connected with the Premises or any portion thereof other than as a result of the intentional or negligent acts of Indemnitee.

SECTION 16 SUBORDINATION

Tenant agrees upon request of Landlord to subordinate this Lease and its rights hereunder to the lien of any mortgage, deed of trust or other encumbrance, together with any renewals, extensions or replacements thereof now or hereafter placed, charged or enforced against the Premises, or any portion thereof, and to execute and deliver at any time, and from time to time, upon demand by Landlord, such documents as may be reasonably required to effectuate such subordination within ten (10) days after receiving such documents, provided that in connection with such subordination agreement Landlord's lender agrees to provide a non-disturbance agreement for the benefit of Tenant in form and substance reasonably acceptable to Tenant and its lender(s).

SECTION 17 ASSIGNMENT AND SUBLETTING

17.1 Except as otherwise set forth herein, Tenant shall not assign, mortgage, pledge, hypothecate or encumber this Lease nor the leasehold estate hereby created or any interest herein, or sublet the Premises or any portion thereof, or license the use of all or any portion of the Premises without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion. Provided, however, that Tenant shall have the right, upon giving notice to Landlord, to assign this Lease or sublet all or any portion of the Premises to an Affiliate of Tenant so long as such Affiliate agrees to be bound by the terms and provisions of this Lease and, in the case of an assignment, assumes Tenant's obligations under this Lease. The restriction or limitation on use of the Premises shall continue to apply to any subtenant or assignee hereunder. Any consent by Landlord to any act requiring consent pursuant to this Section 17.1 shall not constitute a

waiver of the necessity for such consent to any subsequent act. Tenant shall pay all reasonable costs, expenses and reasonable attorneys' fees that may be incurred or paid by Landlord in processing, documenting or administering any request of Tenant for Landlord's consent required pursuant to this Section 17.1.

17.2 Landlord may reasonably require that each proposed assignee or sublessee agree, in a written agreement satisfactory to Landlord, to assume and abide by all the terms and provisions of this Lease, including those which govern the permitted uses of the Premises.

17.3 In the absence of an express agreement in writing to the contrary executed by Landlord, no assignment, mortgage, pledge, hypothecation, encumbrance, subletting or license hereof or hereunder shall act as a release of Tenant from any of the provisions, covenants and conditions of this Lease on the part of Tenant to be kept and performed.

SECTION 18 LEASEHOLD FINANCING

18.1 *Leasehold Mortgage Permitted.* Nothing in this Lease shall be construed as restricting in any manner the right of Tenant, from time to time, or at any time, to create one or more liens on, or encumber, by mortgage, deed of trust or trust deed in the nature of a mortgage (each, a "*Leasehold Mortgage*") the leasehold interest of Tenant in the Premises, and subject to the restrictions and limitations contained in any such instrument as to further conveyances, transfers and assignments, Tenant will have the right at any time, and from time to time, to convey, transfer and assign its interest under this Lease to a mortgagee, trustee or beneficiary, of its designee (each "*Leasehold Mortgage*"), under a Leasehold Mortgage given to secure any note or other obligation of Tenant or an Affiliate thereof.

18.2 *Certain Benefits to Leasehold Mortgage.* If Tenant shall execute any Leasehold Mortgage, then, in such event and so long as such Leasehold Mortgage shall constitute a lien or encumbrance against the leasehold estate of Tenant hereunder, the following provisions shall apply:

18.2.1 *Amendment of Lease.* No agreement by Landlord and Tenant for the assignment, cancellation, surrender, acceptance of surrender or termination, modification or amendment of this Lease shall be effective as to any Leasehold Mortgagee without the written consent of such Leasehold Mortgagee. If the Leasehold Mortgagee whose lien has first priority consents to an amendment, any Leasehold Mortgagee of a junior lien on the Premises will not unreasonably withhold its consent to such amendment.

18.2.2 *Exercise of Section 365(h)(i) Rights.* Landlord agrees, for the benefit of such Leasehold Mortgagee, that the right of election arising under Section 365(h)(i) of the Bankruptcy Code shall be exercised by the most senior Leasehold Mortgagee at such time and not by Tenant. Any attempted exercise by Tenant of such right of election in violation hereof shall be void.

18.2.3 *Loss Payee.* The name of each such Leasehold Mortgagee shall be added to the "*Loss Payable Endorsement*" of any and all insurance policies required to be carried by Tenant under this Lease.

18.2.4 *Proceeds of Casualty and Condemnation.* Notwithstanding anything in this Lease to the contrary, in the event of any casualty to or condemnation of the Premises or any portion thereof, the Leasehold Mortgagees shall be entitled to receive all insurance proceeds and/or condemnation awards as their interests appear (up to the amount of the indebtedness secured by the Leasehold Mortgage) otherwise payable to Tenant or Landlord or both and apply them in accordance with the Leasehold Mortgage and shall have the right, but not the obligation, to restore the Premises.

18.2.5 *Merger.* If Tenant shall acquire fee title, or any other estate, title or interest in the Premises which is the subject of this Lease, or any part thereof, or if the leasehold estate created by this Lease, or any portion thereof, shall be assigned, sold or otherwise transferred to the owner of such fee title or other estate, title or interest in the Premises which is the subject of this Lease, then in either such event, upon the election of the Leasehold Mortgagee first in priority expressly

made in writing at any time thereafter, each Leasehold Mortgage shall attach to and be a lien upon such fee title and/or other estate so acquired (but only as the same pertains to the Premises), and such fee title and/or other estate so acquired shall be considered as mortgaged, assigned and conveyed to each Leasehold Mortgagee and the lien of each such Leasehold Mortgage shall be spread to cover such estate with the same force and effect as though specifically mortgaged, assigned or conveyed in such Leasehold Mortgage (and upon request of any Leasehold Mortgagee, either or both Landlord and Tenant shall execute further mortgages, assignments of leases and rents, amendments to documents and instruments as such Leasehold Mortgagee may reasonably require for such purpose); provided, however, that notwithstanding the foregoing, if and so long as any of the indebtedness secured by any such Leasehold Mortgage shall remain unpaid, unless the Leasehold Mortgagee thereunder shall otherwise in writing expressly consent, the fee title to the Premises which is the subject of this Lease and the leasehold estate created by this Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates either in Landlord or in Tenant, or in a third party, by purchase or otherwise. Nothing in this Section 18.2.5 shall be deemed to subordinate or require Landlord to subordinate the fee interest of Landlord in the Premises to the lien of a Leasehold Mortgage.

18.2.6 *Right of Entry.* Each Leasehold Mortgagee shall have the right to enter upon the Premises at any time for any purpose, including curing any defaults by Tenant under this Lease, and Landlord hereby agrees to accept performance and compliance by any such Leasehold Mortgagee of any covenants, agreements, provisions, conditions and limitations on Tenant's part to be kept, observed or performed hereunder, with the same force and effect as though kept, observed and performed by Tenant. Any default by Tenant that is not susceptible to being cured by a Leasehold Mortgagee shall be deemed waived by Landlord.

18.2.7 *Notice to Tenant.* Landlord shall serve Tenant with notice if Landlord files, or has filed against it, a petition under chapters 7 or 11 of the Bankruptcy Code. Such notice shall be served within twenty-four (24) hours of such filing. Landlord shall, upon serving Tenant with any notice of (1) a bankruptcy filing as herein described, (2) default pursuant to the provisions of this Lease, or (3) a matter on which Landlord may predicate or claim a default, at the same time serve a copy of such notice upon every Leasehold Mortgagee that has provided Landlord with notice of its identity and address,

and no such notice by Landlord to Tenant hereunder shall have been deemed duly given unless and until a copy thereof has been so served on every such Leasehold Mortgagee.

18.2.8 *Termination.* Anything contained in this Lease to the contrary notwithstanding, if any default shall occur which entitles Landlord to terminate this Lease, or to exercise any other rights, powers or remedies available to it under this Lease, Landlord shall have no right to terminate this Lease or to exercise any of such rights, powers or remedies unless following the expiration of the period of time given Tenant to cure such default (or the act or omission which gave rise to such default), Landlord shall notify every Leasehold Mortgagee of Landlord's intent to so terminate or exercise any such rights, powers or remedies ("*Default Notice*") at least (x) sixty (60) days in advance of the proposed effective date of such termination, or exercise of any rights, powers or remedies if such default is capable of being cured by the payment of money, and (y) ninety (90) days in advance of the proposed effective date of such termination, or exercise of any such rights, powers or remedies if such default is not capable of being cured by the payment of money ("*Default Notice Period*"). The provisions of Subsection 18.2.9 below shall apply if during such thirty (60) or ninety (90) day Default Notice Period, any Leasehold Mortgagee shall notify Landlord of such Leasehold Mortgagee's desire to nullify such notice (the "*Nullification Notice*").

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18.2.9 *Procedure on Default.*

(a) If Landlord shall elect to terminate this Lease or obtain possession of the Premises by reason of any default of Tenant, and a Leasehold Mortgagee shall have delivered the Nullification Notice set forth in Subsection 18.2.8, the specified date for the termination of this Lease as fixed by Landlord in its Default Notice or for the obtaining of possession shall be extended for a period of six (6) months, provided that such Leasehold Mortgagee shall, during such six (6) month period:

(1) pay or cause to be paid the monetary obligations of Tenant under this Lease as the same become due, and continue its good faith efforts to perform all of Tenant's other obligations under this Lease, excepting (i) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant's interest in this Lease or the Premises junior in priority to the lien of the mortgage held by such Leasehold Mortgagee and (ii) past non-monetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee (including by reason of a bankruptcy stay or if possession of the Premises is required in order to cure such default); *provided* that Leasehold Mortgagee may offset amounts it expends to cure any defaults by Landlord under this Lease; and

(2) if not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with due diligence.

(b) If at the end of such six (6) month period such Leasehold Mortgagee is complying with Subsection 18.2.9(a) then this Lease shall not then terminate, and the time for completion by such Leasehold Mortgagee of its proceedings shall continue so long as such Leasehold Mortgagee is enjoined or stayed and thereafter for so long as such Leasehold Mortgagee proceeds to complete steps to acquire or sell Lessee's interest in this Lease by foreclosure of the Leasehold Mortgage or by other appropriate means with reasonable diligence. Nothing in this Subsection 18.2.9, however, shall be construed to extend this Lease beyond the original term thereof or to require a Leasehold Mortgagee to continue such foreclosure proceedings after the default has been cured. If the default shall be cured and the Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

(c) If a Leasehold Mortgagee is complying with Subsection 18.2.9(a) of this Section, then upon the acquisition of Tenant's estate herein by such Leasehold Mortgagee or its designee or any other purchaser at a foreclosure sale or otherwise (and the discharge of any lien, charge or encumbrance against the Tenant's interest in this Lease or the demised premises which is junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee and which the Tenant is obligated to satisfy and discharge by reason of the terms of this Lease) this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

18.2.10 *Receiver.* A Leasehold Mortgagee shall have the right after institution of foreclosure proceedings to apply to the court for the appointment of a receiver of the Premises. In the event foreclosure proceedings have been instituted, any money held by Landlord which becomes payable to Tenant shall be payable upon demand to such Leasehold Mortgagee as the interest of such Leasehold Mortgagee may appear when the same so becomes payable to Tenant. If Landlord shall at any time be in doubt as to whether such monies are payable to such Leasehold Mortgagee or to Tenant, Landlord may pay such monies into court and file an appropriate action of interpleader in which event all of Landlord's costs and expenses (including attorneys' fees) shall first be paid out of the proceeds so deposited.

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18.2.11 *No Assumption.* For purposes of this Subsection 18.2.11, the making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or of the leasehold estate hereby created, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created, so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder, but the purchaser at any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignee or transferee of this Lease and of the leasehold estate hereby created under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage, shall be deemed to be an assignee or transferee within the meaning of this Subsection 18.2.11 and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder arising and accruing from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of the leasehold estate.

18.2.12 *Successive Sales.* Any Leasehold Mortgagee or other acquiror of the leasehold estate of Tenant pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings may, upon acquiring Tenant's leasehold estate, without further consent of Landlord, sell and assign the leasehold estate so acquired on such terms and to such persons or organizations as are acceptable to such Leasehold Mortgagee or acquiror and thereafter be relieved of all obligations under this Lease; provided that such assignee has delivered to Landlord its written agreement to be bound by all of the provisions of this Lease from and after the date of such assignment.

18.2.13 *Leasehold Mortgagee Need Not Cure Specified Defaults.* Nothing herein contained shall require any Leasehold Mortgagee or its designee as a condition to the exercise of its rights hereunder to cure any default of Tenant not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee.

18.2.14 *Lease Proceedings.* Landlord shall give each Leasehold Mortgagee that has provided Landlord with notice of its interest and address, prompt notice of any arbitration or legal proceedings between Landlord and Tenant involving this Lease. Each Leasehold Mortgagee shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the parties hereto do hereby consent to such intervention. In the event that any Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, Landlord shall give such Leasehold Mortgagee notice of, and a copy of any award or decision made in any such proceedings, which shall be binding on all Leasehold Mortgagees not intervening after receipt of notice of arbitration. Tenant agrees that each Leasehold Mortgagee shall also have the right to intervene in, and be made a party to, any such proceedings.

18.2.15 *Future Leasehold Mortgage: Amendment of Lease.*

(a) Notwithstanding anything in this Lease to the contrary, each Leasehold Mortgagee shall have the right (if it has such right under its loan documents) to restrict, limit or prohibit the execution of any other Leasehold Mortgage junior in priority to the lien of such senior Leasehold Mortgage, or, in the event of the execution of any such junior Leasehold Mortgage, to accelerate or increase the interest rate under the indebtedness secured by such senior Leasehold Mortgage; and

(b) In the event of a Leasehold Mortgage (each, a "*Successor Leasehold Mortgage*") the proceeds of which are used to pay off in its entirety the indebtedness secured by any existing Leasehold Mortgage (each such existing Leasehold Mortgage, an "*Initial Leasehold Mortgage*"), then the Successor Leasehold Mortgage shall be deemed to have succeeded to the position and all of the rights and priorities of the mortgagee under the Initial Leasehold

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Mortgage with respect to the mortgagor under the Initial Leasehold Mortgage and with respect to third parties.

18.2.16 *Certificate.* Landlord shall, without charge, at any time and from time to time within ten (10) business days after written request of Tenant to do so, certify by written instrument duly executed and acknowledged to any Leasehold Mortgagee or purchaser, or proposed Leasehold Mortgagee or proposed purchaser, or any other person, firm or corporation specified in such request: (1) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (2) as to the validity and force and effect of this Lease, in accordance with its tenor; (3) as to the existence of any default hereunder or any event which with the passage of time or notice would constitute a default hereunder; (4) as to the existence of any offsets, claims, counterclaims or defenses hereto on the part of Landlord or, to Landlord's knowledge, on the part of Tenant; (5) as to the commencement and expiration dates of this Lease; and (6) as to any other matters as may be reasonably so requested. Any such certificate may be relied upon by Tenant and any other person, firm or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on Landlord.

18.2.17 *Nominee.* Any acquisition by a Leasehold Mortgagee of the leasehold estate under this Lease, or any rights or privileges thereunder may be taken in the name of such Leasehold Mortgagee or in the name of any nominee or designee selected by it.

18.2.18 *New Lease.* In the event of the termination of this Lease as a result of Tenant's default prior to the expiration of the term, or in the event of a rejection by Landlord or Tenant of this Lease under Chapter 11 of the Bankruptcy Code, Landlord shall, in addition to providing the notices of default and termination as required by this Lease, provide each Leasehold Mortgagee with written notice that the Lease has been terminated or that Landlord has filed a request with the Bankruptcy Court seeking to reject the Lease, together with a statement of all sums which would at that time be due under this Lease but for such termination or rejection, and of all other defaults, if any, then known to Landlord. Upon any request of the Leasehold Mortgagee, or its designee, Landlord agrees to enter into a new lease ("*New Lease*") of the Premises with such Leasehold Mortgagee or its designee for the remainder of the term of this Lease, effective as of the date of termination or rejection, as the case may be, at the Rent, and upon the terms, covenants and conditions (including all transfer rights, but excluding requirements which are not applicable or which have already been fulfilled) of this Lease; *provided, however*, that (i) the Leasehold Mortgagee whose lien upon the Premises is superior to the lien of any other Leasehold Mortgage (the "*Senior Leasehold Mortgage*") shall have the right to give notice of its intent to enter into a New Lease to the Landlord for a period of 60 days from its receipt of the notice referred to in the first sentence of this Section 18.2.18 and (ii) if the Senior Leasehold Mortgagee does not exercise its right to enter into the New Lease during this 60-day period; the Leasehold Mortgagee whose lien upon the Premises is superior to the lien of any other Leasehold Mortgage (other than the Senior Leasehold Mortgagee) shall have the right to give notice of its intent to enter into a New Lease to the Landlord during the remainder of the period(s) specified below; and *provided further, however*,

(a) Such Leasehold Mortgagee shall make written request upon Landlord for such New Lease at the later of (1) within one hundred (100) days after the date such Leasehold Mortgagee receives Landlord's notice of termination or rejection of this Lease given pursuant to this Subsection 18.2.18; or (2) within forty-five (45) days after the actual termination of the Lease as same may have been extended by Subsection 18.2.18 hereof.

(b) Such Leasehold Mortgagee or its designee shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease, any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such

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termination and, in addition thereto, all reasonable expenses, including reasonable attorneys' fees, court costs and costs and disbursements which Landlord shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by Landlord from or on behalf of Tenant. Upon the execution of such New Lease, Landlord shall allow to Tenant named therein as an offset against the sums otherwise due under this Subsection 18.2.18 or under the New Lease, an amount equal to the net income derived by

Landlord from the Premises during the period from the effective date of termination of this Lease to the date of the beginning of the lease term under the New Lease. In the event of a controversy as to the amount to be paid to Landlord pursuant to this Section 18.2, the payment obligation shall be satisfied if Landlord shall be paid the amount not in controversy, and such Leasehold Mortgagee or its designee shall agree to pay any additional sum ultimately determined to be due.

(c) Such Leasehold Mortgagee or its designee shall agree to remedy any of Tenant's defaults of which said Leasehold Mortgagee was notified by Landlord's notice of termination or rejection and which are reasonably susceptible of being so cured by such Leasehold Mortgagee or its designee.

(d) The Tenant under such New Lease shall have the same right, title and interest in and to the Premises and buildings and improvements thereon as Tenant under this Lease. Any holder of any such lien, charge or encumbrance or sublease shall execute such instruments of non-disturbance and/or attornment as the tenant under the New Lease may at any time require.

(e) The tenant under any New Lease shall be liable to perform the obligations imposed on the Tenant by such New Lease only for and during the period such person has ownership of the Premises.

(f) If more than one (1) Leasehold Mortgagee shall request a New Lease pursuant to this Section 18.3, Landlord shall enter into such New Lease with the Leasehold Mortgagee whose mortgage is in the first lien position, or with the designee of such Leasehold Mortgagee.

(g) Concurrently with the execution and delivery of any New Lease, Landlord shall assign to the tenant named therein all of the right, title and interest in and to moneys (including insurance proceeds and condemnation awards), if any, then held by and payable by Landlord which Tenant would have been entitled to receive but for the termination of the Lease. Upon the execution of any New Lease, the tenant named therein shall be entitled to any rent received under any sublease in effect during the period from the date of termination of the Lease to the date of execution of such New Lease.

SECTION 19 RIGHT OF ACCESS

Landlord and its authorized agents, representatives and employees shall be entitled to enter the Premises immediately in the case of an emergency or with reasonable notice for the purpose of observing, posting or keeping posted thereon notices provided for hereunder, and such other notices as Landlord may deem reasonably necessary or appropriate; for the purpose of inspecting the Premises; for the purpose of exhibiting the Premises to prospective purchasers or lessees; and for the purpose of making repairs and providing services to the Premises or the Building and performing any work upon the Premises which Landlord may elect or be required to make. In any such case, Landlord and its agents and representatives shall not unreasonably interfere with Tenant's operations at the Premises.

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SECTION 20 ESTOPPEL CERTIFICATE

Tenant agrees that within ten (10) business days of any demand therefor by Landlord, Tenant will execute and deliver to Landlord a certificate stating that this Lease is in full force and effect without amendment, or if amended attaching a copy thereof to the certificate, the date to which all rentals have been paid, any defaults or offsets claimed by Tenant and such other information concerning this Lease, the Premises or Tenant as Landlord may request. Landlord will provide a similar document to Tenant upon request by Tenant within ten (10) business days after request.

SECTION 21 EXPENDITURES

21.1 Whenever under any provision of this Lease, Tenant shall be obligated to make any payment or expenditure, or to do any act or thing, or to incur any liability whatsoever, and Tenant fails, refuses or neglects to perform as herein required after notice and an opportunity to cure (which shall be deemed to be thirty (30) days unless provided for specifically herein), Landlord shall be entitled, but shall not be obligated, to make any such payment or to do any such act or thing, or to incur any such liability, all on behalf of and at the cost and for the account of Tenant. In such event, the amount thereof with interest thereon at the Default Rate, shall constitute and be collectable as additional rent on demand.

21.1 Whenever under any provision of this Lease, Landlord shall be obligated to make any payment or expenditure, or to do any act or thing, or to incur any liability whatsoever, and Landlord fails, refuses or neglects to perform as herein required after notice and an opportunity to cure (which shall be deemed to be thirty (30) days unless provided for specifically herein), Tenant shall be entitled, but shall not be obligated, to make any such payment or to do any such act or thing, or to incur any such liability, all on behalf of and at the cost and for the account of Landlord. In such event, the amount thereof with interest thereon at the Default Rate, shall be collectable on demand.

SECTION 22 DEFAULT

22.1 Tenant shall be in default of this Lease if:

22.1.1 Tenant shall fail to make timely and full payment of any sum of money required to be paid hereunder and such failure continues for ten (10) days after written notice thereof from Landlord;

22.1.2 Tenant shall fail to perform any other term, covenant or condition of Tenant contained in this Lease, and such failure continues for twenty (20) days after written notice thereof from Landlord; provided, however, that if correction is impossible to correct within twenty (20) days, Tenant shall not be deemed in default if Tenant commences correction within said twenty (20) day period, and diligently pursues such correction to completion;

22.1.3 Tenant should vacate or abandon the Premises; or

22.1.4 There is filed any petition in bankruptcy or Tenant is adjudicated a bankrupt or insolvent, or there is appointed a receiver or trustee to take possession of Tenant or of all or substantially all of the assets of Tenant, or there is a general assignment by Tenant for the benefit of creditors, or any action is taken by or against Tenant under any state of federal insolvency or bankruptcy act, or any similar law now or hereafter in effect; or

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22.2 In the event of a default, in addition to any other rights or remedies provided for herein or at law or in equity, Landlord, at its sole option, shall have the following rights:

22.2.1 The right to declare the Lease Term ended and to re-enter the Premises and take possession thereof, and to terminate all of the rights of Tenant in and to the Premises; or

22.2.2 Pursuant to its rights of re-entry, Landlord may, but shall not be obligated to (i) remove all persons from the Premises, (ii) remove all property therefrom, and (iii) enforce any rights Landlord may have against said property or store the same in any warehouse or elsewhere at the cost and for the account of Tenant. Tenant agrees to hold Landlord free and harmless of any liability whatsoever for the removal and/or storage of any such property, whether of Tenant or any third party whomsoever, except for damage caused by the willful misconduct or gross negligence of Landlord, its agents or subcontractors.

22.2.3 Anything contained herein to the contrary notwithstanding, Landlord shall not be deemed to have terminated this Lease or the liability of Tenant to pay any Rent or other sum of money accruing hereunder, by any such re-entry, or by any action in unlawful detainer or otherwise to obtain possession of the Premises, unless Landlord shall specifically notify Tenant in writing that it has so elected to terminate this Lease.

22.3 In any action brought by Landlord to enforce any of its rights under or arising from this Lease, Landlord shall be entitled to receive its reasonable costs and legal expenses, including reasonable attorneys' fees, whether such action is prosecuted to judgment or not.

22.4 The waiver by Landlord of any breach of this Lease by Tenant shall not be a waiver of any preceding or subsequent breach of this Lease by Tenant. The subsequent acceptance of Rent or any other payment hereunder by Landlord shall not be construed to be a waiver of any preceding breach of this Lease by Tenant. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein provided shall be deemed to be other than on account of the earliest Rent due and payable hereunder.

SECTION 23 MISCELLANEOUS

23.1 Tenant, upon paying the rentals and other payments herein required and upon performance of all of the terms, covenants and conditions of this Lease on its part to be kept, may quietly have, hold and enjoy the Premises during the Lease Term without any disturbance from Landlord or from any other person claiming through Landlord, except as expressly provided otherwise in this Lease.

23.2 In the event of any sale or exchange of the Premises by Landlord, Landlord shall be, and is, hereby relieved of all liability under and all of its covenants and obligations contained in or derived from this Lease. Tenant agrees to attorn to such purchaser or transferee, provided that such purchaser or transferee agrees to be bound as Landlord under all of the terms and conditions of this Lease. Any sale of the Building or the Premises by Landlord shall be subject to this Lease.

23.3 It is agreed that in the event Landlord fails or refuses to perform any of the provisions, covenants or conditions of this Lease, Tenant, prior to exercising any right or remedy Tenant may have against Landlord, shall give written notice to Landlord of such default, specifying in said notice the default with which Landlord is charged and Landlord shall not be deemed in default if the same is cured within thirty (30) days of receipt of said notice. Notwithstanding any other provision hereof, Tenant agrees that if the default is of such a nature that the same can be rectified or cured by Landlord, but cannot with reasonable diligence be rectified or cured within that thirty (30) day period, then such default shall be deemed to be rectified or cured if Landlord within that thirty (30) day period shall commence the rectification and curing thereof and shall continue thereafter with all due diligence to cause such rectification and curing to proceed.

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23.4 Neither party shall be in breach of this Lease if it fails to perform as required hereunder due to labor disputes, civil commotion, war, warlike operation, sabotage, governmental regulations or control, fire or other casualty, inability to obtain any materials, or other causes beyond such party's reasonable control (financial inability excepted); provided, however, that nothing contained herein shall excuse Tenant from the prompt payment of any Rent or charge required of Tenant hereunder.

23.5 Any and all notices and demands required or desired to be given hereunder shall be in writing and shall be validly given or made (and effective) if served personally, delivered by a nationally recognized overnight courier service, or deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, to the following addresses:

| | |
|-----------------|---|
| If to Landlord: | Valvino Lamore, LLC 3145 Las Vegas Boulevard South Las Vegas, Nevada 89109 Attention: Legal Department |
|-----------------|---|

If to Tenant: Wynn Las Vegas, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attention: Legal Department
Telephone: 702-733-4556
Facsimile: 702-733-4596

Either party may change its address for the purpose of receiving notices by providing written notice to the other.

23.6 The various rights, options, elections and remedies of Landlord contained in this Lease shall be cumulative and no one of them shall be construed as exclusive of any other, or of any right, priority or remedy allowed or provided for by law and not expressly waived in this Lease.

23.7 The terms, provisions, covenants and conditions contained in this Lease shall apply to, bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as permitted in Section 17 hereof.

23.8 If any term, covenant or condition of this Lease, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all terms, covenants and conditions of this Lease, and all applications thereof, not held invalid, void or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

23.9 Time is of the essence of this Lease and all of the terms, covenants and conditions hereof.

23.10 This Lease contains the entire agreement between the parties and cannot be changed or terminated orally.

23.11 Nothing contained herein shall be deemed to create any partnership, joint venture, agency or other relationship between Landlord and Tenant other than the relationship of landlord and tenant.

23.12 The captions are descriptive only and for convenience in reference to this Lease and in no way whatsoever define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

23.13 The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Lease. Each party hereto consents to, and waives any objection to, Clark County, Nevada as the

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proper and exclusive venue for any disputes arising out of or relating to this Lease or any alleged breach thereof.

23.14 In the event Tenant now or hereafter shall consist of more than one person, firm, corporation or trust, then and in such event, all such persons, firms, corporations or trusts shall be jointly and severally liable as Tenant hereunder.

23.15 This Lease may not be recorded without Landlord's prior written consent. However, the parties agree to record a Memorandum of Lease in the form attached hereto as Exhibit "D". A Memorandum of Termination of Lease in the form attached hereto as Exhibit "E" shall also be executed by the parties, shall be held by Landlord, and shall be recorded by Landlord upon termination of the Lease.

23.16 All necessary actions have been taken under the parties' organizational documents to authorize the individuals signing this Lease on behalf of the respective parties to do so.

23.17 The prevailing party in any action regarding this Lease shall be entitled to receive its costs and legal expenses including reasonable attorneys' fees, whether such action is prosecuted to judgment or not. The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim of injury or damage.

23.18 Landlord and Tenant each represent and warrant to the other that they have not entered into any written contractual arrangement with, or promised to pay any broker's fee, finder's fee, commission or other similar compensation to, or otherwise agreed to compensate, any real estate agent or broker in connection with this transaction. Landlord and Tenant each agree to indemnify, defend, save and hold the other harmless from and against all loss, cost and expense incurred by reason of the breach of the foregoing representation and warranty arising from any claim for compensation founded upon or as a result of acts asserted to have been performed on their respective behalf. Such indemnification obligation shall survive any termination of the Lease.

23.19 This Lease may be executed in one or more counterparts, all of which executed counterparts shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this document to physically form one document.

[Signature page follows]

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IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above-written.

"Landlord"

"Tenant"

Valvino Lamore, LLC
a Nevada limited liability company

By: Wynn Resorts, Limited,
a Nevada corporation
its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein
Title: Senior Vice President, General Counsel & Secretary

Wynn Las Vegas, LLC
a Nevada limited liability company

By: Wynn Resorts Holdings, LLC
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein
Title: Senior Vice President, General Counsel & Secretary

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SCHEDULE 1

1. *First Deed of Trust.* Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by Valvino Lamore, LLC, a Nevada limited liability company, as Trustor, to Nevada Title Company, a Nevada corporation, as Trustee, for the benefit of Deutsche Bank Trust Company Americas, in its capacity as Administrative Agent for the benefit of the Banks, as Beneficiary; and

2. *Second Deed of Trust.* Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by Valvino Lamore, LLC, a Nevada limited liability company, as Trustor, to Nevada Title Company, a Nevada corporation, as Trustee, for the benefit of Wells Fargo Bank, National Association, in its capacity as the Mortgage Notes Indenture Trustee, as Beneficiary.

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QuickLinks

[Exhibit 10.3](#)

[LEASE AGREEMENT between VALVINO LAMORE, LLC, Landlord and WYNN LAS VEGAS, LLC, Tenant Dated October 21, 2002](#)

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GOLF COURSE LEASE
between
WYNN RESORTS HOLDINGS, LLC,
and
PALO, LLC,
Landlord
and
WYNN LAS VEGAS, LLC,
Tenant
Dated October 21, 2002

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GOLF COURSE LEASE

THIS GOLF COURSE LEASE (this "Lease") is entered into as of the 21st day of October, 2002 by and between **Wynn Resorts Holdings, LLC**, a Nevada limited liability company ("Holdings"), and **Palo, LLC**, a Delaware limited liability company ("Palo", and together with Holdings, collectively, "Landlord"), and **Wynn Las Vegas, LLC**, a Nevada limited liability company ("Tenant").

WITNESSETH:

WHEREAS, Tenant owns good and marketable title in and to the parcel of real property described on Exhibit "A" annexed hereto ("Tenant's Property") upon which Tenant intends to construct and develop a first class luxury hotel and destination casino resort (the "Hotel"); and

WHEREAS, Holdings owns good and marketable title in and to the parcel of real property adjacent to Tenant's Property and described on Exhibit "B-1" annexed hereto and Palo owns good and marketable title in and to the parcel of real property adjacent to Tenant's Property and described on Exhibit "B-2" annexed hereto (collectively, the "Premises"); and

WHEREAS, Landlord desires to lease to Tenant and Tenant desires to lease from Landlord the Premises for the purpose of constructing and operating a golf course on the Premises ("Golf Course"), to be operated as an amenity to the Hotel and which Golf Course will include a clubhouse, restaurant, retail space and facilities ("the Clubhouse") and all structures and facilities located or to be located on the Premises (together with the Golf Course, Clubhouse and all restrooms, refreshment stands, cart storage and maintenance facilities, equipment storage, chemical storage and all infrastructure, landscaping, service areas, equipment, fixtures, trade fixtures, personal property (leased or owned), roads, paths, furnishings, bridges, tunnels, utilities and utility lines, drainage channels, storm and wastewater drains and systems, culverts, spillways, irrigation systems, water features, reservoirs, ponds, golf course tees, traps, fairways, greens, bunkers and other features and properties of any kind located or to be located on the Premises, are referred to herein collectively as the "Golf Facilities") upon the terms conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the terms, covenants, conditions and provisions hereinafter set forth and other good and valuable consideration, it is hereby mutually agreed by and between Landlord and Tenant as follows:

**SECTION 1
DEMISED PREMISES**

1.1 Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises, to have and to hold the Premises, together with all and singular improvements, appurtenances, rights, privileges, and easements thereunto appertaining (including, without limitation, the Golf Facilities) during the Lease Term and subject to the terms and conditions herein contained.

1.2 Tenant shall construct and maintain the Golf Facilities at a standard consistent with a typical first class, championship golf course. In addition, Landlord and Tenant agree to cooperate with respect to fulfilling any and all conditions of Clark County, the Regional Flood Control District, the Southern Nevada Water Authority, the State of Nevada, and any other governmental or regulatory entity having jurisdiction over the Premises and the construction and operation of the Golf Facilities.

**SECTION 2
TERM**

2.1 The term of the Lease (the "Lease Term") and payment of Rent (as defined in Section 3.1 hereof) shall commence (the "Commencement Date") on October 21, 2002, and shall continue for a period of thirty (30) years thereafter (the "Initial Lease Term") unless terminated earlier as elsewhere

herein provided. Following the date (the "Lien Release Date") on which there shall occur the release of Landlord's Property, or any portion thereof, from the lien of (i) the First Trust Deeds (as defined and described on *Schedule I* attached hereto) or, with respect to a portion of Landlord's Property, the First Trust Deed that encumbers such portion and (ii) the Second Trust Deeds (as defined and described on *Schedule I* attached hereto) or, with respect to a portion of Landlord's Property, the Second Trust Deed that encumbers such portion, Tenant may terminate this Lease with respect to such released portion on thirty (30) days' written notice to Landlord. The First Trust Deeds and the Second Trust Deeds are collectively referred to herein as the "Deeds of Trust."

2.2 In the event Tenant is not then in default of its obligations hereunder beyond any applicable cure period and this Lease has not previously been terminated, after the expiration of the Initial Lease Term, the Lease Term shall continue on a month-to-month basis upon the same terms and conditions as are set forth in this Lease. At any time during any such extension of the Initial Lease Term, either party may terminate the Lease by delivering written notice no later than ten (10) days prior to the expiration of any monthly period. In the event that such notice is not given within such time period, the Lease shall continue in effect.

2.3 Upon the expiration or sooner termination of this Lease, Tenant shall, at its sole cost and expense, within fifteen (15) days after receipt of written notice, thereupon surrender the Premises to Landlord in the same condition as on the date of completion of the Tenant's Work. All personal property of Tenant relating to the Golf Facilities and to the operation of the Premises as a Golf Course shall become the property of Landlord on termination of this Lease.

**SECTION 3
RENT**

3.1 During the Lease Term, Tenant shall pay as monthly rent for the Premises the sum of One Dollar (\$1.00) per month (the "Rent"). The Rent shall be due and payable in advance on the first (1st) day of each month.

3.2 All rents and other monies required to be paid by Tenant hereunder shall be paid to Landlord without deduction or offset, prior notice or demand, in lawful money of the United States of America, at the address of Landlord and set forth in Section 24.5 or at such other place as Landlord may from time to time designate in writing.

3.3 If Tenant fails to pay, when due and payable, any Rent or any other amounts or charges to be paid by Tenant hereunder within ten (10) days after written notice from Landlord that the amount is past due, such unpaid amounts shall bear interest from the due date thereof to the date of payment at a rate equal to the prime rate of interest last ascertained by the Commissioner of Financial Institutions of the State of Nevada pursuant to Nevada Revised Statutes 99.040, plus five (5) percentage points (the "Default Rate").

**SECTION 4
CONSTRUCTION OF THE GOLF COURSE; WATER**

4.1 Tenant shall be responsible, at its sole cost, for constructing and maintaining the Golf Facilities ("Tenant's Work") in accordance with the conceptual plans and specifications which have been reviewed and approved by Landlord. If requested by Landlord, Tenant shall use only union labor to perform Tenant's Work. In addition, Tenant agrees that material modifications to such Plans shall be subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld or delayed; provided, however, that Landlord shall be deemed to have approved any and all such Plan modifications if such Plan modifications are approved by the lender or lenders of Tenant financing the construction of the Tenant's Work.

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4.2 Tenant shall be solely responsible for (i) securing all necessary building, zoning and other governmental permits, approvals and waivers, as necessary, to construct the Golf Facilities and (ii) satisfying any offsite improvement requirements.

4.3 Prior to commencing operation of the Golf Course, Tenant shall provide Landlord with the following:

- (a) Written verification by Tenant's contractor that Tenant's Work has been completed;
- (b) A copy of the Certificate of Occupancy issued by the County of Clark, Nevada with respect to the Premises and the Golf Facilities; and
- (c) Insurance certificates and other evidence, satisfactory to Landlord, of Tenant's compliance with Section 13 of this Lease.

4.4 Subject to any Public Utilities Commission approval or waiver that may be required, Tenant shall be permitted to use on the Premises any rights to water that currently or hereafter have the Premises as their place of use, including, without limitation, any such water rights currently or hereafter owned by Landlord, in connection with the irrigation, construction and operation of the Golf Facilities. Such use shall be without charge, except to the extent Landlord incurs charges therefor. Furthermore, in the event Landlord becomes the owner of any water rights, which rights currently or hereafter have the Premises and/or Golf Facilities as their place of use, Landlord agrees not to transfer such rights to any third person.

**SECTION 5
FINANCING**

Landlord may obtain loans from time to time from third parties to finance acquisition and development of Landlord's and its Affiliates' real property, including the Premises. For purposes of this Lease, an "Affiliate" of a party shall mean any person or entity (a) that is owned or controlled by the party, (b) that owns or controls the party, (c) that is owned or controlled by a person or entity that owns or controls the party, (d) that owns or controls an Affiliate of the party, or (e) that is owned or controlled by an Affiliate of the party. As used in this definition, the words "owns" or "owned" refer to the ownership of twenty percent (20%) or more of the equity interest in the person or entity so owned, regardless of the manner of ownership. Also, as used in this definition, ownership or control may be direct or indirect. By its execution of this Lease, Tenant (i) acknowledges and consents to Landlord's collateral assignment of its rights hereunder to its and its Affiliates' lenders, including the beneficiaries under the Deeds of Trust (collectively, "Lenders"); (ii) acknowledges and affirms Tenant's agreement to attorn performance obligations to the benefit of Lenders in the same manner as it would with respect to Landlord if any such lender exercises its rights under any collateral assignment from Landlord; and (iii) agrees to execute such separate consents and acknowledgements to and of Landlord's collateral assignment of this Lease to such third party Lenders. Any Lender or its successor which acquires the Premises (through foreclosure or deed in lieu of foreclosure) shall not disturb Tenant's lease of the Premises and shall respect Tenant's rights under this Lease.

**SECTION 6
USE OF PREMISES; EXCLUSIVITY**

6.1 The Premises are leased to Tenant solely for the purpose of developing, constructing, operating and maintaining the Golf Course and the Golf Facilities and related and ancillary uses. Tenant shall not use or suffer to be used the Premises, or any portion thereof, for any other purpose or purposes whatsoever, without Landlord's prior written consent, which consent shall not be unreasonably withheld.

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6.2 Tenant shall, at all times during the Lease Term, comply with all governmental rules, regulations, ordinances, statutes and laws, now or hereafter in effect pertaining to the Golf Facilities, the Premises or Tenant's use thereof.

6.3 Tenant shall not use the Premises for the generation, storage, manufacture, production, releasing, discharge, or disposal or any Hazardous Substance (defined below) or allow or suffer any other entity or person to do so. Provided, however, that Tenant shall be permitted to utilize customary fertilizers, pesticides, and other similar golf course chemicals to the extent such use is consistent with any governmental regulations governing such use. Except as otherwise set forth herein, "Hazardous Substance" shall mean any flammable or related material and any other substance or material defined or designated as a hazardous or toxic substance, material or waste by a governmental law, order, regulation or ordinance presently in effect or as amended or promulgated in the future and shall include, without limitation: (a) those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances" or "solid waste" in CERCLA, RCRA, and the Hazardous Materials Transportation Act, 40 U.S.C. §§ 1801 *et seq.*, and in the regulations promulgated pursuant to said laws; (b) those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto); (c) such other substances, materials and wastes which are or become regulated under applicable local, state or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state or local laws or regulations; and (d) any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls or (iv) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* (33 U.S.C. 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. 1317).

6.3.1 Tenant shall protect, indemnify and hold harmless Landlord, its partners, members, managers, employees, agents, successors and assigns, the Premises and the Golf Facilities in general from and against any and all claims, losses, damages, costs, expenses, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind (including, without limitation, attorneys' fees and costs at trial and on appeal) directly or indirectly arising out of or attributable to, in whole or in part, the breach of any of the covenants, representations and warranties of this Section 6.3, or the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, from or about the Premises. The foregoing indemnity shall further apply to any residual contamination on, under, from or about the Premises, or the property in general, or affecting any natural resources arising in connection with the use, generation, manufacture, production, handling, storage, transport, discharge or disposal of any such Hazardous Substance, and irrespective of whether any of such activities were or will be undertaken in accordance with environmental laws or other applicable laws, regulations, codes and ordinances.

6.3.2 Landlord reserves the right to request appropriate governmental officials to inspect the Premises, from time to time, in order to determine Tenant's compliance herewith.

SECTION 7 ALTERATIONS AND IMPROVEMENTS

7.1 Following the completion of the Tenant's Work, Tenant shall not make any material alterations, improvements or changes (specifically excluding repairs and maintenance work) ("Improvements") in or to the Premises without the prior written approval of Landlord, which approval shall not be unreasonably withheld or delayed. Any Improvements shall be at the sole cost and expense of Tenant. Landlord may require Tenant, at Tenant's sole cost and expense, to furnish a bond, or other security satisfactory to Landlord, to assure diligent and faithful performance of any work to be performed by Tenant. Any Improvements shall be made promptly, in good and workmanlike manner by

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duly licensed union contractors and in compliance with all insurance requirements and with all applicable permits, authorizations, building regulations, zoning laws and all other governmental rules, regulations, ordinances, statutes and laws, now or hereafter in effect, pertaining to the Premises or Tenant's use thereof.

7.2 Prior to making any Improvements in or to the Premises, Tenant shall notify Landlord ten (10) days in advance in order that Landlord may post and maintain on the Premises and file any notices of nonresponsibility provided for under applicable law. Tenant agrees that Landlord shall have the right to enter upon the Premises to post notices of nonresponsibility.

SECTION 8 UTILITIES

Tenant shall be responsible for the cost and expense of installing all utilities on the Premises. Tenant shall be responsible for the payment of, and shall promptly pay when due, all utility completion fees, connection fees and all utility services (including without limitation, gas, water, electricity, telephone and sanitary sewer) used, rendered or supplied to or in connection with the Premises or the construction, operation and maintenance of the Golf Facilities during the Lease Term.

SECTION 9 TAXES

9.1 Tenant will, at Tenant's own cost and expense, bear, pay, and discharge prior to delinquency, all real estate taxes, assessments, sewer rents, water rents and charges, duties, impositions, license and permit fees, charges for public utilities of any kind, payments and other charges of every kind and nature whatsoever, ordinary or extraordinary, foreseen or unforeseen, general or special (all of which are hereinafter collectively referred to as "Impositions"), which shall, pursuant to present or future law or otherwise, during the Lease Term, have been or be levied, charged, assessed, or imposed upon, or become due and payable out of or for, or become or have become a lien on the Premises, the Golf Facilities and any Improvements; it being the intention of the parties hereto that the rents reserved herein shall be received and enjoyed by Landlord as a net sum free from all such Impositions. Upon the termination of this Lease, Landlord shall promptly reimburse Tenant for any Impositions paid by Tenant attributable to the period of time following such termination. All Impositions shall be prorated on the basis of a 365-day year. Prior to the termination of this Lease with respect to less than all of the Premises, the portion so released shall be a separate tax parcel for property tax purposes or Landlord and Tenant shall agree upon an equitable allocation of property taxes as between the portion of the Premises remaining subject to this Lease and the portion of the Premises for which this Lease has been terminated.

9.2 Tenant shall be liable for and shall pay before delinquency (and, upon five (5) days of written demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of the payment thereof) all Impositions of whatsoever kind or nature, and penalties and interest thereon, if any, levied against Tenant's property or any other personal property of whatsoever kind and to whomsoever belonging situated or installed in or upon the Premises, whether or not affixed to the realty.

9.3 Tenant shall pay when due all taxes, assessments or fees for which Tenant is liable and which arise directly or indirectly from Tenant's operations at the Premises including without limitation all sales and use taxes. Within five (5) days of written demand from Landlord, Tenant shall furnish Landlord evidence satisfactory to Landlord of the timely payment of any such tax, assessment or fee.

9.4 Whenever Landlord shall receive any statement or bill for any tax, payable in whole or in part by Tenant as additional rent, or shall otherwise be required to make any payment on account thereof, except as otherwise provided herein, Tenant shall pay the amount due hereunder within ten (10) days after demand therefor accompanied by delivery to Tenant of a copy of such tax statement, if any.

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SECTION 10
[INTENTIONALLY OMITTED]

SECTION 11
MAINTENANCE AND REPAIRS

11.1 Landlord shall not be obligated to perform any service or to repair or maintain any structure or facility on the Premises except as provided in this Section 11 and Section 14 of this Lease, unless caused by the negligence of Landlord, its agents, customers or contractors. Landlord shall not be obligated to provide any service or maintenance or to make any repairs pursuant to this Lease when such service, maintenance or repair is made necessary because of the negligence or misuse of Tenant, Tenant's agents, employees, servants, contractors, subtenants or licensees. Landlord shall have no responsibility or liability for failure to supply any services or maintenance or to make any repairs on the Premises. Landlord shall not be liable for any loss or damage to persons or property sustained by Tenant or other persons, which may be caused by the Golf Facilities or the Premises, or any appurtenances thereto, being out of repair or by bursting or leakage of any water, gas, sewer or steam pipe, or by theft, or by any act or neglect of any occupant of the Premises, or of any other person.

11.2 Except as provided for elsewhere herein, Tenant shall keep and maintain in good order, condition and repair (including any such replacement and restoration as is required for that purpose) the Premises, the Golf Facilities and every part thereof and any and all appurtenances thereto wherever located, including, without limitation, all repairs and replacements, structural and nonstructural, foreseen and unforeseen, which are necessary to maintain and preserve the Golf Facilities and the Premises in accordance with the Golf Course Standards. All repairs shall be made in accordance with all laws, promptly, efficiently, and in good workmanlike manner. Tenant shall also keep and maintain in good order, condition and repair (including any such replacement and restoration as is required for that purpose) any Improvements, special equipment, furnishings, fixtures or facilities installed by it on the Premises.

SECTION 12
LIENS

12.1 Tenant, at all times, whether by bond or otherwise, shall keep (and shall cause any contractor engaged by Tenant to keep) Landlord, the Golf Facilities, the Premises, the leasehold estate created by this Lease, and any trade fixtures, equipment or personal property within the Premises, free and clear from any claim, lien or encumbrance (other than personal property, consensual security interests for lines of credit or inventory financing in the ordinary course of Tenant's business), tax lien or levy, mechanic's lien, attachment, garnishment or encumbrance arising directly or indirectly from any obligation, action or inaction of Tenant whatsoever, except to the extent permitted under Section 17 and 18 below and except for "Permitted Liens" as defined in the Credit Agreement (as defined in the First Trust Deeds) and the Mortgage Notes Indenture (as defined in the Second Trust Deeds).

12.2 Tenant shall, within ten (10) days of the filing of any lien that is not permitted under Section 12.1 above, either pay or satisfy the same in full and procure the discharge thereof or commence an action to discharge the same, fully bond such lien, and diligently prosecute such action, or shall cause Tenant's contractor to do the same.

SECTION 13
INSURANCE

13.1 Landlord and Tenant are covered under the same policies of comprehensive public liability insurance and all-risk, commercial property insurance. The parties each agree to pay its respective share of such insurance costs.

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13.2 If at any time during the Lease Term Tenant ceases to be covered by common insurance with Landlord, Tenant will, at its sole cost and expense, maintain in full force and effect:

(a) a policy of comprehensive or commercial general liability insurance issued by an insurance carrier approved by Landlord, insuring against loss, damage or liability for injury or death to persons and loss or damage to property occurring from any cause whatsoever in connection with the Premises or Tenant's use thereof. Landlord shall be named as an additional insured under each such policy of insurance; with a combined single limit for bodily injury and property damage of not less than two million (\$2,000,000) per occurrence and five million (\$5,000,000) in the aggregate;

(b) a standard form of all-risk, commercial property insurance with extended coverage insurance covering leasehold improvements, furniture, fixtures and equipment, and personal property located in or on the Premises whether owned by Landlord or Tenant, and the personal property of others in Tenant's possession in, upon or about the Premises. Such insurance shall be in an amount equal to the current replacement value of the property required to be insured. Tenant and Landlord, as their interests may appear, shall be the named insureds under each such policy of insurance;

(c) During any period of any construction on the Premises, Tenant shall maintain (i) course of construction and builder's risk insurance on an "all risks" basis, including materials in storage and while in transit, and (ii) worker's compensation and employer's liability insurance for any person working

on such construction who is employed by Tenant or any general contractor and/or any construction contractor.

13.3 A certificate issued by the insurance carrier for each policy of insurance required to be maintained by Tenant under Section 13.2 above, if any, or a copy of each such policy, shall be delivered to Landlord on or before the commencement of Tenant's Work and thereafter, as to policy renewals, within thirty (30) days prior to the expiration of the terms of each such policy. Each of said certificates of insurance and each such policy of insurance shall be from an insurer and in a form and substance satisfactory to Landlord, shall expressly evidence insurance coverage as required by this Lease and shall contain an endorsement or provision requiring not less than thirty (30) days written notice to Landlord and all other named insureds prior to the cancellation, diminution in the perils insureds against, or reduction of the amount of coverage of, the particular policy in question. In addition to the foregoing certificates, Tenant shall at all times during the Lease Term maintain (either through common insurance with Landlord or otherwise), at Tenant's sole cost and expense, worker's compensation coverage evidencing coverage at Nevada statutory limits.

13.4 Tenant shall not use or occupy, or permit the Premises to be used or occupied, in a manner that will make void any insurance then in force.

13.5 Landlord and Tenant hereby waive any and all rights of recovery from the other party and its officers, agents and employees for any loss or damage, including consequential loss or damage, caused by any peril or perils (including negligent acts) that are caused by or result from risks insured against under any form of insurance policy.

13.6 Each policy of insurance provided for in this Section 13 shall contain an express waiver of any and all rights of subrogation thereunder whatsoever against the other party, its officers, directors, agents and employees. All such policies shall be written as primary policies and not contributing with or in excess of the coverage, if any, which Landlord may carry. Notwithstanding any other provision contained in this Section 13 or elsewhere in this Lease, the amounts of all insurance required hereunder to be paid by Tenant shall be not less than an amount sufficient to prevent Landlord from becoming a co-insurer. The limits of the public liability insurance required to be maintained by Tenant under this Lease shall in no way limit or diminish Tenant's liability under Section 15 hereof and such

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limits shall be subject to increase at any time and from time to time during the Lease Term if Landlord, in the exercise of reasonable discretion, deems such an increase necessary for its adequate protection; provided, however, Landlord may not exercise its right under this sentence more frequently than one time every two years during the Lease Term.

13.7 All of the provisions of this Section 13 are subject to, and shall be modified as reasonably necessary to be consistent with, the requirements of the Credit Agreement.

SECTION 14 DESTRUCTION OF PREMISES; CONDEMNATION

14.1 With respect to any portion of the Premises, during the period prior to the earlier to occur of the expiration of the Initial Lease Term or the Lien Release Date for a portion of the Premises, should such portion of the Premises be destroyed by any cause whatsoever ("Damaged") and provided that restoration is permitted under the Credit Agreement and the Mortgage Notes Indenture, Tenant shall restore such portion of the Premises. After the earlier to occur of the expiration of the Initial Lease Term or the Lien Release Date with respect to a portion of the Premises, should such portion of the Premises be Damaged, Tenant may elect to either terminate this Lease with respect to such portion of the Premises or restore such portion of the Premises by delivery of written notice to Landlord within thirty (30) days after the casualty event giving rise to the Damage. If Tenant fails to give timely notice of Tenant's election, Tenant shall be deemed to have elected to terminate and this Lease shall terminate with respect to the portion of the Premises in question at the end of the calendar month following the calendar month in which such casualty event shall have occurred. If Tenant is required or elects to restore the Premises, or any portion thereof, the following provisions shall apply: After any such casualty and during the reconstruction period, Rent shall continue to accrue and be payable as if such event of destruction had not occurred. Tenant shall reconstruct the Damaged Improvements with all reasonable diligence (allowing for adjustment and collection of insurance proceeds, licensing, permitting, and approvals) and as often as any structures subsequently constructed on the Premises or any part thereof shall be Damaged. No Damage to any building or Improvements on the Premises by fire, windstorm, or any other casualty shall entitle Tenant to violate any of the provisions of this Lease. Landlord hereby agrees to assign to Tenant any insurance proceeds otherwise payable to Landlord, whether payable solely to Landlord or jointly to Landlord and Tenant, subject to reasonable and third party customary construction control procedures, so long as Tenant uses such proceeds solely to repair or rebuild the Damaged buildings or Improvements.

14.2 [Intentionally Omitted]

14.3 All insurance proceeds payable under any fire and extended coverage risk insurance covering the Premises and maintained by Landlord shall be payable to Landlord in the event of Damage, and Tenant shall have no interest therein, except to the extent of such insurance separately carried by Tenant. Tenant shall in no case be entitled to compensation for damages on account of any annoyance or inconvenience in making repairs under any provision of this Lease. Except to the extent provided for in this Section 14, neither the Rent payable by Tenant nor any of Tenant's other obligations under any provision of this Lease shall be affected by any Damage.

14.4 Should the whole of the Premises be condemned or taken by a competent authority for any public or quasi-public purpose, then this Lease shall terminate upon such taking. If such portion of the Premises is condemned or taken such that the remaining portion thereof will not be reasonably adequate for the operation of Tenant's business after Landlord completes such repairs or alterations as Landlord elects to make, either Landlord or Tenant shall have the option to terminate this Lease by notifying the other party hereto of such election in writing within twenty (20) days after such taking. If by such condemnation and taking a portion of the Premises is taken and the remaining part thereof is suitable for the purposes for which Tenant has leased the Premises, this Lease shall continue in full

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force and effect, but the Rent and all other charges hereunder shall be reduced in an amount equal to that proportion of such charges which the square footage of the portion taken bears to the total square feet of the Premises, and Rent and other charges shall be suspended during any period of time that Tenant is closed for business. In the event a partial taking does not terminate this Lease, Landlord, at Landlord's expense, shall repair the damage to the Premises with reasonable dispatch and restore it as nearly as reasonably possible to its condition immediately before the taking. If any part of the Golf Course shall be taken or appropriated so as to materially and adversely affect the ability of Tenant's subtenants, customers and/or invitees to reach the Premises, Tenant shall have the right, at its option to terminate this Lease by notifying the other party within twenty (20) days of such taking.

14.5 For the purposes hereof, a deed in lieu of condemnation shall be deemed a taking.

SECTION 15 INDEMNIFICATION

Each party ("Indemnitor") hereby covenants and agrees to indemnify, defend, save and hold the other party ("Indemnitee"), the Premises and the leasehold estate created by this Lease free, clear and harmless from any and all liability, loss, costs, expenses (including attorneys' fees), judgments, claims, liens and demands of any kind whatsoever in connection with, arising out of, or by reason of any act, omission, or negligence of Indemnitor, its agents, employees, servants, contractors, subtenants or licensees while in, upon, about, or in any way connected with, the Premises or the Golf Facilities or arising from any accident, injury or damage, howsoever and by whomsoever caused, to any person or property whatsoever, occurring in, upon, about or in any way connected with the Premises or any portion thereof other than as a result of the intentional or negligent acts of Indemnitee.

SECTION 16 SUBORDINATION

Tenant agrees upon request of Landlord to subordinate this Lease and its rights hereunder to the lien of any mortgage, deed of trust or other encumbrance, together with any renewals, extensions or replacements thereof now or hereafter placed, charged or enforced against the Premises, or any portion thereof, and to execute and deliver at any time, and from time to time, upon demand by Landlord, such documents as may be reasonably required to effectuate such subordination within ten (10) days after receiving such documents, provided that in connection with such subordination agreement Landlord's lender agrees to provide a non-disturbance agreement for the benefit of Tenant in form and substance reasonably acceptable to Tenant and its lenders.

SECTION 17 ASSIGNMENT AND SUBLETTING

17.1 Except as otherwise set forth herein, Tenant shall not assign, mortgage, pledge, hypothecate or encumber this Lease nor the leasehold estate hereby created or any interest herein, or sublet the Premises or any portion thereof, or license the use of all or any portion of the Premises without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion. Tenant shall have the right, upon giving notice to Landlord, to assign to an Affiliate of Tenant so long as Tenant remains as guarantor and liable for all payments due pursuant to this Lease. The restriction or limitation on use of the Premises shall continue to apply to any subtenant or assignee hereunder. Any consent by Landlord to any act requiring consent pursuant to this Section 17.1 shall not constitute a waiver of the necessity for such consent to any subsequent act. Tenant shall pay all reasonable costs, expenses and reasonable attorneys' fees that may be incurred or paid by Landlord in processing, documenting or administering any request of Tenant for Landlord's consent required pursuant to this Section 17.1.

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17.2 Landlord may reasonably require that each proposed assignee or sublessee agree, in a written agreement satisfactory to Landlord, to assume and abide by all the terms and provisions of this Lease, including those which govern the permitted uses of the Premises.

17.3 In the absence of an express agreement in writing to the contrary executed by Landlord, no assignment, mortgage, pledge, hypothecation, encumbrance, subletting or license hereof or hereunder shall act as a release of Tenant from any of the provisions, covenants and conditions of this Lease on the part of Tenant to be kept and performed.

SECTION 18 LEASEHOLD FINANCING

18.1 *Leasehold Mortgage Permitted.* Nothing in this Lease shall be construed as restricting in any manner the right of Tenant, from time to time, or at any time, to create one or more liens on, or encumber, by mortgage, deed of trust or trust deed in the nature of a mortgage (each, a "*Leasehold Mortgage*") the leasehold interest of Tenant in the Premises, and subject to the restrictions and limitations contained in any such instrument as to further conveyances, transfers and assignments, Tenant will have the right at any time, and from time to time, to convey, transfer and assign its interest under this Lease to a mortgagee, trustee or beneficiary, of its designee (each "*Leasehold Mortgagee*"), under a Leasehold Mortgage given to secure any note or other obligation of Tenant or an Affiliate thereof.

18.2 *Certain Benefits to Leasehold Mortgage.* If Tenant shall execute any Leasehold Mortgage, then, in such event and so long as such Leasehold Mortgage shall constitute a lien or encumbrance against the leasehold estate of Tenant hereunder, the following provisions shall apply:

18.2.1 *Amendment of Lease.* No agreement by Landlord and Tenant for the assignment, cancellation, surrender, acceptance of surrender or termination, modification or amendment of this Lease shall be effective as to any Leasehold Mortgagee without the written consent of such Leasehold Mortgagee. If the Leasehold Mortgagee whose lien has first priority consents to an amendment, any Leasehold Mortgagee of a junior lien on the Premises will not unreasonably withhold its consent to such amendment.

18.2.2 *Exercise of Section 365(h)(i) Rights.* Landlord agrees, for the benefit of such Leasehold Mortgagee, that the right of election arising under Section 365(h)(i) of the Bankruptcy Code shall be exercised by the most senior Leasehold Mortgagee at such time and not by Tenant. Any attempted exercise by Tenant of such right of election in violation hereof shall be void.

18.2.3 *Loss Payee.* The name of each such Leasehold Mortgagee shall be added to the "*Loss Payable Endorsement*" of any and all insurance policies required to be carried by Tenant under this Lease.

18.2.4 *Proceeds of Casualty and Condemnation.* Notwithstanding anything in this Lease to the contrary, in the event of any casualty to or condemnation of the Premises or any portion thereof, the Leasehold Mortgagees shall be entitled to receive all insurance proceeds and/or condemnation awards as their interests appear (up to the amount of the indebtedness secured by the Leasehold Mortgage) otherwise payable to Tenant or Landlord or both and apply them in accordance with the Leasehold Mortgage and shall have the right, but not the obligation, to restore the Premises.

18.2.5 *Merger.* If Tenant shall acquire fee title, or any other estate, title or interest in the Premises which is the subject of this Lease, or any part thereof, or if the leasehold estate created by this Lease, or any portion thereof, shall be assigned, sold or otherwise transferred to the owner of such fee title or other estate, title or interest in the Premises which is the subject of this Lease, then in either such event, upon the election of the Leasehold Mortgagee first in priority expressly

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made in writing at any time thereafter, each Leasehold Mortgage shall attach to and be a lien upon such fee title and/or other estate so acquired (but only as the same pertains to the Premises), and such fee title and/or other estate so acquired shall be considered as mortgaged, assigned and conveyed to each Leasehold Mortgagee and the lien of each such Leasehold Mortgage shall be spread to cover such estate with the same force and effect as though specifically mortgaged, assigned or conveyed in such Leasehold Mortgage (and upon request of any Leasehold Mortgagee, either or both Landlord and Tenant shall execute further mortgages, assignments of leases and rents, amendments to documents and instruments as such Leasehold Mortgagee may reasonably require for such purpose); provided, however, that notwithstanding the foregoing, if and so long as any of the indebtedness secured by any such Leasehold Mortgage shall remain unpaid, unless the Leasehold Mortgagee thereunder shall otherwise in writing expressly consent, the fee title to the Premises which is the subject of this Lease and the leasehold estate created by this Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates either in Landlord or in Tenant, or in a third party, by purchase or otherwise. Nothing in this Section 18.2.5 shall be deemed to subordinate or require Landlord to subordinate the fee interest of Landlord in the Premises to the lien of a Leasehold Mortgage.

18.2.6 *Right of Entry.* Each Leasehold Mortgagee shall have the right to enter upon the Premises at any time for any purpose, including curing any defaults by Tenant under this Lease, and Landlord hereby agrees to accept performance and compliance by any such Leasehold Mortgagee of any covenants, agreements, provisions, conditions and limitations on Tenant's part to be kept, observed or performed hereunder, with the same force and effect as though kept, observed and performed by Tenant. Any default by Tenant that is not susceptible to being cured by a Leasehold Mortgagee shall be deemed waived by Landlord.

18.2.7 *Notice to Tenant.* Landlord shall serve Tenant with notice if Landlord files, or has filed against it, a petition under chapters 7 or 11 of the Bankruptcy Code. Such notice shall be served within twenty-four (24) hours of such filing. Landlord shall, upon serving Tenant with any notice of (1) a bankruptcy filing as herein described, (2) default pursuant to the provisions of this Lease, or (3) a matter on which Landlord may predicate or claim a default, at the same time serve a copy of such notice upon every Leasehold Mortgagee that has provided Landlord with notice of its identity and address, and no such notice by Landlord to Tenant hereunder shall have been deemed duly given unless and until a copy thereof has been so served on every such Leasehold Mortgagee.

18.2.8 *Termination.* Anything contained in this Lease to the contrary notwithstanding, if any default shall occur which entitles Landlord to terminate this Lease, or to exercise any other rights, powers or remedies available to it under this Lease, Landlord shall have no right to terminate this Lease or to exercise any of such rights, powers or remedies unless following the expiration of the period of time given Tenant to cure such default (or the act or omission which gave rise to such default), Landlord shall notify every Leasehold Mortgagee of Landlord's intent to so terminate or exercise any such rights, powers or remedies ("*Default Notice*") at least (x) sixty (60) days in advance of the proposed effective date of such termination, or exercise of any rights, powers or remedies if such default is capable of being cured by the payment of money, and (y) ninety (90) days in advance of the proposed effective date of such termination, or exercise of any such rights, powers or remedies if such default is not capable of being cured by the payment of money ("*Default Notice Period*"). The provisions of Subsection 18.2.9 below shall apply if during such thirty (60) or ninety (90) day Default Notice Period, any Leasehold Mortgagee shall notify Landlord of such Leasehold Mortgagee's desire to nullify such notice (the "*Nullification Notice*").

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18.2.9 *Procedure on Default.*

(a) If Landlord shall elect to terminate this Lease or obtain possession of the Premises by reason of any default of Tenant, and a Leasehold Mortgagee shall have delivered the Nullification Notice set forth in Subsection 18.2.8, the specified date for the termination of this Lease as fixed by Landlord in its Default Notice or for the obtaining of possession shall be extended for a period of six (6) months, provided that such Leasehold Mortgagee shall, during such six (6) month period:

(1) pay or cause to be paid the monetary obligations of Tenant under this Lease as the same become due, and continue its good faith efforts to perform all of Tenant's other obligations under this Lease, excepting (i) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant's interest in this Lease or the Premises junior in priority to the lien of the mortgage held by such Leasehold Mortgagee and (ii) past non-monetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee (including by reason of a bankruptcy stay or if possession of the Premises is required in order to cure such default); *provided* that Leasehold Mortgagee may offset amounts it expends to cure any defaults by Landlord under this Lease; and

(2) if not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with due diligence.

(b) If at the end of such six (6) month period such Leasehold Mortgagee is complying with Subsection 18.2.9(a) then this Lease shall not then terminate, and the time for completion by such Leasehold Mortgagee of its proceedings shall continue so long as such Leasehold Mortgagee

is enjoined or stayed and thereafter for so long as such Leasehold Mortgagee proceeds to complete steps to acquire or sell Lessee's interest in this Lease by foreclosure of the Leasehold Mortgage or by other appropriate means with reasonable diligence. Nothing in this Subsection 18.2.9, however, shall be construed to extend this Lease beyond the original term thereof or to require a Leasehold Mortgagee to continue such foreclosure proceedings after the default has been cured. If the default shall be cured and the Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

(c) If a Leasehold Mortgagee is complying with Subsection 18.2.9(a) of this Section, then upon the acquisition of Tenant's estate herein by such Leasehold Mortgagee or its designee or any other purchaser at a foreclosure sale or otherwise (and the discharge of any lien, charge or encumbrance against the Tenant's interest in this Lease or the demised premises which is junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee and which the Tenant is obligated to satisfy and discharge by reason of the terms of this Lease) this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

18.2.10 *Receiver.* A Leasehold Mortgagee shall have the right after institution of foreclosure proceedings to apply to the court for the appointment of a receiver of the Premises. In the event foreclosure proceedings have been instituted, any money held by Landlord which becomes payable to Tenant shall be payable upon demand to such Leasehold Mortgagee as the interest of such Leasehold Mortgagee may appear when the same so becomes payable to Tenant. If Landlord shall at any time be in doubt as to whether such monies are payable to such Leasehold Mortgagee or to Tenant, Landlord may pay such monies into court and file an appropriate action of interpleader in which event all of Landlord's costs and expenses (including attorneys' fees) shall first be paid out of the proceeds so deposited.

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18.2.11 *No Assumption.* For purposes of this Subsection 18.2.11, the making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or of the leasehold estate hereby created, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created, so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder, but the purchaser at any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignee or transferee of this Lease and of the leasehold estate hereby created under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage, shall be deemed to be an assignee or transferee within the meaning of this Subsection 18.2.11 and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder arising and accruing from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of the leasehold estate.

18.2.12 *Successive Sales.* Any Leasehold Mortgagee or other acquiror of the leasehold estate of Tenant pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings may, upon acquiring Tenant's leasehold estate, without further consent of Landlord, sell and assign the leasehold estate so acquired on such terms and to such persons or organizations as are acceptable to such Leasehold Mortgagee or acquiror and thereafter be relieved of all obligations under this Lease; provided that such assignee has delivered to Landlord its written agreement to be bound by all of the provisions of this Lease from and after the date of such assignment.

18.2.13 *Leasehold Mortgagee Need Not Cure Specified Defaults.* Nothing herein contained shall require any Leasehold Mortgagee or its designee as a condition to the exercise of its rights hereunder to cure any default of Tenant not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee.

18.2.14 *Lease Proceedings.* Landlord shall give each Leasehold Mortgagee that has provided Landlord with notice of its interest and address, prompt notice of any arbitration or legal proceedings between Landlord and Tenant involving this Lease. Each Leasehold Mortgagee shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the parties hereto do hereby consent to such intervention. In the event that any Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, Landlord shall give such Leasehold Mortgagee notice of, and a copy of any award or decision made in any such proceedings, which shall be binding on all Leasehold Mortgagees not intervening after receipt of notice of arbitration. Tenant agrees that each Leasehold Mortgagee shall also have the right to intervene in, and be made a party to, any such proceedings.

18.2.15 *Future Leasehold Mortgage: Amendment of Lease.*

(a) Notwithstanding anything in this Lease to the contrary, each Leasehold Mortgagee shall have the right (if it has such right under its loan documents) to restrict, limit or prohibit the execution of any other Leasehold Mortgage junior in priority to the lien of such senior Leasehold Mortgage, or, in the event of the execution of any such junior Leasehold Mortgage, to accelerate or increase the interest rate under the indebtedness secured by such senior Leasehold Mortgage; and

(b) In the event of a Leasehold Mortgage (each, a "*Successor Leasehold Mortgage*") the proceeds of which are used to pay off in its entirety the indebtedness secured by any existing Leasehold Mortgage (each such existing Leasehold Mortgage, an "*Initial Leasehold Mortgage*"), then the Successor Leasehold Mortgage shall be deemed to have succeeded to the position and all of the rights and priorities of the mortgagee under the Initial Leasehold

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Mortgage with respect to the mortgagor under the Initial Leasehold Mortgage and with respect to third parties.

18.2.16 *Certificate.* Landlord shall, without charge, at any time and from time to time within ten (10) business days after written request of Tenant to do so, certify by written instrument duly executed and acknowledged to any Leasehold Mortgagee or purchaser, or proposed Leasehold Mortgagee or proposed purchaser, or any other person, firm or corporation specified in such request: (1) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (2) as to the validity and force and effect of this Lease, in accordance with its tenor; (3) as to the existence of any default hereunder or any event which with the passage of time or notice would constitute a default hereunder; (4) as to the existence of any offsets, claims, counterclaims or defenses hereto on the part of Landlord or, to Landlord's knowledge, on the part of Tenant; (5) as to the commencement and expiration dates of this Lease; and (6) as to any other matters as may be reasonably so requested. Any such certificate

may be relied upon by Tenant and any other person, firm or corporation to whom the same maybe exhibited or delivered, and the contents of such certificate shall be binding on Landlord.

18.2.17 *Nominee.* Any acquisition by a Leasehold Mortgagee of the leasehold estate under this Lease, or any rights or privileges thereunder may be taken in the name of such Leasehold Mortgagee or in the name of any nominee or designee selected by it.

18.2.18 *New Lease.* In the event of the termination of this Lease as a result of Tenant's default prior to the expiration of the term, or in the event of a rejection by Landlord or Tenant of this Lease under Chapter 11 of the Bankruptcy Code, Landlord shall, in addition to providing the notices of default and termination as required by this Lease, provide each Leasehold Mortgagee with written notice that the Lease has been terminated or that Landlord has filed a request with the Bankruptcy Court seeking to reject the Lease, together with a statement of all sums which would at that time be due under this Lease but for such termination or rejection, and of all other defaults, if any, then known to Landlord. Upon any request of the Leasehold Mortgagee, or its designee, Landlord agrees to enter into a new lease ("*New Lease*") of the Premises with such Leasehold Mortgagee or its designee for the remainder of the term of this Lease, effective as of the date of termination or rejection, as the case may be, at the Rent, and upon the terms, covenants and conditions (including all transfer rights, but excluding requirements which are not applicable or which have already been fulfilled) of this Lease; *provided, however*, that (i) the Leasehold Mortgagee whose lien upon the Premises is superior to the lien of any other Leasehold Mortgage (the "*Senior Leasehold Mortgage*") shall have the right to give notice of its intent to enter into a New Lease to the Landlord for a period of 60 days from its receipt of the notice referred to in the first sentence of this Section 18.2.18 and (ii) if the Senior Leasehold Mortgagee does not exercise its right to enter into the New Lease during this 60-day period; the Leasehold Mortgagee whose lien upon the Premises is superior to the lien of any other Leasehold Mortgage (other than the Senior Leasehold Mortgagee) shall have the right to give notice of its intent to enter into a New Lease to the Landlord during the remainder of the period(s) specified below; and *provided further, however*,

(a) Such Leasehold Mortgagee shall make written request upon Landlord for such New Lease at the later of (1) within one hundred (100) days after the date such Leasehold Mortgagee receives Landlord's notice of termination or rejection of this Lease given pursuant to this Subsection 18.2.18; or (2) within forty-five (45) days after the actual termination of the Lease as same may have been extended by Subsection 18.2.18 hereof.

(b) Such Leasehold Mortgagee or its designee shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease, any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such

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termination and, in addition thereto, all reasonable expenses, including reasonable attorneys' fees, court costs and costs and disbursements which Landlord shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by Landlord from or on behalf of Tenant. Upon the execution of such New Lease, Landlord shall allow to Tenant named therein as an offset against the sums otherwise due under this Subsection 18.2.18 or under the New Lease, an amount equal to the net income derived by Landlord from the Premises during the period from the effective date of termination of this Lease to the date of the beginning of the lease term under the New Lease. In the event of a controversy as to the amount to be paid to Landlord pursuant to this Section 18.2, the payment obligation shall be satisfied if Landlord shall be paid the amount not in controversy, and such Leasehold Mortgagee or its designee shall agree to pay any additional sum ultimately determined to be due.

(c) Such Leasehold Mortgagee or its designee shall agree to remedy any of Tenant's defaults of which said Leasehold Mortgagee was notified by Landlord's notice of termination or rejection and which are reasonably susceptible of being so cured by such Leasehold Mortgagee or its designee.

(d) The Tenant under such New Lease shall have the same right, title and interest in and to the Premises and buildings and improvements thereon as Tenant under this Lease. Any holder of any such lien, charge or encumbrance or sublease shall execute such instruments of non-disturbance and/or attornment as the tenant under the New Lease may at any time require.

(e) The tenant under any New Lease shall be liable to perform the obligations imposed on the Tenant by such New Lease only for and during the period such person has ownership of the Premises.

(f) If more than one (1) Leasehold Mortgagee shall request a New Lease pursuant to this Section 18.3, Landlord shall enter into such New Lease with the Leasehold Mortgagee whose mortgage is in the first lien position, or with the designee of such Leasehold Mortgagee;

(g) Concurrently with the execution and delivery of any New Lease, Landlord shall assign to the tenant named therein all of the right, title and interest in and to moneys (including insurance proceeds and condemnation awards), if any, then held by and payable by Landlord which Tenant would have been entitled to receive but for the termination of the Lease. Upon the execution of any New Lease, the tenant named therein shall be entitled to any rent received under any sublease in effect during the period from the date of termination of the Lease to the date of execution of such New Lease.

SECTION 19
[INTENTIONALLY OMITTED]

SECTION 20
RIGHT OF ACCESS

Landlord and its authorized agents and representatives shall be entitled to enter the Premises immediately in the case of an emergency or with reasonable notice for the purpose of observing, posting or keeping posted thereon notices provided for hereunder, and such other notices as Landlord may deem reasonably necessary or appropriate; for the purpose of inspecting the Premises; for the purpose of exhibiting the Premises to prospective purchasers or lessees; and for the purpose of performing any work upon the Premises which Landlord may elect or be required to make. In any such

case, Landlord and its agents and representatives shall not unreasonably interfere with Tenant's operations at the Premises.

SECTION 21 ESTOPPEL CERTIFICATE

Tenant agrees that within ten (10) business days of any demand therefor by Landlord, Tenant will execute and deliver to Landlord a certificate stating that this Lease is in full force and effect without amendment, or if amended attaching a copy thereof to the certificate, the date to which all rentals have been paid, any defaults or offsets claimed by Tenant and such other information concerning the Lease, the Premises or Tenant as Landlord may request. Landlord will provide a similar document to Tenant upon request by Tenant within ten (10) business days after request.

SECTION 22 EXPENDITURES

22.1 Whenever under any provision of this Lease, Tenant shall be obligated to make any payment or expenditure, or to do any act or thing, or to incur any liability whatsoever, and Tenant fails, refuses or neglects to perform as herein required after notice and an opportunity to cure (which shall be deemed to be thirty (30) days unless provided for specifically herein), Landlord shall be entitled, but shall not be obligated, to make any such payment or to do any such act or thing, or to incur any such liability, all on behalf of and at the cost and for the account of Tenant. In such event, the amount thereof with interest thereon at the Default Rate, shall constitute and be collectable as additional rent on demand.

22.2 Whenever under any provision of this Lease, Landlord shall be obligated to make any payment or expenditure, or to do any act or thing, or to incur any liability whatsoever, and Landlord fails, refuses or neglects to perform as herein required after notice and an opportunity to cure (which shall be deemed to be thirty (30) days unless provided for specifically herein), Tenant shall be entitled, but shall not be obligated, to make any such payment or to do any such act or thing, or to incur any such liability, all on behalf of and at the cost and for the account of Landlord. In such event, the amount thereof with interest thereon at the Default Rate, shall be collectable on demand.

SECTION 23 DEFAULT

23.1 Tenant shall be in default of this Lease if:

23.1.1 Tenant shall fail to make timely and full payment of any sum of money required to be paid hereunder and such failure continues for ten (10) days after written notice thereof from Landlord;

23.1.2 Tenant shall fail to perform any other term, covenant or condition of Tenant contained in this Lease, and such failure continues for thirty (30) days after written notice thereof from Landlord; provided, however, that if such failure is impossible to correct within thirty (30) days Tenant shall not be deemed in default if Tenant commences correction within said thirty (30) day period, and diligently pursues such correction to completion;

23.1.3 Tenant should vacate or abandon the Premises or cease operations during the Lease Term;

23.1.4 There is filed any petition in bankruptcy or Tenant is adjudicated a bankrupt or insolvent, or there is appointed a receiver or trustee to take possession of Tenant or of all or substantially all of the assets of Tenant, or there is a general assignment by Tenant for the benefit of creditors, or

any action is taken by or against Tenant under any state of federal insolvency or bankruptcy act, or any similar law now or hereafter in effect; or

23.2 In the event of a default, in addition to any other rights or remedies provided for herein or at law or in equity, Landlord, at its sole option, shall have the following rights:

23.2.1 The right to declare the Lease Term ended and to re-enter the Premises and take possession thereof, and to terminate all of the rights of Tenant in and to the Premises;

23.2.2 Pursuant to its rights of re-entry, Landlord may, but shall not be obligated to (i) remove all persons from the Premises, (ii) remove all property therefrom, and (iii) enforce any rights Landlord may have against said property or store the same in any warehouse or elsewhere at the cost and for the account of Tenant. Tenant agrees to hold Landlord free and harmless of any liability whatsoever for the removal and/or storage of any such property, whether of Tenant or any third party whomsoever, except for damage caused by the willful misconduct or gross negligence of Landlord, its agents or subcontractors.

23.2.3 Anything contained herein to the contrary notwithstanding, Landlord shall not be deemed to have terminated this Lease or the liability of Tenant to pay any rent or other sum of money accruing hereunder, by any such re-entry, or by any action in unlawful detainer or otherwise to obtain possession of the Premises, unless Landlord shall specifically notify Tenant in writing that it has so elected to terminate this Lease.

23.2.4 In any action brought by Landlord to enforce any of its rights under or arising from this Lease, Landlord shall be entitled to receive its reasonable costs and legal expenses, including reasonable attorneys' fees, whether such action is prosecuted to judgment or not.

23.4 The waiver by Landlord of any breach of this Lease by Tenant shall not be a waiver of any preceding or subsequent breach of this Lease by Tenant. The subsequent acceptance of rent or any other payment hereunder by Landlord shall not be construed to be a waiver of any preceding breach of this Lease by Tenant. No payment by Tenant or receipt by Landlord of a lesser amount than the rent herein provided shall be deemed to be other than on account of the earliest rent due and payable hereunder.

SECTION 24 MISCELLANEOUS

24.1 Tenant, upon paying the rentals and other payments herein required and upon performance of all of the terms, covenants and conditions of this Lease on its part to be kept, may quietly have, hold and enjoy the Premises during the Lease Term without any disturbance from Landlord or from any other person claiming through Landlord, except as expressly provided otherwise in this Lease.

24.2 In the event of any sale or exchange of the Premises by Landlord, Landlord shall be, and is, hereby relieved of all liability under and all of its covenants and obligations contained in or derived from this Lease from and after the date of sale or exchange. Tenant agrees to attorn to such purchaser or transferee, provided that such purchaser or transferee agrees to be bound as Landlord under all of the terms and conditions of this Lease. Any sale of the Premises by Landlord shall be subject to this Lease.

24.3 It is agreed that in the event Landlord fails or refuses to perform any of the provisions, covenants or conditions of this Lease, Tenant, prior to exercising any right or remedy Tenant may have against Landlord, shall give written notice to Landlord of such default, specifying in said notice the default with which Landlord is charged and Landlord shall not be deemed in default if the same is cured within thirty (30) days of receipt of said notice. Notwithstanding any other provision hereof, Tenant agrees that if the default is of such a nature that the same can be rectified or cured by

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Landlord, but cannot with reasonable diligence be rectified or cured within that thirty (30) day period, then such default shall be deemed to be rectified or cured if Landlord within that thirty (30) day period shall commence the rectification and curing thereof and shall continue thereafter with all due diligence to cause such rectification and curing to proceed.

24.4 Neither party shall be in breach of this Lease if it fails to perform as required hereunder due to labor disputes, civil commotion, war, warlike operation, sabotage, governmental regulations or control, fire or other casualty, inability to obtain any materials, or other causes beyond such party's reasonable control (financial inability excepted); provided, however, that nothing contained herein shall excuse Tenant from the prompt payment of any rent or charge required of Tenant hereunder.

24.5 Any and all notices and demands required or desired to be given hereunder shall be in writing and shall be validly given or made (and effective) if served personally, delivered by a nationally recognized overnight courier service, or faxed and deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, to the following addresses:

| | |
|-----------------|---|
| If to Landlord: | Wynn Resort Holdings, LLC 3145 Las Vegas Boulevard South Las Vegas, Nevada 89109 Attention: Legal Department Telephone: 702-733-4444 Facsimile: 702-791-0167 |
|-----------------|---|

| | |
|---------------|---|
| If to Tenant: | Wynn Las Vegas, LLC 3145 Las Vegas Boulevard South Las Vegas, Nevada 89109 Attention: Legal Department Telephone: 702-733-4556 Facsimile: 702-733-4596 |
|---------------|---|

Either party may change its address for the purpose of receiving notices by providing written notice to the other.

24.6 The various rights, options, elections and remedies of Landlord contained in this Lease shall be cumulative and no one of them shall be construed as exclusive of any other, or of any right, priority or remedy allowed or provided for by law and not expressly waived in this Lease.

24.7 The terms, provisions, covenants and conditions contained in this Lease shall apply to, bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as permitted in Section 17 hereof.

24.8 If any term, covenant or condition of this Lease, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all terms, covenants and conditions of this Lease, and all applications thereof, not held invalid, void or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

24.9 Time is of the essence of this Lease and all of the terms, covenants and conditions hereof.

24.10 This Lease contains the entire agreement between the parties and cannot be changed or terminated orally.

24.11 Nothing contained herein shall be deemed to create any partnership, joint venture, agency or other relationship between Landlord and Tenant other than the relationship of landlord and tenant.

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24.12 The captions are descriptive only and for convenience in reference to this Lease and in no way whatsoever define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

24.13 The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Lease. Each party hereto consents to, and waives any objection to, Clark County, Nevada as the proper and exclusive venue for any disputes arising out of or relating to this Lease or any alleged breach thereof.

24.14 In the event Tenant now or hereafter shall consist of more than one person, firm, corporation or trust, then and in such event, all such persons, firms, corporations or trusts shall be jointly and severally liable as Tenant hereunder.

24.15 This Lease may not be recorded without Landlord's prior written consent. However, the parties agree to record a Memorandum of Lease in the form attached hereto as Exhibit "C". A Memorandum of Termination of Lease in the form attached hereto as Exhibit "D" shall also be executed by the parties, shall be held by Landlord, and shall be recorded by Landlord upon termination of the Lease.

24.16 All necessary actions have been taken under the parties' organizational documents to authorize the individuals signing this Lease on behalf of the respective parties to do so.

24.17 The prevailing party in any action regarding this Lease shall be entitled to receive its costs and legal expenses including reasonable attorneys' fees, whether such action is prosecuted to judgment or not. The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim of injury or damage.

24.18 Landlord and Tenant each represent and warrant to the other that they have not entered into any written contractual arrangement with, or promised to pay any broker's fee, finder's fee, commission or other similar compensation to, or otherwise agreed to compensate, any real estate agent or broker in connection with this transaction. Landlord and Tenant each agree to indemnify, defend, save and hold the other harmless from and against all loss, cost and expense incurred by reason of the breach of the foregoing representation and warranty arising from any claim for compensation founded upon or as a result of acts asserted to have been performed on their respective behalf. Such indemnification obligation shall survive any termination of the Lease.

24.19 This Lease may be executed in one or more counterparts, all of which executed counterparts shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this document to physically form one document.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above-written.

"Landlord"

"Tenant"

Wynn Resorts Holdings, LLC
a Nevada limited liability company

Wynn Las Vegas, LLC
a Nevada limited liability company

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts Holdings, LLC
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: Valvino Lamore, LLC
a Nevada limited liability company,
its sole member

By: _____
Name: _____
Title: _____

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: _____
Name: _____
Title: _____

PALO, LLC
a Delaware limited liability company

By: Wynn Resorts Holdings, LLC
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC

a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: _____

Name: _____

Title: _____

EXHIBIT "A"
Tenant's Property

EXHIBIT "B-1"
Holdings' Property

EXHIBIT "B-2"
Palo's Property

EXHIBIT "C"

APN 162-16-610-016, 162-16-610-007
and 162-16-610-006,
A portion of 162-16-511-009
162-16-510-007 through 018, inclusive,
162-16-510-021 through 022, inclusive,
162-16-510-024 through 025, inclusive,
162-16-510-028 through 031, inclusive,
162-16-610-028 through 030, inclusive,
162-16-610-021 through 022, inclusive,
162-16-610-017 through 019, inclusive,
162-16-610-008 through 015, inclusive, and
162-16-611-001 through 014, inclusive
RECORDING REQUESTED BY,
MAIL TAX STATEMENTS TO,
AND WHEN RECORDED
MAIL THIS INSTRUMENT TO:

WYNN RESORTS HOLDINGS, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attention: Legal Department

MEMORANDUM OF LEASE

Notice is hereby given that Wynn Resorts Holdings, LLC, a Nevada limited liability company and Palo, LLC, a Delaware limited liability company (collectively "Landlord"), and Wynn Las Vegas, LLC, a Nevada limited liability company ("Tenant"), have entered into a Golf Course Lease Agreement dated October 21, 2002 ("Lease") by the terms of which Landlord has leased to Tenant the real property described on Exhibit "A" hereto for a term of thirty (30) years commencing October 21, 2002. Under the terms of the Lease, Tenant covenants not to use the Premises for any purpose other than a golf course and related and ancillary uses, including a clubhouse, restaurant and retail space. Reference is made to the Lease for further particulars.

[Signature Page Follows]

IN WITNESS WHEREOF, we have set forth our hands as of the 21st day of October, 2002.

"Landlord"

"Tenant"

Wynn Resorts Holdings, LLC
a Nevada limited liability company

Wynn Las Vegas, LLC
a Nevada limited liability company

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts Holdings, LLC
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: Valvino Lamore, LLC
a Nevada limited liability company,
its sole member

By: /s/ MARC H. RUBINSTEIN

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

Name: Marc H. Rubinstein
Title: Senior Vice President, General Counsel &
Secretary

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein
Title: Senior Vice President, General Counsel &
Secretary

PALO, LLC

a Delaware limited liability company

By: Wynn Resorts Holdings, LLC
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein
Title: Senior Vice President, General Counsel &
Secretary

SCHEDULE 1

1. *First Deed of Trust.* Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by Palo, LLC, a Delaware limited liability company, as Trustor, to Nevada Title Company, a Nevada corporation, as Trustee, for the benefit of Deutsche Bank Trust Company Americas, in its capacity as Administrative Agent for the benefit of the Banks, as Beneficiary; and

2. *Second Deed of Trust.* Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by Palo, LLC, a Delaware limited liability company, as Trustor, to Nevada Title Company, a Nevada corporation, as Trustee, for the benefit of Wells Fargo Bank, National Association, in its capacity as the Mortgage Notes Indenture Trustee, as Beneficiary.

3. *First Deed of Trust.* Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by Wynn Resorts Holdings, LLC, a Nevada limited liability company, as Trustor, to Nevada Title Company, a Nevada corporation, as Trustee, for the benefit of Deutsche Bank Trust Company Americas, in its capacity as Administrative Agent for the benefit of the Banks, as Beneficiary; and

4. *Second Deed of Trust.* Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by Wynn Resorts Holdings, LLC, a Nevada limited liability company, as Trustor, to Nevada Title Company, a Nevada corporation, as Trustee, for the benefit of Wells Fargo Bank, National Association, in its capacity as the Mortgage Notes Indenture Trustee, as Beneficiary.

QuickLinks

[Exhibit 10.4](#)

[GOLF COURSE LEASE between WYNN RESORTS HOLDINGS, LLC, and PALO, LLC, Landlord and WYNN LAS VEGAS, LLC, Tenant Dated October 21, 2002](#)

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DRIVING RANGE LEASE

between

VALVINO LAMORE, LLC,

Landlord

and

WYNN LAS VEGAS, LLC,

Tenant

Dated October 21, 2002

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DRIVING RANGE LEASE

THIS DRIVING RANGE LEASE (this "Lease") is entered into as of the 21st day of October, 2002 by and between **Valvino Lamore, LLC**, a Nevada limited liability company ("Landlord"), and **Wynn Las Vegas, LLC**, a Nevada limited liability company ("Tenant").

WITNESSETH:

WHEREAS, Tenant owns good and marketable title in and to the parcel of real property described on Exhibit A annexed hereto ("Tenant's Property") upon which Tenant intends to construct and develop a first class luxury hotel and destination casino resort (the "Hotel"); and

WHEREAS, Landlord owns good and marketable title in and to the parcel of real property adjacent to Tenant's Property and described on Exhibit B annexed hereto (the "Landlord's Property"); and

WHEREAS, Tenant has entered into a lease to lease real property (the "Golf Course Property") adjacent to the Hotel and the Landlord's Property upon which Tenant intends to construct a golf course, clubhouse and related improvements (the "Golf Facilities"); and

WHEREAS, Landlord desires to lease to Tenant and Tenant desires to lease from Landlord a portion of Landlord's Property, as shown on Exhibit C annexed hereto (the "Premises") for the purpose of constructing and operating a driving range on the Premises ("Driving Range"), to be operated as an amenity to the Hotel and the Golf Course which Driving Range will include all structures and facilities located or to be located on the Premises.

NOW, THEREFORE, in consideration of the terms, covenants, conditions and provisions hereinafter set forth and other good and valuable consideration, it is hereby mutually agreed by and between Landlord and Tenant as follows:

SECTION 1 DEMISED PREMISES

1.1 Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises, to have and to hold the Premises, together with all and singular improvements, appurtenances, rights, privileges, and easements thereunto appertaining during the Lease Term and subject to the terms and conditions herein contained.

1.2 Tenant shall construct and maintain the Driving Range at a standard consistent with a typical first class, driving range. In addition, Landlord and Tenant agree to cooperate with respect to fulfilling any and all conditions of Clark County, the State of Nevada, and any other governmental or regulatory entity having jurisdiction over the Premises and the construction and operation of the Driving Range.

SECTION 2 TERM

2.1 The term of the Lease (the "Lease Term") and payment of Rent (as defined in Section 3.1 hereof) shall commence (the "Commencement Date") on October 21, 2002, and shall continue for a period of thirty (30) years thereafter (the "Initial Lease Term") unless terminated earlier as elsewhere herein provided. Following the earlier to occur of the following (the "Lien Release Date") (x) the release of Landlord's Property from the lien of that certain First Trust Deed (as defined and described on *Schedule I* attached hereto) and of that certain Second Trust Deed (as defined and described on *Schedule I* attached hereto) (collectively, the "Deeds of Trust") or (y) the release of the Golf Course Property and Golf Facilities from the liens of the deeds of trust described on *Schedule II* (collectively,

the "Golf Course Deeds of Trust"), Tenant may terminate this Lease on thirty (30) days' written notice to Landlord.

2.2 In the event Tenant is not then in default of its obligations hereunder beyond any applicable cure period and this Lease has not previously been terminated, after the expiration of the Initial Lease Term, the Lease Term shall continue on a month-to-month basis, upon the same terms and conditions as are set forth in this Lease. At any time during any such extension of the Initial Lease Term, either party may terminate the Lease by delivering written notice no later than ten (10) days prior to the expiration of any thirty (30) day extension period. In the event that such notice is not given within such time period, the Lease shall continue in effect.

2.3 Upon the expiration or sooner termination of this Lease, Tenant shall, at its sole cost and expense, within fifteen (15) days after receipt of written notice, thereupon surrender the Premises to Landlord in the same condition as on the date of completion of the Tenant's Work. All personal property of Tenant relating to the Driving Range and to the operation of the Premises as a Driving Range shall become the property of Landlord on termination of this Lease.

SECTION 3 RENT

3.1 During the Lease Term, Tenant shall pay as monthly rent for the Premises the sum of One Dollar (\$1.00) per month (the "Rent"). The Rent shall be due and payable in advance on the first (1st) day of each month.

3.2 All rents and other monies required to be paid by Tenant hereunder shall be paid to Landlord without deduction or offset, prior notice or demand, in lawful money of the United States of America, at the address of Landlord and set forth in Section 24.5 or at such other place as Landlord may from time to time designate in writing.

3.3 If Tenant fails to pay, when due and payable, any Rent or any other amounts or charges to be paid by Tenant hereunder within ten (10) days after written notice from Landlord that the amount is past due, such unpaid amounts shall bear interest from the due date thereof to the date of payment at a rate equal to the prime rate of interest last ascertained by the Commissioner of Financial Institutions of the State of Nevada pursuant to Nevada Revised Statutes 99.040, plus five (5) percentage points (the "Default Rate").

SECTION 4 CONSTRUCTION OF THE DRIVING RANGE

4.1 Tenant shall be responsible, at its sole cost, for constructing and maintaining the Driving Range ("Tenant's Work") in accordance with the conceptual plans and specifications which have been reviewed and approved by Landlord. If requested by Landlord, Tenant shall use only union labor to perform Tenant's Work. In addition, Tenant agrees that material modifications to such Plans shall be subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld or delayed; provided, however, that Landlord shall be deemed to have approved any and all such Plan modifications if such Plan modifications are approved by the lender or lenders of Tenant financing the construction of the Tenant's Work.

4.2 Tenant shall be solely responsible for (i) securing all necessary building, zoning and other governmental permits, approvals and waivers, as necessary, to construct the Driving Range and (ii) satisfying any offsite improvement requirements.

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SECTION 5 FINANCING

Landlord may obtain loans from time to time from third parties to finance acquisition and development of Landlord's and its Affiliates' real property, including the Premises. For purposes of this Lease, an "Affiliate" of a party shall mean any person or entity (a) that is owned or controlled by the party, (b) that owns or controls the party, (c) that is owned or controlled by a person or entity that owns or controls the party, (d) that owns or controls an Affiliate of the party, or (e) that is owned or controlled by an Affiliate of the party. As used in this definition, the words "owns" or "owned" refer to the ownership of twenty percent (20%) or more of the equity interest in the person or entity so owned, regardless of the manner of ownership. Also, as used in this definition, ownership or control may be direct or indirect. By its execution of this Lease, Tenant (i) acknowledges and consents to Landlord's collateral assignment of its rights hereunder to its and its Affiliates' lenders, including the beneficiaries under the Deeds of Trust (collectively, "Lenders"); (ii) acknowledges and affirms Tenant's agreement to attorn performance obligations to the benefit of Lenders in the same manner as it would with respect to Landlord if any such Lender exercises its rights under any collateral assignment from Landlord; and (iii) agrees to execute such separate consents and acknowledgements to and of Landlord's collateral assignment of this Lease to such third party Lenders. A Lender or its successor which acquires the Premises (through foreclosure on Landlord's Property or deed in lieu of foreclosure) shall not disturb Tenant's lease of the Premises and shall respect Tenant's rights under this Lease.

SECTION 6 USE OF PREMISES; EXCLUSIVITY

6.1 The Premises are leased to Tenant solely for the purpose of developing, constructing, operating and maintaining the Driving Range and related and ancillary uses. Tenant shall not use or suffer to be used the Premises, or any portion thereof, for any other purpose or purposes whatsoever, without Landlord's prior written consent, which consent shall not be unreasonably withheld.

6.2 Tenant shall, at all times during the Lease Term, comply with all governmental rules, regulations, ordinances, statutes and laws, now or hereafter in effect pertaining to the Driving Range, the Premises or Tenant's use thereof.

6.3 Tenant shall not use the Premises for the generation, storage, manufacture, production, releasing, discharge, or disposal or any Hazardous Substance (defined below) or allow or suffer any other entity or person to do so. Provided, however, that Tenant shall be permitted to utilize customary fertilizers, pesticides, and other similar landscaping chemicals to the extent such use is consistent with any governmental regulations governing such use. Except as otherwise set forth herein, "Hazardous Substance" shall mean any flammable or related material and any other substance or material defined or designated as a hazardous or toxic substance, material or waste by a governmental law, order, regulation or ordinance presently in effect or as amended or promulgated in the future and shall include, without limitation: (a) those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances" or "solid waste" in CERCLA, RCRA, and the Hazardous Materials Transportation Act, 40 U.S.C. §§ 1801 *et seq.*, and in the regulations promulgated pursuant to said laws; (b) those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto); (c) such other substances, materials and wastes which are or become regulated under applicable local, state or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state or local laws or regulations; and (d) any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls or (iv) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* (33 U.S.C. 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. 1317).

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6.3.1 Tenant shall protect, indemnify and hold harmless Landlord, its partners, members, managers, employees, agents, successors and assigns, the Premises and the Driving Range in general from and against any and all claims, losses, damages, costs, expenses, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind (including, without limitation, attorneys' fees and costs at trial and on appeal) directly or indirectly arising out of or attributable to, in whole or in part, the breach of any of the covenants, representations and warranties of this Section 6.3, or the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, from or about the Premises. The foregoing indemnity shall further apply to any residual contamination on, under, from or about the Premises, or the property in general, or affecting any natural resources arising in connection with the use, generation, manufacture, production, handling, storage, transport, discharge or disposal of any such Hazardous Substance, and irrespective of whether any of such activities were or will be undertaken in accordance with environmental laws or other applicable laws, regulations, codes and ordinances.

6.3.2 Landlord reserves the right to request appropriate governmental officials to inspect the Premises, from time to time, in order to determine Tenant's compliance herewith.

SECTION 7 ALTERATIONS AND IMPROVEMENTS

7.1 Following the completion of the Tenant's Work, Tenant shall not make any material alterations, improvements or changes (specifically excluding repairs and maintenance work) ("Improvements") in or to the Premises without the prior written approval of Landlord, which approval shall not be unreasonably withheld or delayed. Any Improvements shall be at the sole cost and expense of Tenant. Landlord may require Tenant, at Tenant's sole cost and expense, to furnish a bond, or other security satisfactory to Landlord, to assure diligent and faithful performance of any work to be performed by Tenant. Any Improvements shall be made promptly, in good and workmanlike manner by duly licensed union contractors and in compliance with all insurance requirements and with all applicable permits, authorizations, building regulations, zoning laws and all other governmental rules, regulations, ordinances, statutes and laws, now or hereafter in effect, pertaining to the Premises or Tenant's use thereof.

7.2 Prior to making any Improvements in or to the Premises, Tenant shall notify Landlord ten (10) days in advance in order that Landlord may post and maintain on the Premises and file any notices of nonresponsibility provided for under applicable law. Tenant agrees that Landlord shall have the right to enter upon the Premises to post notices of nonresponsibility.

SECTION 8 UTILITIES

Tenant shall be responsible for the cost and expense of installing all utilities on the Premises. Tenant shall be responsible for the payment of, and shall promptly pay when due, all utility completion fees, connection fees and all utility services (including without limitation, gas, water, electricity, telephone and sanitary sewer) used, rendered or supplied to or in connection with the Premises or the construction, operation and maintenance of the Driving Range during the Lease Term.

SECTION 9 TAXES

9.1 Tenant will, at Tenant's own cost and expense, bear, pay, and discharge prior to delinquency, all real estate taxes, assessments, sewer rents, water rents and charges, duties, impositions, license and permit fees, charges for public utilities of any kind, payments and other charges of every kind and

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nature whatsoever, ordinary or extraordinary, foreseen or unforeseen, general or special (all of which are hereinafter collectively referred to as "Impositions"), which shall, pursuant to present or future law or otherwise, during the Lease Term, have been or be levied, charged, assessed, or imposed upon, or become due and payable out of or for, or become or have become a lien on the Premises, the Driving Range and any Improvements; it being the intention of the parties hereto that the rents reserved herein shall be received and enjoyed by Landlord as a net sum free from all such Impositions. Provided, however, that for such part of the Lease Term, if any, as the Premises is not separately assessed but is included as part of Landlord's Property for computation of real property taxes and assessments, or is separately assessed but the taxes attributable thereto are billed to Landlord, then Tenant's share of taxes shall be an amount equal to twenty two and one-half percent (22.5%) of the total assessments for Landlord's Property; provided further that following the release of the liens of the Deeds of Trust, Landlord and Tenant shall either create a tax parcel for the Driving Range separate from the remainder of Landlord's Property, or equitably adjust the percentage of property taxes payable by Tenant for the Premises following adjustments in assessments for Landlord's Property attributable to construction or demolition activity on Landlord's Property other than the Driving Range. All taxes payable by Tenant hereunder shall be paid to Landlord, as the case may be, on the later of (a) ten (10) days before such tax becomes delinquent or (b) ten (10) days after Landlord, or the taxing authority, notifies Tenant that a payment is due. Subject to any reimbursement due from Tenant as provided herein, Landlord shall be responsible for timely payment of all assessments on Landlord's Property. In the event Landlord fails to timely pay any such assessment, Tenant may, but is not obligated to pay such assessment directly to the taxing authority and pursue reimbursement of Landlord's share of such assessment from Landlord. Upon the termination of this Lease, Landlord shall promptly reimburse Tenant for any Impositions paid by Tenant attributable to the period of time following such termination. All Impositions shall be prorated on the basis of a 365-day year.

9.2 Tenant shall be liable for and shall pay before delinquency (and, upon five (5) days of written demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of the payment thereof) all Impositions of whatsoever kind or nature, and penalties and interest thereon, if any, levied against any personal property of Tenant of whatsoever kind and to whomsoever belonging situated or installed in or upon the Premises, whether or not affixed to the realty.

9.3 Tenant shall pay when due all taxes, assessments or fees for which Tenant is liable and which arise directly or indirectly from Tenant's operations at the Premises including without limitation all sales and use taxes. Within five (5) days of written demand from Landlord, Tenant shall furnish Landlord evidence satisfactory to Landlord of the timely payment of any such tax, assessment or fee.

9.4 Whenever Landlord shall receive any statement or bill for any tax, payable in whole or in part by Tenant as additional rent, or shall otherwise be required to make any payment on account thereof, except as otherwise provided herein, Tenant shall pay the amount due hereunder within ten (10) days after demand therefor accompanied by delivery to Tenant of a copy of such tax statement, if any.

SECTION 10 [INTENTIONALLY OMITTED]

SECTION 11 MAINTENANCE AND REPAIRS

11.1 Landlord shall not be obligated to perform any service or to repair or maintain any structure or facility on the Premises except as provided in this Section 11 and Section 14 of this Lease, unless caused by the negligence of Landlord, its agents, customers or contractors. Landlord shall not be obligated to

provide any service or maintenance or to make any repairs pursuant to this Lease when such service, maintenance or repair is made necessary because of the negligence or misuse of Tenant,

Tenant's agents, employees, servants, contractors, subtenants or licensees. Landlord shall have no responsibility or liability for failure to supply any services or maintenance or to make any repairs on the Premises. Landlord shall not be liable for any loss or damage to persons or property sustained by Tenant or other persons, which may be caused by the Driving Range or the Premises, or any appurtenances thereto, being out of repair or by bursting or leakage of any water, gas, sewer or steam pipe, or by theft, or by any act or neglect of any occupant of the Premises, or of any other person.

11.2 Except as provided for elsewhere herein, Tenant shall keep and maintain in good order, condition and repair (including any such replacement and restoration as is required for that purpose) the Premises, the Driving Range and every part thereof and any and all appurtenances thereto wherever located, including, without limitation, all repairs and replacements, structural and nonstructural, foreseen and unforeseen, which are necessary to maintain and preserve the Driving Range and the Premises in good condition. All repairs shall be made in accordance with all laws, promptly, efficiently, and in good workmanlike manner. Tenant shall also keep and maintain in good order, condition and repair (including any such replacement and restoration as is required for that purpose) any Improvements, special equipment, furnishings, fixtures or facilities installed by it on the Premises.

SECTION 12 LIENS

12.1 Tenant, at all times, whether by bond or otherwise, shall keep (and shall cause any contractor engaged by Tenant to keep) Landlord, the Driving Range, the Premises, the leasehold estate created by this Lease, and any trade fixtures, equipment or personal property within the Premises, free and clear from any claim, lien or encumbrance (other than personal property, consensual security interests for lines of credit or inventory financing in the ordinary course of Tenant's business), tax lien or levy, mechanic's lien, attachment, garnishment or encumbrance arising directly or indirectly from any obligation, action or inaction of Tenant whatsoever, except to the extent permitted under Sections 17 and 18 below and except for "Permitted Liens" as defined in the Credit Agreement. (as that term is defined in the First Trust Deed) and the Mortgage Notes Indenture (as that term is defined in the Second Trust Deed).

12.2 Tenant shall, within ten (10) days of the filing of any lien that is not permitted under Section 12.1 above, either pay or satisfy the same in full and procure the discharge thereof or commence an action to discharge the same, fully bond such lien, and diligently prosecute such action, or shall cause Tenant's contractor to do the same.

SECTION 13 INSURANCE

13.1 Landlord and Tenant are covered under the same policies of comprehensive public liability insurance and all-risk, commercial property insurance. The parties each agree to pay its respective share of such insurance costs.

13.2 If at any time during the Lease Term Tenant ceases to be covered by common insurance with Landlord, Tenant will, at its sole cost and expense, maintain in full force and effect:

(a) a policy of comprehensive or commercial general liability insurance issued by an insurance carrier approved by Landlord, insuring against loss, damage or liability for injury or death to persons and loss or damage to property occurring from any cause whatsoever in connection with the Premises or Tenant's use thereof. Landlord shall be named as an additional insured under each such policy of insurance; with a combined single limit for bodily injury and property damage of not less than two million (\$2,000,000) per occurrence and five million (\$5,000,000) in the aggregate;

(b) a standard form of all-risk, commercial property insurance with extended coverage insurance covering leasehold improvements, furniture, fixtures and equipment, and personal property located in or on the Premises whether owned by Landlord or Tenant, and the personal property of others in Tenant's possession in, upon or about the Premises. Such insurance shall be in an amount equal to the current replacement value of the property required to be insured. Tenant and Landlord, as their interests may appear, shall be the named insureds under each such policy of insurance;

(c) During any period of any construction on the Premises, Tenant shall maintain (i) course of construction and builder's risk insurance on an "all risks" basis, including materials in storage and while in transit, and (ii) worker's compensation and employer's liability insurance for any person working on such construction who is employed by Tenant or any general contractor and/or any construction contractor.

13.3 A certificate issued by the insurance carrier for each policy of insurance required to be maintained by Tenant under Section 13.2 above, if any, or a copy of each such policy, shall be delivered to Landlord on or before the commencement of Tenant's Work and thereafter, as to policy renewals, within thirty (30) days prior to the expiration of the terms of each such policy. Each of said certificates of insurance and each such policy of insurance shall be from an insurer and in a form and substance satisfactory to Landlord, shall expressly evidence insurance coverage as required by this Lease and shall contain an endorsement or provision requiring not less than thirty (30) days written notice to Landlord and all other named insureds prior to the cancellation, diminution in the perils insured against, or reduction of the amount of coverage of, the particular policy in question. In addition to the foregoing certificates, Tenant shall at all times during the Lease Term maintain (either through common insurance with Landlord or otherwise), at Tenant's sole cost and expense, worker's compensation coverage evidencing coverage at Nevada statutory limits.

13.4 Tenant shall not use or occupy, or permit the Premises to be used or occupied, in a manner that will make void any insurance then in force.

13.5 Landlord and Tenant hereby waive any and all rights of recovery from the other party and its officers, agents and employees for any loss or damage, including consequential loss or damage, caused by any peril or perils (including negligent acts) that are caused by or result from risks insured against under any form of insurance policy.

13.6 Each policy of insurance provided for in this Section 13 shall contain an express waiver of any and all rights of subrogation thereunder whatsoever against the other party, its officers, directors, agents and employees. All such policies shall be written as primary policies and not contributing with or in excess of the coverage, if any, which Landlord may carry. Notwithstanding any other provision contained in this Section 13 or elsewhere in this Lease, the amounts of all insurance required hereunder to be paid by Tenant shall be not less than an amount sufficient to prevent Landlord from becoming a co-insurer. The limits of the public liability insurance required to be maintained by Tenant under this Lease shall in no way limit or diminish Tenant's liability under Section 15 hereof and such limits shall be subject to increase at any time and from time to time during the Lease Term if Landlord, in the exercise of reasonable discretion, deems such an increase necessary for its adequate protection; provided, however, Landlord may not exercise its right under this sentence more frequently than one time every two years during the Lease Term.

13.7 All of the provisions of this Section 13 are subject to, and shall be modified as reasonably necessary to be consistent with, the requirements of the Credit Agreement and the Second Mortgage Notes.

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SECTION 14 DESTRUCTION OF PREMISES; CONDEMNATION

14.1 During the period prior to the earlier to occur of the expiration of the Initial Lease Term or the Lien Release Date, should the Premises or any portion thereof be destroyed by any cause whatsoever ("Damaged") and provided that restoration is permitted under the Credit Agreement and the Second Mortgage Notes, Tenant shall restore the Premises. After the earlier to occur of the expiration of the Initial Lease Term or the Lien Release Date, should the Premises be Damaged, Tenant may elect to either terminate this Lease or restore the Premises by delivery of written notice to Landlord within thirty (30) days after the casualty event giving rise to the Damage. If Tenant fails to give timely notice of Tenant's election, Tenant shall be deemed to have elected to terminate and this Lease shall terminate at the end of the calendar month following the calendar month in which such casualty event shall have occurred. If Tenant is required or elects to restore the Premises, the following provisions shall apply: After any such casualty and during the reconstruction period, Rent shall continue to accrue and be payable as if such event of destruction had not occurred. Tenant shall reconstruct the Damaged Improvements with all reasonable diligence (allowing for adjustment and collection of insurance proceeds, licensing, permitting, and approvals) and as often as any structures subsequently constructed on the Premises or any part thereof shall be Damaged. No Damage to any building or Improvements on the Premises by fire, windstorm, or any other casualty shall entitle Tenant to violate any of the provisions of this Lease. Landlord hereby agrees to assign to Tenant any insurance proceeds otherwise payable to Landlord, whether payable solely to Landlord or jointly to Landlord and Tenant, subject to reasonable and third party customary construction control procedures, so long as Tenant uses such proceeds solely to repair or rebuild the Damaged buildings or Improvements.

14.2 INTENTIONALLY OMITTED

14.3 Notwithstanding the foregoing provisions, in the event the Premises or any portion thereof shall be Damaged by fire or other casualty due to the fault, negligence or willful misconduct of Tenant, its agents, employees, servants, contractors, subtenants, licensees, customers or business invitees, then this Lease shall not terminate, the Damage shall be repaired by Tenant, and there shall be no apportionment or abatement of any Rent.

14.4 All insurance proceeds payable under any fire and extended coverage risk insurance covering the Premises and maintained by Landlord shall be payable to Landlord in the event of Damage, and Tenant shall have no interest therein, except to the extent of such insurance separately carried by Tenant. Tenant shall in no case be entitled to compensation for damages on account of any annoyance or inconvenience in making repairs under any provision of this Lease. Except to the extent provided for in this Section 14, neither the Rent payable by Tenant nor any of Tenant's other obligations under any provision of this Lease shall be affected by any Damage.

14.5 Should the whole of the Premises be condemned or taken by a competent authority for any public or quasi-public purpose, then this Lease shall terminate upon such taking. If such portion of the Premises is condemned or taken such that the remaining portion thereof will not be reasonably adequate for the operation of Tenant's business after Landlord completes such repairs or alterations as Landlord elects to make, either Landlord or Tenant shall have the option to terminate this Lease by notifying the other party hereto of such election in writing within twenty (20) days after such taking. If by such condemnation and taking a portion of the Premises is taken and the remaining part thereof is suitable for the purposes for which Tenant has leased the Premises, this Lease shall continue in full force and effect, but the Rent and all other charges hereunder shall be reduced in an amount equal to that proportion of such charges which the square footage of the portion taken bears to the total square feet of the Premises, and Rent and other charges shall be suspended during any period of time that Tenant is closed for business. In the event a partial taking does not terminate this Lease, Landlord, at Landlord's expense, shall repair the damage to the Premises with reasonable dispatch and restore it as

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nearly as reasonably possible to its condition immediately before the taking. If any part of the Driving Range shall be taken or appropriated so as to materially and adversely affect the ability of Tenant's subtenants, customers and/or invitees to reach the Premises, Tenant shall have the right, at its option to terminate this Lease by notifying the other party within twenty (20) days of such taking.

14.6 For the purposes hereof, a deed in lieu of condemnation shall be deemed a taking.

SECTION 15 INDEMNIFICATION

Each party ("Indemnitor") hereby covenants and agrees to indemnify, defend, save and hold the other party ("Indemnitee"), the Premises and the leasehold estate created by this Lease free, clear and harmless from any and all liability, loss, costs, expenses (including attorneys' fees), judgments, claims, liens and demands of any kind whatsoever in connection with, arising out of, or by reason of any act, omission, or negligence of Indemnitor, its agents, employees, servants, contractors, subtenants or licensees while in, upon, about, or in any way connected with, the Premises or the Driving Range or arising from any accident, injury or damage, howsoever and by whomsoever caused, to any person or property whatsoever, occurring in, upon, about or in any way connected with the Premises or any portion thereof other than as a result of the intentional or negligent acts of Indemnitee.

**SECTION 16
SUBORDINATION**

Tenant agrees upon request of Landlord to subordinate this Lease and its rights hereunder to the lien of any mortgage, deed of trust or other encumbrance, together with any renewals, extensions or replacements thereof now or hereafter placed, charged or enforced against the Premises, or any portion thereof, and to execute and deliver at any time, and from time to time, upon demand by Landlord, such documents as may be reasonably required to effectuate such subordination within ten (10) days after receiving such documents, provided that in connection with such subordination agreement Landlord's lender agrees to provide a non-disturbance agreement for the benefit of Tenant in form and substance reasonably acceptable to Tenant and its Lenders.

**SECTION 17
ASSIGNMENT AND SUBLETTING**

17.1 Except as otherwise set forth herein, Tenant shall not assign, mortgage, pledge, hypothecate or encumber this Lease nor the leasehold estate hereby created or any interest herein, or sublet the Premises or any portion thereof, or license the use of all or any portion of the Premises without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion. Provided, however, that Tenant shall have the right, upon giving notice to Landlord, to assign this Lease to any successor-in-interest to the Golf Facilities and, upon such assignment Tenant shall be relieved from any further obligation under this Lease except as otherwise expressly provided herein. The restriction or limitation on use of the Premises shall continue to apply to any subtenant or assignee hereunder. Any consent by Landlord to any act requiring consent pursuant to this Section 17.1 shall not constitute a waiver of the necessity for such consent to any subsequent act. Tenant shall pay all reasonable costs, expenses and reasonable attorneys' fees that may be incurred or paid by Landlord in processing, documenting or administering any request of Tenant for Landlord's consent required pursuant to this Section 17.1.

17.2 Landlord may reasonably require that each proposed assignee or sublessee agree, in a written agreement satisfactory to Landlord, to assume and abide by all the terms and provisions of this Lease, including those which govern the permitted uses of the Premises.

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17.3 In the absence of an express agreement in writing to the contrary executed by Landlord, no assignment, mortgage, pledge, hypothecation, encumbrance, subletting or license hereof or hereunder shall act as a release of Tenant from any of the provisions, covenants and conditions of this Lease on the part of Tenant to be kept and performed.

17.4 Notwithstanding anything to the contrary contained herein, Tenant may encumber Tenant's leasehold estate under this Lease to secure financing of any indebtedness or any obligations of Tenant or any Affiliate of Tenant, in such amount and on such terms as Tenant may determine appropriate in its discretion, and Landlord hereby agrees to effect such amendments and modifications of this Lease as may be required by the obligee of such indebtedness or obligations to make this Lease "financeable" and to execute and deliver to such obligee such documents and instruments as such obligee may require in connection therewith; provided, however, that Landlord shall have no obligation to agree to any amendments or modifications or to execute any documents or instruments that require Landlord to subordinate its fee interest to the lien of any such encumbrance or extend the term of this Lease, or materially decrease Tenant's obligations or materially increase Landlord's obligations under this Lease.

**SECTION 18
LEASEHOLD FINANCING**

18.1 *Leasehold Mortgage Permitted.* Nothing in this Lease shall be construed as restricting in any manner the right of Tenant, from time to time, or at any time, to create one or more liens on, or encumber, by mortgage, deed of trust or trust deed in the nature of a mortgage (each, a "*Leasehold Mortgage*") the leasehold interest of Tenant in the Premises, and subject to the restrictions and limitations contained in any such instrument as to further conveyances, transfers and assignments, Tenant will have the right at any time, and from time to time, to convey, transfer and assign its interest under this Lease to a mortgagee, trustee or beneficiary, of its designee (each "*Leasehold Mortgagee*"), under a Leasehold Mortgage given to secure any note or other obligation of Tenant or an Affiliate thereof.

18.2 *Certain Benefits to Leasehold Mortgage.* If Tenant shall execute any Leasehold Mortgage, then, in such event and so long as such Leasehold Mortgage shall constitute a lien or encumbrance against the leasehold estate of Tenant hereunder, the following provisions shall apply:

18.2.1 *Amendment of Lease.* No agreement by Landlord and Tenant for the assignment, cancellation, surrender, acceptance of surrender or termination, modification or amendment of this Lease shall be effective as to any Leasehold Mortgagee without the written consent of such Leasehold Mortgagee. If the Leasehold Mortgagee whose lien has first priority consents to an amendment, any Leasehold Mortgagee of a junior lien on the Premises will not unreasonably withhold its consent to such amendment.

18.2.2 *Exercise of Section 365(h)(i) Rights.* Landlord agrees, for the benefit of such Leasehold Mortgagee, that the right of election arising under Section 365(h)(i) of the Bankruptcy Code shall be exercised by the most senior Leasehold Mortgagee at such time and not by Tenant. Any attempted exercise by Tenant of such right of election in violation hereof shall be void.

18.2.3 *Loss Payee.* The name of each such Leasehold Mortgagee shall be added to the "*Loss Payable Endorsement*" of any and all insurance policies required to be carried by Tenant under this Lease.

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18.2.4 *Proceeds of Casualty and Condemnation.* Notwithstanding anything in this Lease to the contrary, in the event of any casualty to or condemnation of the Premises or any portion thereof, the Leasehold Mortgagees shall be entitled to receive all insurance proceeds and/or condemnation awards as their interests appear (up to the amount of the indebtedness secured by the Leasehold Mortgage) otherwise payable to Tenant or Landlord or both and apply them in accordance with the Leasehold Mortgage and shall have the right, but not the obligation, to restore the Premises.

18.2.5 *Merger.* If Tenant shall acquire fee title, or any other estate, title or interest in the Premises which is the subject of this Lease, or any part thereof, or if the leasehold estate created by this Lease, or any portion thereof, shall be assigned, sold or otherwise transferred to the owner of such fee title or other estate, title or interest in the Premises which is the subject of this Lease, then in either such event, upon the election of the Leasehold Mortgagee first in priority expressly made in writing at any time thereafter, each Leasehold Mortgage shall attach to and be a lien upon such fee title and/or other estate so acquired (but only as the same pertains to the Premises), and such fee title and/or other estate so acquired shall be considered as mortgaged, assigned and conveyed to each Leasehold Mortgagee and the lien of each such Leasehold Mortgage shall be spread to cover such estate with the same force and effect as though specifically mortgaged, assigned or conveyed in such Leasehold Mortgage (and upon request of any Leasehold Mortgagee, either or both Landlord and Tenant shall execute further mortgages, assignments of leases and rents, amendments to documents and instruments as such Leasehold Mortgagee may reasonably require for such purpose); provided, however, that notwithstanding the foregoing, if and so long as any of the indebtedness secured by any such Leasehold Mortgage shall remain unpaid, unless the Leasehold Mortgagee thereunder shall otherwise in writing expressly consent, the fee title to the Premises which is the subject of this Lease and the leasehold estate created by this Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates either in Landlord or in Tenant, or in a third party, by purchase or otherwise. Nothing in this Section 18.2.5 shall be deemed to subordinate or require Landlord to subordinate the fee interest of Landlord in the Premises to the lien of a Leasehold Mortgage.

18.2.6 *Right of Entry.* Each Leasehold Mortgagee shall have the right to enter upon the Premises at any time for any purpose, including curing any defaults by Tenant under this Lease, and Landlord hereby agrees to accept performance and compliance by any such Leasehold Mortgagee of any covenants, agreements, provisions, conditions and limitations on Tenant's part to be kept, observed or performed hereunder, with the same force and effect as though kept, observed and performed by Tenant. Any default by Tenant that is not susceptible to being cured by a Leasehold Mortgagee shall be deemed waived by Landlord.

18.2.7 *Notice to Tenant.* Landlord shall serve Tenant with notice if Landlord files, or has filed against it, a petition under chapters 7 or 11 of the Bankruptcy Code. Such notice shall be served within twenty-four (24) hours of such filing. Landlord shall, upon serving Tenant with any notice of (1) a bankruptcy filing as herein described, (2) default pursuant to the provisions of this Lease, or (3) a matter on which Landlord may predicate or claim a default, at the same time serve a copy of such notice upon every Leasehold Mortgagee that has provided Landlord with notice of its identity and address, and no such notice by Landlord to Tenant hereunder shall have been deemed duly given unless and until a copy thereof has been so served on every such Leasehold Mortgagee.

18.2.8 *Termination.* Anything contained in this Lease to the contrary notwithstanding, if any default shall occur which entitles Landlord to terminate this Lease, or to exercise any other rights, powers or remedies available to it under this Lease, Landlord shall have no right to terminate this Lease or to exercise any of such rights, powers or remedies unless following the expiration of the period of time given Tenant to cure such default (or the act or omission which gave rise to such

default), Landlord shall notify every Leasehold Mortgagee of Landlord's intent to so terminate or exercise any such rights, powers or remedies ("*Default Notice*") at least (x) sixty (60) days in advance of the proposed effective date of such termination, or exercise of any rights, powers or remedies if such default is capable of being cured by the payment of money, and (y) ninety (90) days in advance of the proposed effective date of such termination, or exercise of any such rights, powers or remedies if such default is not capable of being cured by the payment of money ("*Default Notice Period*"). The provisions of Subsection 18.2.9 below shall apply if during such thirty (60) or ninety (90) day Default Notice Period, any Leasehold Mortgagee shall notify Landlord of such Leasehold Mortgagee's desire to nullify such notice (the "*Nullification Notice*").

18.2.9 *Procedure on Default.*

(a) If Landlord shall elect to terminate this Lease or obtain possession of the Premises by reason of any default of Tenant, and a Leasehold Mortgagee shall have delivered the Nullification Notice set forth in Subsection 18.2.8, the specified date for the termination of this Lease as fixed by Landlord in its Default Notice or for the obtaining of possession shall be extended for a period of six (6) months, provided that such Leasehold Mortgagee shall, during such six (6) month period:

(1) pay or cause to be paid the monetary obligations of Tenant under this Lease as the same become due, and continue its good faith efforts to perform all of Tenant's other obligations under this Lease, excepting (i) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant's interest in this Lease or the Premises junior in priority to the lien of the mortgage held by such Leasehold Mortgagee and (ii) past non-monetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee (including by reason of a bankruptcy stay or if possession of the Premises is required in order to cure such default); *provided* that Leasehold Mortgagee may offset amounts it expends to cure any defaults by Landlord under this Lease; and

(2) if not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with due diligence.

(b) If at the end of such six (6) month period such Leasehold Mortgagee is complying with Subsection 18.2.9(a) then this Lease shall not terminate, and the time for completion by such Leasehold Mortgagee of its proceedings shall continue so long as such Leasehold Mortgagee is enjoined or stayed and thereafter for so long as such Leasehold Mortgagee proceeds to complete steps to acquire or sell Lessee's interest in this Lease by foreclosure of the Leasehold Mortgage or by other appropriate means with reasonable diligence. Nothing in this Subsection 18.2.9, however, shall be construed to extend this Lease beyond the original term thereof or to require a Leasehold Mortgagee to continue such foreclosure proceedings after the default has been cured. If the default shall be cured and the Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

(c) If a Leasehold Mortgagee is complying with Subsection 18.2.9(a) of this Section, then upon the acquisition of Tenant's estate herein by such Leasehold Mortgagee or its designee or any other purchaser at a foreclosure sale or otherwise (and the discharge of any lien, charge or encumbrance against the Tenant's interest in this Lease or the demised premises which is junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee and which the Tenant is obligated to satisfy and discharge by reason of the terms of this Lease) this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

18.2.10 *Receiver.* A Leasehold Mortgagee shall have the right after institution of foreclosure proceedings to apply to the court for the appointment of a receiver of the Premises. In the event foreclosure proceedings have been instituted, any money held by Landlord which becomes payable to Tenant shall be payable upon demand to such Leasehold Mortgagee as the interest of such Leasehold Mortgagee may appear when the same so becomes payable to Tenant. If Landlord shall at any time be in doubt as to whether such monies are payable to such Leasehold Mortgagee or to Tenant, Landlord may pay such monies into court and file an appropriate action of interpleader in which event all of Landlord's costs and expenses (including attorneys' fees) shall first be paid out of the proceeds so deposited.

18.2.11 *No Assumption.* For purposes of this Subsection 18.2.11, the making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or of the leasehold estate hereby created, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created, so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder, but the purchaser at any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignee or transferee of this Lease and of the leasehold estate hereby created under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage, shall be deemed to be an assignee or transferee within the meaning of this Subsection 18.2.11 and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder arising and accruing from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of the leasehold estate.

18.2.12 *Successive Sales.* Any Leasehold Mortgagee or other acquiror of the leasehold estate of Tenant pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings may, upon acquiring Tenant's leasehold estate, without further consent of Landlord, sell and assign the leasehold estate so acquired on such terms and to such persons or organizations as are acceptable to such Leasehold Mortgagee or acquiror and thereafter be relieved of all obligations under this Lease; provided that such assignee has delivered to Landlord its written agreement to be bound by all of the provisions of this Lease from and after the date of such assignment.

18.2.13 *Leasehold Mortgagee Need Not Cure Specified Defaults.* Nothing herein contained shall require any Leasehold Mortgagee or its designee as a condition to the exercise of its rights hereunder to cure any default of Tenant not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee.

18.2.14 *Lease Proceedings.* Landlord shall give each Leasehold Mortgagee that has provided Landlord with notice of its interest and address, prompt notice of any arbitration or legal proceedings between Landlord and Tenant involving this Lease. Each Leasehold Mortgagee shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the parties hereto do hereby consent to such intervention. In the event that any Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, Landlord shall give such Leasehold Mortgagee notice of, and a copy of any award or decision made in any such proceedings, which shall be binding on all Leasehold Mortgagees not intervening after receipt of notice of arbitration. Tenant agrees that each Leasehold Mortgagee shall also have the right to intervene in, and be made a party to, any such proceedings.

18.2.15 *Future Leasehold Mortgage: Amendment of Lease.*

(a) Notwithstanding anything in this Lease to the contrary, each Leasehold Mortgagee shall have the right (if it has such right under its loan documents) to restrict, limit or prohibit the execution of any other Leasehold Mortgage junior in priority to the lien of such senior

Leasehold Mortgage, or, in the event of the execution of any such junior Leasehold Mortgage, to accelerate or increase the interest rate under the indebtedness secured by such senior Leasehold Mortgage; and

(b) In the event of a Leasehold Mortgage (each, a "*Successor Leasehold Mortgage*") the proceeds of which are used to pay off in its entirety the indebtedness secured by any existing Leasehold Mortgage (each such existing Leasehold Mortgage, an "*Initial Leasehold Mortgage*"), then the Successor Leasehold Mortgage shall be deemed to have succeeded to the position and all of the rights and priorities of the mortgagee under the Initial Leasehold Mortgage with respect to the mortgagor under the Initial Leasehold Mortgage and with respect to third parties.

18.2.16 *Certificate.* Landlord shall, without charge, at any time and from time to time within ten (10) business days after written request of Tenant to do so, certify by written instrument duly executed and acknowledged to any Leasehold Mortgagee or purchaser, or proposed Leasehold Mortgagee or proposed purchaser, or any other person, firm or corporation specified in such request: (1) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (2) as to the validity and force and effect of this Lease, in accordance with its tenor; (3) as to the existence of any default hereunder or any event which with the passage of time or notice would constitute a default hereunder; (4) as to the existence of any offsets, claims, counterclaims or defenses hereto on the part of Landlord or, to Landlord's knowledge, on the part of Tenant; (5) as to the commencement and expiration dates of this Lease; and (6) as to any other matters as may be reasonably so requested. Any such certificate may be relied upon by Tenant and any other person, firm or corporation to whom the same maybe exhibited or delivered, and the contents of such certificate shall be binding on Landlord.

18.2.17 *Nominee.* Any acquisition by a Leasehold Mortgagee of the leasehold estate under this Lease, or any rights or privileges thereunder may be taken in the name of such Leasehold Mortgagee or in the name of any nominee or designee selected by it.

18.2.18 *New Lease.* In the event of the termination of this Lease as a result of Tenant's default prior to the expiration of the term, or in the event of a rejection by Landlord or Tenant of this Lease under Chapter 11 of the Bankruptcy Code, Landlord shall, in addition to providing the notices of default and termination as required by this Lease, provide each Leasehold Mortgagee with written notice that the Lease has been terminated or that Landlord has filed a request with the Bankruptcy Court seeking to reject the Lease, together with a statement of all sums which would at that time be due under this Lease but for such termination or rejection, and of all other defaults, if any, then known to Landlord. Upon any request of the Leasehold Mortgagee, or its designee, Landlord agrees to enter into a new lease ("*New Lease*") of the Premises with such Leasehold Mortgagee or its designee for the remainder of the term of this Lease, effective as of the date of termination or rejection, as the case may be, at the Rent, and upon the terms, covenants and conditions

(including all transfer rights, but excluding requirements which are not applicable or which have already been fulfilled) of this Lease; *provided, however*, that (i) the Leasehold Mortgagee whose lien upon the Premises is superior to the lien of any other Leasehold Mortgage (the "*Senior Leasehold Mortgage*") shall have the right to give notice of its intent to enter into a New Lease to the Landlord for a period of 60 days from its receipt of the notice referred to in the first sentence of this Section 18.2.18 and (ii) if the Senior Leasehold Mortgagee does not exercise its right to enter into the New Lease during this 60-day period; the Leasehold Mortgagee whose lien upon the Premises is superior to the lien of any other Leasehold Mortgage (other than the Senior Leasehold Mortgagee) shall have the right to give notice of its intent to

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enter into a New Lease to the Landlord during the remainder of the period(s) specified below; and *provided further, however*,

(a) Such Leasehold Mortgagee shall make written request upon Landlord for such New Lease at the later of (1) within one hundred (100) days after the date such Leasehold Mortgagee receives Landlord's notice of termination or rejection of this Lease given pursuant to this Subsection 18.2.18; or (2) within forty-five (45) days after the actual termination of the Lease as same may have been extended by Subsection 18.2.18 hereof.

(b) Such Leasehold Mortgagee or its designee shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease, any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such termination and, in addition thereto, all reasonable expenses, including reasonable attorneys' fees, court costs and costs and disbursements which Landlord shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by Landlord from or on behalf of Tenant. Upon the execution of such New Lease, Landlord shall allow to Tenant named therein as an offset against the sums otherwise due under this Subsection 18.2.18 or under the New Lease, an amount equal to the net income derived by Landlord from the Premises during the period from the effective date of termination of this Lease to the date of the beginning of the lease term under the New Lease. In the event of a controversy as to the amount to be paid to Landlord pursuant to this Section 18.2, the payment obligation shall be satisfied if Landlord shall be paid the amount not in controversy, and such Leasehold Mortgagee or its designee shall agree to pay any additional sum ultimately determined to be due.

(c) Such Leasehold Mortgagee or its designee shall agree to remedy any of Tenant's defaults of which said Leasehold Mortgagee was notified by Landlord's notice of termination or rejection and which are reasonably susceptible of being so cured by such Leasehold Mortgagee or its designee.

(d) The Tenant under such New Lease shall have the same right, title and interest in and to the Premises and buildings and improvements thereon as Tenant under this Lease. Any holder of any such lien, charge or encumbrance or sublease shall execute such instruments of non-disturbance and/or attornment as the tenant under the New Lease may at any time require.

(e) The tenant under any New Lease shall be liable to perform the obligations imposed on the Tenant by such New Lease only for and during the period such person has ownership of the Premises.

(f) If more than one (1) Leasehold Mortgagee shall request a New Lease pursuant to this Section 18.3, Landlord shall enter into such New Lease with the Leasehold Mortgagee whose mortgage is in the first lien position, or with the designee of such Leasehold Mortgagee.

(g) Concurrently with the execution and delivery of any New Lease, Landlord shall assign to the tenant named therein all of the right, title and interest in and to moneys (including insurance proceeds and condemnation awards), if any, then held by and payable by Landlord which Tenant would have been entitled to receive but for the termination of the Lease. Upon the execution of any New Lease, the tenant named therein shall be entitled to any rent received under any sublease in effect during the period from the date of termination of the Lease to the date of execution of such New Lease.

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SECTION 19
[INTENTIONALLY OMITTED]

SECTION 20
RIGHT OF ACCESS

Landlord and its authorized agents and representatives shall be entitled to enter the Premises immediately in the case of an emergency or with reasonable notice for the purpose of observing, posting or keeping posted thereon notices provided for hereunder, and such other notices as Landlord may deem reasonably necessary or appropriate; for the purpose of inspecting the Premises; for the purpose of exhibiting the Premises to prospective purchasers or lessees; and for the purpose of performing any work upon the Premises which Landlord may elect or be required to make. In any such case, Landlord and its agents and representatives shall not unreasonably interfere with Tenant's operations at the Premises.

SECTION 21
ESTOPPEL CERTIFICATE

Tenant agrees that within ten (10) business days of any demand therefor by Landlord, Tenant will execute and deliver to Landlord a certificate stating that this Lease is in full force and effect without amendment, or if amended attaching a copy thereof to the certificate, the date to which all rentals have been paid, any

defaults or offsets claimed by Tenant and such other information concerning the Lease, the Premises or Tenant as Landlord may request. Landlord will provide a similar document to Tenant upon request by Tenant within ten (10) business days after request.

SECTION 22 EXPENDITURES

22.1 Whenever under any provision of this Lease, Tenant shall be obligated to make any payment or expenditure, or to do any act or thing, or to incur any liability whatsoever, and Tenant fails, refuses or neglects to perform as herein required after notice and an opportunity to cure (which shall be deemed to be thirty (30) days unless provided for specifically herein), Landlord shall be entitled, but shall not be obligated, to make any such payment or to do any such act or thing, or to incur any such liability, all on behalf of and at the cost and for the account of Tenant. In such event, the amount thereof with interest thereon at the Default Rate, shall be collectable on demand.

22.1 Whenever under any provision of this Lease, Landlord shall be obligated to make any payment or expenditure, or to do any act or thing, or to incur any liability whatsoever, and Landlord fails, refuses or neglects to perform as herein required after notice and an opportunity to cure (which shall be deemed to be thirty (30) days unless provided for specifically herein), Tenant shall be entitled, but shall not be obligated, to make any such payment or to do any such act or thing, or to incur any such liability, all on behalf of and at the cost and for the account of Landlord. In such event, the amount thereof with interest thereon at the Default Rate, shall be collectable on demand.

SECTION 23 DEFAULT

23.1 Tenant shall be in default of this Lease if:

23.1.1 Tenant shall fail to make timely and full payment of any sum of money required to be paid hereunder and such failure continues for ten (10) days after written notice thereof from Landlord;

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23.1.2 Tenant shall fail to perform any other term, covenant or condition of Tenant contained in this Lease, and such failure continues for thirty (30) days after written notice thereof from Landlord; provided, however, that if such failure is impossible to correct within thirty (30) days Tenant shall not be deemed in default if Tenant commences correction within said thirty (30) day period, and diligently pursues such correction to completion;

23.1.3 Tenant should vacate or abandon the Premises or cease operations during the Lease Term;

23.1.4 There is filed any petition in bankruptcy or Tenant is adjudicated a bankrupt or insolvent, or there is appointed a receiver or trustee to take possession of Tenant or of all or substantially all of the assets of Tenant, or there is a general assignment by Tenant for the benefit of creditors, or any action is taken by or against Tenant under any state of federal insolvency or bankruptcy act, or any similar law now or hereafter in effect; or

23.2 In the event of a default, in addition to any other rights or remedies provided for herein or at law or in equity, Landlord, at its sole option, shall have the following rights:

23.2.1 The right to declare the Lease Term ended and to re-enter the Premises and take possession thereof, and to terminate all of the rights of Tenant in and to the Premises;

23.2.2 Pursuant to its rights of re-entry, Landlord may, but shall not be obligated to (i) remove all persons from the Premises, (ii) remove all property therefrom, and (iii) enforce any rights Landlord may have against said property or store the same in any warehouse or elsewhere at the cost and for the account of Tenant. Tenant agrees to hold Landlord free and harmless of any liability whatsoever for the removal and/or storage of any such property, whether of Tenant or any third party whomsoever, except for damage caused by the willful misconduct or gross negligence of Landlord, its agents or subcontractors.

23.2.3 Anything contained herein to the contrary notwithstanding, Landlord shall not be deemed to have terminated this Lease or the liability of Tenant to pay any rent or other sum of money accruing hereunder, by any such re-entry, or by any action in unlawful detainer or otherwise to obtain possession of the Premises, unless Landlord shall specifically notify Tenant in writing that it has so elected to terminate this Lease.

23.2.4 In any action brought by Landlord to enforce any of its rights under or arising from this Lease, Landlord shall be entitled to receive its reasonable costs and legal expenses, including reasonable attorneys' fees, whether such action is prosecuted to judgment or not.

23.4 The waiver by Landlord of any breach of this Lease by Tenant shall not be a waiver of any preceding or subsequent breach of this Lease by Tenant. The subsequent acceptance of rent or any other payment hereunder by Landlord shall not be construed to be a waiver of any preceding breach of this Lease by Tenant. No payment by Tenant or receipt by Landlord of a lesser amount than the rent herein provided shall be deemed to be other than on account of the earliest rent due and payable hereunder.

SECTION 24 MISCELLANEOUS

24.1 Tenant, upon paying the rentals and other payments herein required and upon performance of all of the terms, covenants and conditions of this Lease on its part to be kept, may quietly have, hold and enjoy the Premises during the Lease Term without any disturbance from Landlord or from any other person claiming through Landlord, except as expressly provided otherwise in this Lease.

24.2 In the event of any sale or exchange of the Premises by Landlord, Landlord shall be, and is, hereby relieved of all liability under any or all of its covenants and obligations contained in or derived

from this Lease from and after the date of sale or exchange. Tenant agrees to attorn to such purchaser or transferee, provided that such purchaser or transferee agrees to be bound as Landlord under all of the terms and conditions of this Lease. Any sale of the Premises by Landlord shall be subject to this Lease.

24.3 It is agreed that in the event Landlord fails or refuses to perform any of the provisions, covenants or conditions of this Lease, Tenant, prior to exercising any right or remedy Tenant may have against Landlord, shall give written notice to Landlord of such default, specifying in said notice the default with which Landlord is charged and Landlord shall not be deemed in default if the same is cured within thirty (30) days of receipt of said notice. Notwithstanding any other provision hereof, Tenant agrees that if the default is of such a nature that the same can be rectified or cured by Landlord, but cannot with reasonable diligence be rectified or cured within that thirty (30) day period, then such default shall be deemed to be rectified or cured if Landlord within that thirty (30) day period shall commence the rectification and curing thereof and shall continue thereafter with all due diligence to cause such rectification and curing to proceed.

24.4 Neither party shall be in breach of this Lease if it fails to perform as required hereunder due to labor disputes, civil commotion, war, warlike operation, sabotage, governmental regulations or control, fire or other casualty, inability to obtain any materials, or other causes beyond such party's reasonable control (financial inability excepted); provided, however, that nothing contained herein shall excuse Tenant from the prompt payment of any rent or charge required of Tenant hereunder.

24.5 Any and all notices and demands required or desired to be given hereunder shall be in writing and shall be validly given or made (and effective) if served personally, delivered by a nationally recognized overnight courier service, or faxed and deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, to the following addresses:

If to Landlord: Valvino Lamore, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attention: Legal Department
Telephone: 702-733-4444
Facsimile: 702-791-0167

If to Tenant: Wynn Las Vegas, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attention: Legal Department
Telephone: 702-733-4556
Facsimile: 702-733-4596

Either party may change its address for the purpose of receiving notices by providing written notice to the other.

24.6 The various rights, options, elections and remedies of Landlord contained in this Lease shall be cumulative and no one of them shall be construed as exclusive of any other, or of any right, priority or remedy allowed or provided for by law and not expressly waived in this Lease.

24.7 The terms, provisions, covenants and conditions contained in this Lease shall apply to, bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as permitted in Section 17 hereof.

24.8 If any term, covenant or condition of this Lease, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all terms, covenants and

conditions of this Lease, and all applications thereof, not held invalid, void or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

24.9 Time is of the essence of this Lease and all of the terms, covenants and conditions hereof.

24.10 This Lease contains the entire agreement between the parties and cannot be changed or terminated orally.

24.11 Nothing contained herein shall be deemed to create any partnership, joint venture, agency or other relationship between Landlord and Tenant other than the relationship of landlord and tenant.

24.12 The captions are descriptive only and for convenience in reference to this Lease and in no way whatsoever define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

24.13 The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Lease. Each party hereto consents to, and waives any objection to, Clark County, Nevada as the proper and exclusive venue for any disputes arising out of or relating to this Lease or any alleged breach thereof.

24.14 In the event Tenant now or hereafter shall consist of more than one person, firm, corporation or trust, then and in such event, all such persons, firms, corporations or trusts shall be jointly and severally liable as Tenant hereunder.

24.15 This Lease may not be recorded without Landlord's prior written consent. However, the parties agree to record a Memorandum of Lease in the form attached hereto as Exhibit D. A Memorandum of Termination of Lease in the form attached hereto as Exhibit E shall also be executed by the parties, shall be held by Landlord, and shall be recorded by Landlord upon termination of the Lease.

24.16 All necessary actions have been taken under the parties' organizational documents to authorize the individuals signing this Lease on behalf of the respective parties to do so.

24.17 The prevailing party in any action regarding this Lease shall be entitled to receive its costs and legal expenses including reasonable attorneys' fees, whether such action is prosecuted to judgment or not. The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim of injury or damage.

24.18 Landlord and Tenant each represent and warrant to the other that they have not entered into any written contractual arrangement with, or promised to pay any broker's fee, finder's fee, commission or other similar compensation to, or otherwise agreed to compensate, any real estate agent or broker in connection with this transaction. Landlord and Tenant each agree to indemnify, defend, save and hold the other harmless from and against all loss, cost and expense incurred by reason of the breach of the foregoing representation and warranty arising from any claim for compensation founded upon or as a result of acts asserted to have been performed on their respective behalf. Such indemnification obligation shall survive any termination of the Lease.

24.19 This Lease may be executed in one or more counterparts, all of which executed counterparts shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this document to physically form one document.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above-written.

"Landlord"

Valvino Lamore, LLC
a Nevada limited liability company

By: Wynn Resorts, Limited,
a Nevada corporation
its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein

Title: Senior Vice President, General Counsel &
Secretary

"Tenant"

Wynn Las Vegas, LLC
a Nevada limited liability company

By: Wynn Resorts Holdings, LLC
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein

Title: Senior Vice President, General Counsel &
Secretary

SCHEDULE 1

1. *First Deed of Trust.* Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by Valvino Lamore, LLC, a Nevada limited liability company, as Trustor, to Nevada Title Company, a Nevada corporation, as Trustee, for the benefit of Deutsche Bank Trust Company Americas, in its capacity as Administrative Agent for the benefit of the Banks, as Beneficiary; and

2. *Second Deed of Trust.* Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by Valvino Lamore, LLC, a Nevada limited liability company, as Trustor, to Nevada Title Company, a Nevada corporation, as Trustee, for the benefit of Wells Fargo Bank, National Association, in its capacity as the Mortgage Notes Indenture Trustee, as Beneficiary.

SCHEDULE II

(Golf Course Deeds of Trust)

1. *First Deed of Trust.* Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by Palo, LLC, a Delaware limited liability company, as Trustor, to Nevada Title Company, a Nevada corporation, as Trustee, for the benefit of Deutsche Bank Trust Company Americas, in its capacity as Administrative Agent for the benefit of the Banks, as Beneficiary; and

2. *Second Deed of Trust.* Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by Palo, LLC, a Delaware limited liability company, as Trustor, to Nevada Title Company, a Nevada corporation, as Trustee, for the benefit of Wells Fargo Bank, National Association, in its capacity as the Mortgage Notes Indenture Trustee, as Beneficiary.

3. *First Deed of Trust.* Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by Wynn Resorts Holdings, LLC, a Nevada limited liability company, as Trustor, to Nevada Title Company, a Nevada corporation, as Trustee, for the benefit of Deutsche Bank Trust Company Americas, in its capacity as Administrative Agent for the benefit of the Banks, as Beneficiary; and

4. *Second Deed of Trust.* Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by Wynn Resorts Holdings, LLC, a Nevada limited liability company, as Trustor, to Nevada Title Company, a Nevada corporation, as Trustee, for the benefit of Wells Fargo Bank, National Association, in its capacity as the Mortgage Notes Indenture Trustee, as Beneficiary.

QuickLinks

[Exhibit 10.5](#)

[DRIVING RANGE LEASE between VALVINO LAMORE, LLC, Landlord and WYNN LAS VEGAS, LLC, Tenant Dated October 21, 2002](#)

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PARKING FACILITY LEASE

between

VALVINO LAMORE, LLC,

Landlord

and

WYNN LAS VEGAS, LLC,

Tenant

Dated October 21, 2002

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PARKING FACILITY LEASE

THIS PARKING FACILITY LEASE (this "Lease") is entered into as of the 21st day of October, 2002 by and between **Valvino Lamore, LLC**, a Nevada limited liability company ("Landlord"), and **Wynn Las Vegas, LLC**, a Nevada limited liability company ("Tenant").

WITNESSETH:

WHEREAS, Tenant owns good and marketable title in and to the parcel of real property described on Exhibit "A" annexed hereto ("Tenant's Property") upon which Tenant intends to construct and develop a first class luxury hotel and destination casino resort (the "Hotel"); and

WHEREAS, Landlord owns good and marketable title in and to the 20-acre parcel of real property adjacent to Tenant's Property and described on Exhibit "B" annexed hereto ("Landlord's Property"); and

WHEREAS, Landlord desires to lease to Tenant and Tenant desires to lease from Landlord up to 1,317 parking stalls (the "Stalls") in the parking structure (the "Parking Facility") currently located on the north side of Landlord's Property, as described and depicted on Exhibit "C" annexed hereto, together with the right of access to the Parking Facility over the portion of the Landlord's Property described on Exhibit C-1 (the "Access Area") (the Stalls and Access Area are referred to herein as the "Premises"), all upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the terms, covenants, conditions and provisions hereinafter set forth and other good and valuable consideration, it is hereby mutually agreed by and between Landlord and Tenant as follows:

SECTION 1 DEMISED PREMISES

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, the Premises, together with all and singular improvements, appurtenances, rights, privileges, and easements thereunto appertaining during the Lease Term and subject to the terms and conditions herein contained.

SECTION 2 TERM

2.1 The term of the Lease (the "Lease Term") and payment of Rent (as defined in Section 3.1 hereof) shall commence (the "Commencement Date") on October 21, 2002, and shall continue for a period of thirty (30) years thereafter (the "Initial Term") unless terminated earlier as elsewhere herein provided. Following the release of Landlord's Property from the lien or liens of that certain First Trust Deed (as defined and described on *Schedule I* attached hereto) and that certain Second Trust Deed (as defined and described on *Schedule I* attached hereto) (collectively, the "Deeds of Trust"), Tenant may terminate this Lease on thirty (30) days' written notice to Landlord. Provided, however, that Tenant shall not exercise its right to terminate until on or after the date (the "Termination Option Date") that it is permitted to do so pursuant to the provisions of the Credit Agreement and the Mortgage Notes Indenture (as defined and described on *Schedule 1* attached hereto).

2.2 In the event Tenant is not then in default of its obligations hereunder beyond any applicable cure period and this Lease has not previously been terminated, after the expiration of the Initial Lease Term, the Lease Term shall continue on a month-to-month basis upon the same terms and conditions as are set forth in this Lease. At any time during any extension of the Initial Lease Term, Tenant may terminate the Lease by delivering written notice no later than ten (10) days prior to the expiration of any thirty (30) day extension period. In the event that such notice is not given within such time period, the Lease shall continue in effect.

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2.3 Upon the expiration or sooner termination of the Lease Term, Tenant shall cease to have the right to use the Premises.

SECTION 3 RENT

3.1 During the Lease Term, Tenant shall pay as monthly rent for the Premises the sum of One Dollar (\$1.00) per month (the "Rent"). The Rent shall be due and payable in advance on the first (1st) day of each month.

3.2 All rents and other monies required to be paid by Tenant hereunder shall be paid to Landlord without deduction or offset, prior notice or demand, in lawful money of the United States of America, at the address of Landlord and set forth in Section 24.5 or at such other place as Landlord may from time to time designate in writing.

3.3 If Tenant fails to pay, when due and payable, any Rent or any other amounts or charges to be paid by Tenant hereunder within ten (10) days after written notice from Landlord that the amount is past due, such unpaid amounts shall bear interest from the due date thereof to the date of payment at a rate equal to the prime rate of interest last ascertained by the Commissioner of Financial Institutions of the State of Nevada pursuant to Nevada Revised Statutes 99.040, plus five (5) percentage points (the "Default Rate").

SECTION 4

**SECTION 5
FINANCING**

Landlord may obtain loans from time to time from third parties to finance acquisition and development of Landlord's and its Affiliates' real property, including Landlord's Property. For purposes of this Lease, an "Affiliate" of a party shall mean any person or entity (a) that is owned or controlled by the party, (b) that owns or controls the party, (c) that is owned or controlled by a person or entity that owns or controls the party, (d) that owns or controls an Affiliate of the party, or (e) that is owned or controlled by an Affiliate of the party. As used in this definition, the words "owns" or "owned" refer to the ownership of twenty percent (20%) or more of the equity interest in the person or entity so owned, regardless of the manner of ownership. Also, as used in this definition, ownership or control may be direct or indirect. By its execution of this Lease, Tenant (i) acknowledges and consents to Landlord's collateral assignment of its rights hereunder to its and its Affiliates' lenders including the beneficiaries under the Deeds of Trust (collectively "Lenders"); (ii) acknowledges and affirms Tenant's agreement to attorn performance obligations to the benefit of Lenders in the same manner as it would with respect to Landlord if any such Lender exercises its rights under any collateral assignment from Landlord; and (iii) agrees to execute such separate consents and acknowledgements to and of Landlord's collateral assignment of this Lease to such third party Lenders. Any Lender or its successor which acquires the Parking Facility (through foreclosure on Landlord's Property or deed in lieu of foreclosure) shall not disturb Tenant's lease of the Stalls or any other portion of the Premises and shall respect Tenant's rights under this Lease.

**SECTION 6
USE OF STALLS**

6.1 The Stalls are leased to Tenant solely for the purpose of facilitating Hotel employee parking and, from time to time as reasonably necessary, overflow customer parking for Hotel special events. Tenant shall not use or suffer to be used the Stalls, or any portion of the Parking Facility, for any other

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purpose or purposes whatsoever, without Landlord's prior written consent, which consent may be withheld in Landlord's absolute discretion.

6.2 The parties acknowledge that Tenant's use of the Stalls and the Parking Facility for Hotel employees is nonexclusive and that Landlord and its Affiliates shall have the right to use the Parking Facility, as reasonably necessary, to accommodate the parking requirements of their respective business operations. Provided, however, that Landlord agrees to limit the use of the Parking Facility by others so as not to deprive Tenant of the number of Stalls granted to Tenant hereunder.

**SECTION 7
ALTERATIONS AND IMPROVEMENTS**

Landlord agrees that it shall not make any material alterations, improvements or changes in or to the Stalls, the Parking Facility or the Access Area which would materially interfere with Tenant's use of the Stalls.

**SECTION 8
UTILITIES**

Landlord shall be responsible for the cost and expense of installing any utilities for the Parking Facility.

**SECTION 9
TAXES**

Prior to the opening of the Hotel for business, Landlord will, at Landlord's own cost and expense, bear, pay, and discharge prior to delinquency, all real estate taxes, assessments, sewer rents, water rents and charges, duties, impositions, license and permit fees, charges for public utilities of any kind, payments and other charges of every kind and nature whatsoever, ordinary or extraordinary, foreseen or unforeseen, general or special, which shall, pursuant to present or future law or otherwise, during such period, have been or be levied, charged, assessed, or imposed upon, or become due and payable out of or for, or become or have become a lien on the Premises. After the opening of the Hotel for business, all such items shall be paid by Tenant. Provided, however, that for such part of the Lease Term, if any, as the Premises are not separately assessed but are included as part of Landlord's Property for computation of real property taxes and assessments, or are separately assessed but the taxes attributable thereto are billed to Landlord, then Tenant's share of taxes shall be an amount equal to eleven and two-tenths percent (11.2%) of the total assessments for Landlord's Property; provided further that following the release of the liens of the Deeds of Trust, Landlord and Tenant shall either create a tax parcel for the Premises separate from the remainder of Landlord's Property, or equitably adjust the percentage of property taxes payable by Tenant for the Premises following adjustments in assessments for Landlord's Property attributable to construction or demolition activity on Landlord's Property other than the Premises. All taxes payable by Tenant hereunder shall be paid to Landlord, as the case may be, on the later of (a) ten (10) days before such tax becomes delinquent or (b) ten (10) days after Landlord, or the taxing authority, notifies Tenant that a payment is due. Subject to any reimbursement due from Tenant as provided herein, Landlord shall be responsible for timely payment of all assessments on Landlord's Property. In the event Landlord fails to timely pay any such assessment, Tenant may, but is not obligated to pay such assessment directly to the taxing authority and pursue reimbursement of Landlord's share of such assessment from Landlord. Upon the termination of this Lease, Landlord shall promptly reimburse Tenant for any amounts paid by Tenant pursuant hereto attributable to the period of time following such termination. All amounts payable pursuant hereto shall be prorated on the basis of a 365-day year.

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SECTION 10
[INTENTIONALLY OMITTED]

SECTION 11
MAINTENANCE AND REPAIRS

Prior to the opening of the Hotel for business, Landlord shall keep and maintain in good order, condition and repair (including any such replacement and restoration as is required for that purpose) the Premises and every part thereof and any and all appurtenances thereto wherever located, including, without limitation, all repairs and replacements, structural and nonstructural, foreseen and unforeseen, which are necessary to maintain and preserve the Premises in good condition. All repairs shall be made in accordance with all laws, promptly, efficiently, and in good workmanlike manner. After the opening of the Hotel for business, such obligations shall be borne by Tenant.

SECTION 12
LIENS

12.1 Tenant, at all times, whether by bond or otherwise, shall keep Landlord, the Premises, and the leasehold estate created by this Lease free and clear from any claim, lien or encumbrance, tax lien or levy, mechanic's lien, attachment, garnishment or encumbrance arising directly or indirectly from any obligation, action or inaction of Tenant whatsoever, except to the extent permitted under Sections 17 and 18 below and except for "Permitted Liens" as defined in the Credit Agreement (as that term is defined in the First Trust Deed) and the Mortgage Notes Indenture (as that term is defined in the Second Trust Deed).

12.2 Tenant shall, within ten (10) days of the filing of any lien that is not permitted under Section 12.1 above, either pay or satisfy the same in full and procure the discharge thereof or commence an action to discharge the same, fully bond such lien, and diligently prosecute such action, or shall cause Tenant's contractor to do the same.

SECTION 13
INSURANCE

13.1 Landlord will, at its sole cost and expense, maintain in full force and effect:

(a) a policy of comprehensive or commercial general liability insurance issued by an insurance carrier approved by Landlord, insuring against loss, damage or liability for injury or death to persons and loss or damage to property occurring from any cause whatsoever in connection with the Parking Facility. Tenant shall be named as an additional insured under each such policy of insurance; with a combined single limit for bodily injury and property damage of not less than two million (\$2,000,000) per occurrence and five million (\$5,000,000) in the aggregate;

(b) a standard form of all-risk, commercial property insurance with extended coverage insurance covering leasehold improvements, furniture, fixtures and equipment, and personal property located in or on the Parking Facility. Such insurance shall be in an amount equal to the current replacement value of the property required to be insured.

13.3 Tenant shall not use or occupy, or permit the Stalls or the Parking Facility or the Access Area to be used or occupied, in a manner that will make void any insurance then in force.

13.4 Landlord and Tenant hereby waive any and all rights of recovery from the other party and its officers, agents and employees for any loss or damage, including consequential loss or damage, caused by any peril or perils (including negligent acts) that are caused by or result from risks insured against under any form of insurance policy.

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13.5 Each policy of insurance provided for in this Section 13 shall contain an express waiver of any and all rights of subrogation thereunder whatsoever against the other party, its officers, directors, agents and employees.

13.6 All of the provisions of this Section 13 are subject to, and shall be modified as reasonably necessary to be consistent with, the requirements of the Credit Agreement and the Mortgage Notes Indenture.

SECTION 14
DESTRUCTION OF THE PARKING FACILITY; CONDEMNATION

14.1 During the period prior to the earlier to occur of the expiration of the Initial Lease Term or the Termination Option Date or the opening of the Hotel, should any portion of the Premises be destroyed ("Damaged") by any cause whatsoever and provided that restoration is permitted under the Credit Agreement and the Mortgage Notes Indenture, Landlord shall restore the Premises. Following the opening of the Hotel but prior to the earlier to occur of the expiration of the Initial Lease Term or the Termination Option Date, should any portion of the Premises be Damaged by any cause whatsoever and provided that restoration is permitted under the Credit Agreement and the Mortgage Notes Indenture, Tenant shall restore the Premises so Damaged. After the earlier to occur of the expiration of the Initial Lease Term or the Termination Option Date, should the Premises be Damaged, Tenant may elect either to terminate this Lease or request that Landlord restore the Premises by delivery of written notice to Landlord within thirty (30) days after the casualty event giving rise to the Damage. If Tenant fails to give timely notice of Tenant's election, or if after making a timely election Landlord refuses to restore the Premises, this Lease shall terminate at the end of the calendar month following the calendar month in which such casualty event shall have occurred. If either Landlord or Tenant is required to restore the Premises during the Initial Lease Term or if following the Initial Lease Term Tenant requests Landlord to restore the Premises, and if Landlord, in its sole and absolute discretion, agrees to restore the Premises, the following provisions shall apply: After any such casualty and during the reconstruction period, Rent shall continue to accrue and be payable as if such event of destruction had not occurred. Landlord or Tenant, as the case may be, shall reconstruct the Damaged improvements

with all reasonable diligence (allowing for adjustment and collection of insurance proceeds, licensing, permitting, and approvals). No Damage to the Premises by fire, windstorm, or any other casualty shall entitle Tenant to violate any of the provisions of this Lease.

14.2 Should the whole of the Premises be condemned or taken by a competent authority for any public or quasi-public purpose, then this Lease shall terminate upon such taking. If such portion of the Parking Facility is condemned or taken such that the remaining number of Stalls thereof will not be reasonably adequate to accommodate the parking requirements of Hotel employees, as determined by Tenant in its sole and absolute discretion, Tenant shall have the option to terminate this Lease by notifying Landlord of such election in writing within twenty (20) days after such taking. If by such condemnation and taking a portion of the Parking Facility is taken and the remaining part thereof is suitable for the purposes for which Tenant has leased the Stalls, as determined by Tenant in its sole and absolute discretion, this Lease shall continue in full force and effect.

SECTION 15 INDEMNIFICATION

Tenant ("Indemnitor") hereby covenants and agrees to indemnify, defend, save and hold Landlord and other users of the Parking Facility (collectively "Indemnitee"), the Parking Facility, the Access Area, Landlord's Property and the leasehold estate created by this Lease free, clear and harmless from any and all liability, loss, costs, expenses (including attorneys' fees), judgments, claims, liens and demands of any kind whatsoever in connection with, arising out of, or by reason of any act, omission, or negligence of Indemnitor, its agents, employees, servants, contractors, subtenants or licensees while

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in, upon, about, or in any way connected with, Landlord's Property, the Access Area, the Parking Facility or the Stalls or arising from any accident, injury or damage, howsoever and by whomsoever caused, to any person or property whatsoever, occurring in, upon, about or in any way connected with Landlord's Property, the Premises or any portion thereof other than as a result of the intentional or negligent acts of Indemnitee.

SECTION 16 SUBORDINATION

Tenant agrees upon request of Landlord to subordinate this Lease and its rights hereunder to the lien of any mortgage, deed of trust or other encumbrance, together with any renewals, extensions or replacements thereof now or hereafter placed, charged or enforced against Landlord's Property, or any portion thereof including the Premises, and to execute and deliver at any time, and from time to time, upon demand by Landlord, such documents as may be reasonably required to effectuate such subordination within ten (10) days after receiving such documents, provided that in connection with such subordination agreement Landlord's lender agrees to provide a non-disturbance agreement for the benefit of Tenant in form and substance reasonably acceptable to Tenant and its Lenders.

SECTION 17 ASSIGNMENT AND SUBLETTING

17.1 Except as otherwise set forth herein, Tenant shall not assign, mortgage, pledge, hypothecate or encumber this Lease nor the leasehold estate hereby created or any interest herein, or sublet the Stalls or any of them, or license the use of all or any portion of the Premises without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion. Provided, however, Tenant shall have the right to assign this Lease to any successor-in-interest to the Hotel and, upon such assignment Tenant shall be relieved from any further obligation hereunder. The restriction or limitation on use of the Premises shall continue to apply to any subtenant or assignee hereunder. Any consent by Landlord to any act requiring consent pursuant to this Section 17.1 shall not constitute a waiver of the necessity for such consent to any subsequent act. Tenant shall pay all reasonable costs, expenses and reasonable attorneys' fees that may be incurred or paid by Landlord in processing, documenting or administering any request of Tenant for Landlord's consent required pursuant to this Section 17.1.

17.2 Landlord may reasonably require that each proposed assignee or sublessee agree, in a written agreement satisfactory to Landlord, to assume and abide by all the terms and provisions of this Lease, including those which govern the permitted uses of the Premises.

17.3 In the absence of an express agreement in writing to the contrary executed by Landlord, no assignment, mortgage, pledge, hypothecation, encumbrance, subletting or license hereof or hereunder shall act as a release of Tenant from any of the provisions, covenants and conditions of this Lease on the part of Tenant to be kept and performed.

17.4 Notwithstanding anything to the contrary contained herein, Tenant may encumber Tenant's leasehold estate under this Lease to secure financing of any indebtedness or any obligations of Tenant or any Affiliate of Tenant, in such amount and on such terms as Tenant may determine appropriate in its discretion, and Landlord hereby agrees to effect such amendments and modifications of this Lease as may be required by the obligee of such indebtedness or obligations to make this Lease "financeable" and to execute and deliver to such obligee such documents and instruments as such obligee may require in connection therewith; provided, however, that Landlord shall have no obligation to agree to any amendments or modifications or to execute any documents or instruments that require Landlord to subordinate its fee interest to the lien of any such encumbrance or to extend the term of this Lease or decrease the obligation of Landlord hereunder.

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SECTION 18 LEASEHOLD FINANCING

18.1 *Leasehold Mortgage Permitted.* Nothing in this Lease shall be construed as restricting in any manner the right of Tenant, from time to time, or at any time, to create one or more liens on, or encumber, by mortgage, deed of trust or trust deed in the nature of a mortgage (each, a "*Leasehold Mortgage*") the leasehold interest of Tenant in the Premises, and subject to the restrictions and limitations contained in any such instrument as to further conveyances, transfers and assignments, Tenant will have the right at any time, and from time to time, to convey, transfer and assign its interest under this Lease to a mortgagee, trustee

or beneficiary, of its designee (each "*Leasehold Mortgagee*"), under a Leasehold Mortgage given to secure any note or other obligation of Tenant or an Affiliate thereof.

18.2 *Certain Benefits to Leasehold Mortgage.* If Tenant shall execute any Leasehold Mortgage, then, in such event and so long as such Leasehold Mortgage shall constitute a lien or encumbrance against the leasehold estate of Tenant hereunder, the following provisions shall apply:

18.2.1 *Amendment of Lease.* No agreement by Landlord and Tenant for the assignment, cancellation, surrender, acceptance of surrender or termination, modification or amendment of this Lease shall be effective as to any Leasehold Mortgagee without the written consent of such Leasehold Mortgagee. If the Leasehold Mortgagee whose lien has first priority consents to an amendment, any Leasehold Mortgagee of a junior lien on the Premises will not unreasonably withhold its consent to such amendment.

18.2.2 *Exercise of Section 365(h)(i) Rights.* Landlord agrees, for the benefit of such Leasehold Mortgagee, that the right of election arising under Section 365(h)(i) of the Bankruptcy Code shall be exercised by the most senior Leasehold Mortgagee at such time and not by Tenant. Any attempted exercise by Tenant of such right of election in violation hereof shall be void.

18.2.3 *Loss Payee.* The name of each such Leasehold Mortgagee shall be added to the "*Loss Payable Endorsement*" of any and all insurance policies required to be carried by Tenant under this Lease.

18.2.4 *Proceeds of Casualty and Condemnation.* Notwithstanding anything in this Lease to the contrary, in the event of any casualty to or condemnation of the Premises or any portion thereof, the Leasehold Mortgagees shall be entitled to receive all insurance proceeds and/or condemnation awards as their interests appear (up to the amount of the indebtedness secured by the Leasehold Mortgage) otherwise payable to Tenant or Landlord or both and apply them in accordance with the Leasehold Mortgage and shall have the right, but not the obligation, to restore the Premises.

18.2.5 *Merger.* If Tenant shall acquire fee title, or any other estate, title or interest in the Premises which is the subject of this Lease, or any part thereof, or if the leasehold estate created by this Lease, or any portion thereof, shall be assigned, sold or otherwise transferred to the owner of such fee title or other estate, title or interest in the Premises which is the subject of this Lease, then in either such event, upon the election of the Leasehold Mortgagee first in priority expressly made in writing at any time thereafter, each Leasehold Mortgage shall attach to and be a lien upon such fee title and/or other estate so acquired (but only as the same pertains to the Premises), and such fee title and/or other estate so acquired shall be considered as mortgaged, assigned and conveyed to each Leasehold Mortgagee and the lien of each such Leasehold Mortgage shall be spread to cover such estate with the same force and effect as though specifically mortgaged, assigned or conveyed in such Leasehold Mortgage (and upon request of any Leasehold Mortgagee, either or both Landlord and Tenant shall execute further mortgages, assignments of leases and rents, amendments to documents and instruments as such Leasehold Mortgagee may reasonably

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require for such purpose); provided, however, that notwithstanding the foregoing, if and so long as any of the indebtedness secured by any such Leasehold Mortgage shall remain unpaid, unless the Leasehold Mortgagee thereunder shall otherwise in writing expressly consent, the fee title to the Premises which is the subject of this Lease and the leasehold estate created by this Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates either in Landlord or in Tenant, or in a third party, by purchase or otherwise. Nothing in this Section 18.2.5 shall be deemed to subordinate or require Landlord to subordinate the fee interest of Landlord in the Premises to the lien of any Leasehold Mortgage.

18.2.6 *Right of Entry.* Each Leasehold Mortgagee shall have the right to enter upon the Premises at any time for any purpose, including curing any defaults by Tenant under this Lease, and Landlord hereby agrees to accept performance and compliance by any such Leasehold Mortgagee of any covenants, agreements, provisions, conditions and limitations on Tenant's part to be kept, observed or performed hereunder, with the same force and effect as though kept, observed and performed by Tenant. Any default by Tenant that is not susceptible to being cured by a Leasehold Mortgagee shall be deemed waived by Landlord.

18.2.7 *Notice to Tenant.* Landlord shall serve Tenant with notice if Landlord files, or has filed against it, a petition under chapters 7 or 11 of the Bankruptcy Code. Such notice shall be served within twenty-four (24) hours of such filing. Landlord shall, upon serving Tenant with any notice of (1) a bankruptcy filing as herein described, (2) default pursuant to the provisions of this Lease, or (3) a matter on which Landlord may predicate or claim a default, at the same time serve a copy of such notice upon every Leasehold Mortgagee that has provided Landlord with notice of its identity and address, and no such notice by Landlord to Tenant hereunder shall have been deemed duly given unless and until a copy thereof has been so served on every such Leasehold Mortgagee.

18.2.8 *Termination.* Anything contained in this Lease to the contrary notwithstanding, if any default shall occur which entitles Landlord to terminate this Lease, or to exercise any other rights, powers or remedies available to it under this Lease, Landlord shall have no right to terminate this Lease or to exercise any of such rights, powers or remedies unless following the expiration of the period of time given Tenant to cure such default (or the act or omission which gave rise to such default), Landlord shall notify every Leasehold Mortgagee of Landlord's intent to so terminate or exercise any such rights, powers or remedies ("*Default Notice*") at least (x) sixty (60) days in advance of the proposed effective date of such termination, or exercise of any rights, powers or remedies if such default is capable of being cured by the payment of money, and (y) ninety (90) days in advance of the proposed effective date of such termination, or exercise of any such rights, powers or remedies if such default is not capable of being cured by the payment of money ("*Default Notice Period*"). The provisions of Subsection 18.2.9 below shall apply if during such thirty (60) or ninety (90) day Default Notice Period, any Leasehold Mortgagee shall notify Landlord of such Leasehold Mortgagee's desire to nullify such notice (the "*Nullification Notice*").

18.2.9 *Procedure on Default.*

(a) If Landlord shall elect to terminate this Lease or obtain possession of the Premises by reason of any default of Tenant, and a Leasehold Mortgagee shall have delivered the Nullification Notice set forth in Subsection 18.2.8, the specified date for the termination of this Lease as fixed by Landlord in its Default Notice or for the obtaining of possession shall be extended for a period of six (6) months, provided that such Leasehold Mortgagee shall, during such six (6) month period:

(1) pay or cause to be paid the monetary obligations of Tenant under this Lease as the same become due, and continue its good faith efforts to perform all of Tenant's other obligations under this Lease, excepting (i) obligations of Tenant to satisfy or otherwise

discharge any lien, charge or encumbrance against Tenant's interest in this Lease or the Premises junior in priority to the lien of the mortgage held by such Leasehold Mortgagee and (ii) past non-monetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee (including by reason of a bankruptcy stay or if possession of the Premises is required in order to cure such default); *provided* that Leasehold Mortgagee may offset amounts it expends to cure any defaults by Landlord under this Lease; and

(2) if not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with due diligence.

(b) If at the end of such six (6) month period such Leasehold Mortgagee is complying with Subsection 18.2.9(a) then this Lease shall not then terminate, and the time for completion by such Leasehold Mortgagee of its proceedings shall continue so long as such Leasehold Mortgagee is enjoined or stayed and thereafter for so long as such Leasehold Mortgagee proceeds to complete steps to acquire or sell Lessee's interest in this Lease by foreclosure of the Leasehold Mortgage or by other appropriate means with reasonable diligence. Nothing in this Subsection 18.2.9, however, shall be construed to extend this Lease beyond the original term thereof or to require a Leasehold Mortgagee to continue such foreclosure proceedings after the default has been cured. If the default shall be cured and the Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

(c) If a Leasehold Mortgagee is complying with Subsection 18.2.9(a) of this Section, then upon the acquisition of Tenant's estate herein by such Leasehold Mortgagee or its designee or any other purchaser at a foreclosure sale or otherwise (and the discharge of any lien, charge or encumbrance against the Tenant's interest in this Lease or the demised premises which is junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee and which the Tenant is obligated to satisfy and discharge by reason of the terms of this Lease) this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

18.2.10 *Receiver.* A Leasehold Mortgagee shall have the right after institution of foreclosure proceedings to apply to the court for the appointment of a receiver of the Premises. In the event foreclosure proceedings have been instituted, any money held by Landlord which becomes payable to Tenant shall be payable upon demand to such Leasehold Mortgagee as the interest of such Leasehold Mortgagee may appear when the same so becomes payable to Tenant. If Landlord shall at any time be in doubt as to whether such monies are payable to such Leasehold Mortgagee or to Tenant, Landlord may pay such monies into court and file an appropriate action of interpleader in which event all of Landlord's costs and expenses (including attorneys' fees) shall first be paid out of the proceeds so deposited.

18.2.11 *No Assumption.* For purposes of this Subsection 18.2.11, the making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or of the leasehold estate hereby created, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created, so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder, but the purchaser at any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignee or transferee of this Lease and of the leasehold estate hereby created under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage, shall be deemed to be an assignee or transferee within the meaning of this

Subsection 18.2.11 and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder arising and accruing from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of the leasehold estate.

18.2.12 *Successive Sales.* Any Leasehold Mortgagee or other acquiror of the leasehold estate of Tenant pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings may, upon acquiring Tenant's leasehold estate, without further consent of Landlord, sell and assign the leasehold estate so acquired on such terms and to such persons or organizations as are acceptable to such Leasehold Mortgagee or acquiror and thereafter be relieved of all obligations under this Lease; provided that such assignee has delivered to Landlord its written agreement to be bound by all of the provisions of this Lease from and after the date of such assignment.

18.2.13 *Leasehold Mortgagee Need Not Cure Specified Defaults.* Nothing herein contained shall require any Leasehold Mortgagee or its designee as a condition to the exercise of its rights hereunder to cure any default of Tenant not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee.

18.2.14 *Lease Proceedings.* Landlord shall give each Leasehold Mortgagee that has provided Landlord with notice of its interest and address, prompt notice of any arbitration or legal proceedings between Landlord and Tenant involving this Lease. Each Leasehold Mortgagee shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the parties hereto do hereby consent to such intervention. In the event that any Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, Landlord shall give such Leasehold Mortgagee notice of, and a copy of any award or decision made in any such proceedings, which shall be binding on all Leasehold Mortgagees not intervening after receipt of notice of arbitration. Tenant agrees that each Leasehold Mortgagee shall also have the right to intervene in, and be made a party to, any such proceedings.

18.2.15 *Future Leasehold Mortgage: Amendment of Lease.*

(a) Notwithstanding anything in this Lease to the contrary, each Leasehold Mortgagee shall have the right (if it has such right under its loan documents) to restrict, limit or prohibit the execution of any other Leasehold Mortgage junior in priority to the lien of such senior Leasehold Mortgage, or, in the event of the execution of any such junior Leasehold Mortgage, to accelerate or increase the interest rate under the indebtedness secured by such senior Leasehold Mortgage; and

(b) In the event of a Leasehold Mortgage (each, a "*Successor Leasehold Mortgage*") the proceeds of which are used to pay off in its entirety the indebtedness secured by any existing Leasehold Mortgage (each such existing Leasehold Mortgage, an "*Initial Leasehold Mortgage*"), then the

Successor Leasehold Mortgage shall be deemed to have succeeded to the position and all of the rights and priorities of the mortgagee under the Initial Leasehold Mortgage with respect to the mortgagor under the Initial Leasehold Mortgage and with respect to third parties.

18.2.16 *Certificate.* Landlord shall, without charge, at any time and from time to time within ten (10) business days after written request of Tenant to do so, certify by written instrument duly executed and acknowledged to any Leasehold Mortgagee or purchaser, or proposed Leasehold Mortgagee or proposed purchaser, or any other person, firm or corporation specified in such request: (1) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (2) as to the validity and force and effect of this Lease, in accordance with its tenor; (3) as to the existence of any default hereunder or any event which with the passage of time or notice would constitute a default hereunder; (4) as to the

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existence of any offsets, claims, counterclaims or defenses hereto on the part of Landlord or, to Landlord's knowledge, on the part of Tenant; (5) as to the commencement and expiration dates of this Lease; and (6) as to any other matters as may be reasonably so requested. Any such certificate may be relied upon by Tenant and any other person, firm or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on Landlord.

18.2.17 *Nominee.* Any acquisition by a Leasehold Mortgagee of the leasehold estate under this Lease, or any rights or privileges thereunder may be taken in the name of such Leasehold Mortgagee or in the name of any nominee or designee selected by it.

18.2.18 *New Lease.* In the event of the termination of this Lease as a result of Tenant's default prior to the expiration of the term, or in the event of a rejection by Landlord or Tenant of this Lease under Chapter 11 of the Bankruptcy Code, Landlord shall, in addition to providing the notices of default and termination as required by this Lease, provide each Leasehold Mortgagee with written notice that the Lease has been terminated or that Landlord has filed a request with the Bankruptcy Court seeking to reject the Lease, together with a statement of all sums which would at that time be due under this Lease but for such termination or rejection, and of all other defaults, if any, then known to Landlord. Upon any request of the Leasehold Mortgagee, or its designee, Landlord agrees to enter into a new lease ("*New Lease*") of the Premises with such Leasehold Mortgagee or its designee for the remainder of the term of this Lease, effective as of the date of termination or rejection, as the case may be, at the Rent, and upon the terms, covenants and conditions (including all transfer rights, but excluding requirements which are not applicable or which have already been fulfilled) of this Lease; provided, however, that (i) the Leasehold Mortgagee whose lien upon the Premises is superior to the lien of any other Leasehold Mortgage (the "*Senior Leasehold Mortgagee*") shall have the right to give notice of its intent to enter into a New Lease to the Landlord for a period of 60 days from its receipt of the notice referred to in the first sentence of this Section 18.2.18 and (ii) if the Senior Leasehold Mortgagee does not exercise its right to enter into the New Lease during this 60-day period; the Leasehold Mortgagee whose lien upon the Premises is superior to the lien of any other Leasehold Mortgage (other than the Senior Leasehold Mortgagee) shall have the right to give notice of its intent to enter into a New Lease to the Landlord during the remainder of the period(s) specified below; and *provided further, however,*

(a) Such Leasehold Mortgagee shall make written request upon Landlord for such New Lease at the later of (1) within one hundred (100) days after the date such Leasehold Mortgagee receives Landlord's notice of termination or rejection of this Lease given pursuant to this Subsection 18.2.18; or (2) within forty-five (45) days after the actual termination of the Lease as same may have been extended by Subsection 18.2.18 hereof.

(b) Such Leasehold Mortgagee or its designee shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease, any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such termination and, in addition thereto, all reasonable expenses, including reasonable attorneys' fees, court costs and costs and disbursements which Landlord shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by Landlord from or on behalf of Tenant. Upon the execution of such New Lease, Landlord shall allow to Tenant named therein as an offset against the sums otherwise due under this Subsection 18.2.18 or under the New Lease, an amount equal to the net income derived by Landlord from the Premises during the period from the effective date of termination of this Lease to the date of the beginning of the lease term under the New Lease. In the event of a controversy as to the amount to be paid to Landlord pursuant to this Section 18.2, the payment obligation shall be satisfied if Landlord shall be paid the amount not in controversy, and such Leasehold Mortgagee or its designee shall agree to pay any additional sum ultimately determined to be due.

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(c) Such Leasehold Mortgagee or its designee shall agree to remedy any of Tenant's defaults of which said Leasehold Mortgagee was notified by Landlord's notice of termination or rejection and which are reasonably susceptible of being so cured by such Leasehold Mortgagee or its designee.

(d) The Tenant under such New Lease shall have the same right, title and interest in and to the Premises and buildings and improvements thereon as Tenant under this Lease. Any holder of any such lien, charge or encumbrance or sublease shall execute such instruments of non-disturbance and/or attornment as the tenant under the New Lease may at any time require.

(e) The tenant under any New Lease shall be liable to perform the obligations imposed on the Tenant by such New Lease only for and during the period such person has ownership of the Premises.

(f) If more than one (1) Leasehold Mortgagee shall request a New Lease pursuant to this Section 18.3, Landlord shall enter into such New Lease with the Leasehold Mortgagee whose mortgage is in the first lien position, or with the designee of such Leasehold Mortgagee.

(g) Concurrently with the execution and delivery of any New Lease, Landlord shall assign to the tenant named therein all of the right, title and interest in and to moneys (including insurance proceeds and condemnation awards), if any, then held by and payable by Landlord which Tenant would have been entitled to receive but for the termination of the Lease. Upon the execution of any New Lease, the tenant named therein shall be entitled to any rent received under any sublease in effect during the period from the date of termination of the Lease to the date of execution of such New Lease.

SECTION 19
[INTENTIONALLY OMITTED]

SECTION 20
[INTENTIONALLY OMITTED]

SECTION 21
ESTOPPEL CERTIFICATE

Tenant agrees that within ten (10) business days of any demand therefor by Landlord, Tenant will execute and deliver to Landlord a certificate stating that this Lease is in full force and effect without amendment, or if amended attaching a copy thereof to the certificate, the date to which all rentals have been paid, any defaults or offsets claimed by Tenant and such other information concerning the Lease, the Premises or Tenant as Landlord may request. Landlord will provide a similar document to Tenant upon request by Tenant within ten (10) business days after request.

SECTION 22
EXPENDITURES

21.1 Whenever under any provision of this Lease, Tenant shall be obligated to make any payment or expenditure, or to do any act or thing, or to incur any liability whatsoever, and Tenant fails, refuses or neglects to perform as herein required after notice and an opportunity to cure (which shall be deemed to be thirty (30) days unless provided for specifically herein), Landlord shall be entitled, but shall not be obligated, to make any such payment or to do any such act or thing, or to incur any such liability, all on behalf of and at the cost and for the account of Tenant. In such event, the amount

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thereof with interest thereon at the Default Rate, shall constitute and be collectable as additional rent on demand.

21.1 Whenever under any provision of this Lease, Landlord shall be obligated to make any payment or expenditure, or to do any act or thing, or to incur any liability whatsoever, and Landlord fails, refuses or neglects to perform as herein required after notice and an opportunity to cure (which shall be deemed to be thirty (30) days unless provided for specifically herein), Tenant shall be entitled, but shall not be obligated, to make any such payment or to do any such act or thing, or to incur any such liability, all on behalf of and at the cost and for the account of Landlord. In such event, the amount thereof with interest thereon at the Default Rate, shall be collectable on demand.

SECTION 23
DEFAULT

23.1 Tenant shall be in default of this Lease if:

23.1.1 Tenant shall fail to make timely and full payment of any sum of money required to be paid hereunder and such failure continues for ten (10) days after written notice thereof from Landlord;

23.1.2 Tenant shall fail to perform any other term, covenant or condition of Tenant contained in this Lease, and such failure continues for thirty (30) days after written notice thereof from Landlord; provided, however, that if such failure is impossible to correct within thirty (30) days Tenant shall not be deemed in default if Tenant commences correction within said thirty (30) day period, and diligently pursues such correction to completion;

23.1.3 At any time after the Hotel opens for business, Tenant should cease operations of the Hotel;

23.1.4 There is filed any petition in bankruptcy or Tenant is adjudicated a bankrupt or insolvent, or there is appointed a receiver or trustee to take possession of Tenant or of all or substantially all of the assets of Tenant, or there is a general assignment by Tenant for the benefit of creditors, or any action is taken by or against Tenant under any state of federal insolvency or bankruptcy act, or any similar law now or hereafter in effect; or

23.2 In the event of a default, in addition to any other rights or remedies provided for herein or at law or in equity, Landlord, at its sole option, shall have the following rights:

23.2.1 The right to declare the Lease Term ended and to terminate all of the rights of Tenant in and to the Premises;

23.2.2 Pursuant to its rights of re-entry, Landlord may, but shall not be obligated to (i) remove all persons from the Premises, (ii) remove all property therefrom, and (iii) enforce any rights Landlord may have against said property or store the same in any warehouse or elsewhere at the cost and for the account of Tenant. Tenant agrees to hold Landlord free and harmless of any liability whatsoever for the removal and/or storage of any such property, whether of Tenant or any third party whomsoever, except for damage caused by the willful misconduct or gross negligence of Landlord, its agents or subcontractors.

23.2.3 Anything contained herein to the contrary notwithstanding, Landlord shall not be deemed to have terminated this Lease or the liability of Tenant to pay any rent or other sum of money accruing hereunder, by any such re-entry, or by any action in unlawful detainer or otherwise to obtain possession of the Premises, unless Landlord shall specifically notify Tenant in writing that it has so elected to terminate this Lease.

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23.2.4 In any action brought by Landlord to enforce any of its rights under or arising from this Lease, Landlord shall be entitled to receive its reasonable costs and legal expenses, including reasonable attorneys' fees, whether such action is prosecuted to judgment or not.

23.4 The waiver by Landlord of any breach of this Lease by Tenant shall not be a waiver of any preceding or subsequent breach of this Lease by Tenant. The subsequent acceptance of rent or any other payment hereunder by Landlord shall not be construed to be a waiver of any preceding breach of this Lease by Tenant. No payment by Tenant or receipt by Landlord of a lesser amount than the rent herein provided shall be deemed to be other than on account of the earliest rent due and payable hereunder.

SECTION 24 MISCELLANEOUS

24.1 Tenant, upon paying the rentals and other payments herein required and upon performance of all of the terms, covenants and conditions of this Lease on its part to be kept, may quietly have, hold and enjoy the Premises during the Lease Term without any disturbance from Landlord or from any other person claiming through Landlord, except as expressly provided otherwise in this Lease.

24.2 In the event of any sale or exchange of the Premises by Landlord, Landlord shall be, and is, hereby relieved of all liability under and all of its covenants and obligations contained in or derived from this Lease from and after the date of sale or exchange. Tenant agrees to attorn to such purchaser or transferee, provided that such purchaser or transferee agrees to be bound as Landlord under all of the terms and conditions of this Lease. Any sale of the Premises by Landlord shall be subject to this Lease.

24.3 It is agreed that in the event Landlord fails or refuses to perform any of the provisions, covenants or conditions of this Lease, Tenant, prior to exercising any right or remedy Tenant may have against Landlord, shall give written notice to Landlord of such default, specifying in said notice the default with which Landlord is charged and Landlord shall not be deemed in default if the same is cured within thirty (30) days of receipt of said notice. Notwithstanding any other provision hereof, Tenant agrees that if the default is of such a nature that the same can be rectified or cured by Landlord, but cannot with reasonable diligence be rectified or cured within that thirty (30) day period, then such default shall be deemed to be rectified or cured if Landlord within that thirty (30) day period shall commence the rectification and curing thereof and shall continue thereafter with all due diligence to cause such rectification and curing to proceed.

24.4 Neither party shall be in breach of this Lease if it fails to perform as required hereunder due to labor disputes, civil commotion, war, warlike operation, sabotage, governmental regulations or control, fire or other casualty, inability to obtain any materials, or other causes beyond such party's reasonable control (financial inability excepted); provided, however, that nothing contained herein shall excuse Tenant from the prompt payment of any rent or charge required of Tenant hereunder.

24.5 Any and all notices and demands required or desired to be given hereunder shall be in writing and shall be validly given or made (and effective) if served personally, delivered by a nationally recognized overnight courier service, or faxed and deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, to the following addresses:

| | |
|-----------------|---|
| If to Landlord: | Valvino Lamore, LLC 3145 Las Vegas Boulevard South Las Vegas, Nevada 89109 Attention: Legal Department Telephone: 702-733-4444 Facsimile: 702-791-0167 |
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| | |
|---------------|---|
| If to Tenant: | Wynn Las Vegas, LLC 3145 Las Vegas Boulevard South Las Vegas, Nevada 89109 Attention: Legal Department Telephone: 702-733-4556 Facsimile: 702-733-4596 |
|---------------|---|

Either party may change its address for the purpose of receiving notices by providing written notice to the other.

24.6 The various rights, options, elections and remedies of Landlord contained in this Lease shall be cumulative and no one of them shall be construed as exclusive of any other, or of any right, priority or remedy allowed or provided for by law and not expressly waived in this Lease.

24.7 The terms, provisions, covenants and conditions contained in this Lease shall apply to, bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as permitted in Section 17 hereof.

24.8 If any term, covenant or condition of this Lease, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all terms, covenants and conditions of this Lease, and all applications thereof, not held invalid, void or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

24.9 Time is of the essence of this Lease and all of the terms, covenants and conditions hereof.

24.10 This Lease contains the entire agreement between the parties and cannot be changed or terminated orally.

24.11 Nothing contained herein shall be deemed to create any partnership, joint venture, agency or other relationship between Landlord and Tenant other than the relationship of landlord and tenant.

24.12 The captions are descriptive only and for convenience in reference to this Lease and in no way whatsoever define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

24.13 The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Lease. Each party hereto consents to, and waives any objection to, Clark County, Nevada as the proper and exclusive venue for any disputes arising out of or relating to this Lease or any alleged breach thereof.

24.14 In the event Tenant now or hereafter shall consist of more than one person, firm, corporation or trust, then and in such event, all such persons, firms, corporations or trusts shall be jointly and severally liable as Tenant hereunder.

24.15 This Lease may not be recorded without Landlord's prior written consent. However, the parties agree to record a Memorandum of Lease in the form attached hereto as Exhibit "D". A Memorandum of Termination of Lease in the form attached hereto as Exhibit "E" shall also be executed by the parties, shall be held by Landlord, and shall be recorded by Landlord upon termination of the Lease.

24.16 All necessary actions have been taken under the parties' organizational documents to authorize the individuals signing this Lease on behalf of the respective parties to do so.

24.17 The prevailing party in any action regarding this Lease shall be entitled to receive its costs and legal expenses including reasonable attorneys' fees, whether such action is prosecuted to judgment or not. The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever

arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim of injury or damage.

24.18 Landlord and Tenant each represent and warrant to the other that they have not entered into any written contractual arrangement with, or promised to pay any broker's fee, finder's fee, commission or other similar compensation to, or otherwise agreed to compensate, any real estate agent or broker in connection with this transaction. Landlord and Tenant each agree to indemnify, defend, save and hold the other harmless from and against all loss, cost and expense incurred by reason of the breach of the foregoing representation and warranty arising from any claim for compensation founded upon or as a result of acts asserted to have been performed on their respective behalf. Such indemnification obligation shall survive any termination of the Lease.

24.19 This Lease may be executed in one or more counterparts, all of which executed counterparts shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this document to physically form one document.

[Signature page follows]

IN WITNESS WHEREOF, we have set forth our hands as of the 21st day of October, 2002.

"Landlord"

"Tenant"

Wynn Resorts Holdings, LLC
a Nevada limited liability company

Wynn Las Vegas, LLC
a Nevada limited liability company

By: Valvino Lamore, LLC, a Nevada limited liability company, its sole member

By: Wynn Resorts Holdings, LLC a Nevada limited liability company, its sole member

By: Wynn Resorts, Limited, a Nevada corporation, its sole member

By: Valvino Lamore, LLC a Nevada limited liability company, its sole member

By: /s/ MARC H. RUBINSTEIN

By: Wynn Resorts, Limited, a Nevada corporation, its sole member

Name: Marc H. Rubinstein

Title: Senior Vice President, General Counsel & Secretary

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein

Title: Senior Vice President, General Counsel & Secretary

SCHEDULE 1

1. *First Deed of Trust.* Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by Valvino Lamore, LLC, a Nevada limited liability company, as Trustor, to Nevada Title Company, a Nevada corporation, as Trustee, for the benefit of Deutsche Bank Trust Company Americas, in its capacity as Administrative Agent for the benefit of the Banks, as Beneficiary; and

2. *Second Deed of Trust.* Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by Valvino Lamore, LLC, a Nevada limited liability company, as Trustor, to Nevada Title Company, a Nevada corporation, as Trustee, for the benefit of Wells Fargo Bank, National Association, in its capacity as the Mortgage Notes Indenture Trustee, as Beneficiary.

3. *Credit Agreement.* The Credit Agreement among Wynn Las Vegas, LLC, as the borrower, the several lenders from time to time parties thereto, Deutsche Bank Securities Inc., as lead arranger and joint book running manager, Deutsche Bank Trust Company Americas, as administrative agent and swing line lender, Banc of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear Stearns & Co., Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York and Grand Cayman Branches, as arranger and joint documentation agent, and JPMorgan Chase Bank, as joint documentation agent dated as of October 30, 2002.

4. *Mortgage Notes Indenture.* The Indenture dated as of October 30, 2002, for the 12.0% Second Mortgage Notes Due 2010 by and among Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp., as joint and several obligors, and Desert Inn Water Company, LLC, Wynn Design & Development, LLC, Wynn Resorts Holdings, LLC, Las Vegas Jet, LLC, World Travel, LLC, Palo, LLC, Valvino Lamore, LLC and Wynn Resorts, Limited as guarantors.

QuickLinks

[Exhibit 10.6](#)

[PARKING FACILITY LEASE between VALVINO LAMORE, LLC, Landlord and WYNN LAS VEGAS, LLC, Tenant Dated October 21, 2002](#)

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CREDIT AGREEMENT

among

**WYNN LAS VEGAS, LLC,
as the Borrower,**

**The Several Lenders
from Time to Time Parties Hereto,**

**DEUTSCHE BANK SECURITIES INC.,
as Lead Arranger and Joint Book Running Manager,**

**DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Administrative Agent and Swing Line Lender,**

**BANC OF AMERICA SECURITIES LLC,
as Lead Arranger, Joint Book Running Manager and Syndication Agent,**

**BEAR, STEARNS & CO. INC.,
as Arranger and Joint Book Running Manager,**

**BEAR STEARNS CORPORATE LENDING INC.,
as Joint Documentation Agent,**

**DRESDNER BANK AG, NEW YORK AND
GRAND CAYMAN BRANCHES,
as Arranger and Joint Documentation Agent,**

and

**JPMORGAN CHASE BANK,
as Joint Documentation Agent**

Dated as of October 30, 2002

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| M | Form of Notice of Borrowing |
| N | Form of Subordination, Non-Disturbance and Attornment Agreement |
| O | Form of Letter of Credit Request |

This CREDIT AGREEMENT is dated as of October 30, 2002 and entered into among WYNN LAS VEGAS, LLC, a Nevada limited liability company (the "Borrower"), the several banks and other financial institutions or entities from time to time parties to this Agreement (the "Lenders"), DEUTSCHE BANK SECURITIES INC., as lead arranger and joint book running manager, DEUTSCHE BANK TRUST COMPANY AMERICAS, as administrative agent (in such capacity, the "Administrative Agent") and swing line lender, BANC OF AMERICA SECURITIES LLC, as lead arranger, joint book running manager and syndication agent, BEAR, STEARNS & CO. INC., as arranger and joint book running manager, BEAR STEARNS CORPORATE LENDING INC., as joint

RECITALS

WHEREAS, the Borrower proposes to develop and own the Project (such defined term and other defined terms used in these Recitals shall have the meanings given in Section 1.1 of this Agreement);

WHEREAS, the Borrower desires to finance the development and construction of the Project with (i) existing cash balances of the Borrower and common equity contributions to the Borrower from certain affiliates of the Borrower (consisting of property and cash) in an aggregate amount of approximately \$937,000,000, (ii) approximately \$344,000,000 of proceeds from the issuance of senior secured 12% Mortgage Notes due 2010, (iii) the proceeds of an equipment finance loan from the FF&E Lenders in an aggregate amount of approximately \$188,500,000 to finance certain furniture, fixtures and equipment (including, without limitation, the Aircraft and certain gaming equipment), (iv) projected interest income of approximately \$25,000,000 and (v) the senior secured credit facilities contemplated hereby;

WHEREAS, the Borrower desires that the Lenders extend the senior secured credit facilities contemplated hereby to the Borrower to provide a portion of the funds necessary to develop and construct the Project and, in the case of the Revolving Credit Loans, to provide working capital for the operation of the Project following the Completion Date;

WHEREAS, subject to the terms and conditions hereof, the Lenders are willing to extend such senior secured credit facilities to the Borrower;

WHEREAS, the Borrower desires to secure all of its Obligations by granting to the Administrative Agent on behalf of the Lenders Liens on substantially all of its assets (including the Project and related Collateral), in each case as more fully described in this Agreement and the other Loan Documents; and

WHEREAS, each of the Loan Parties (other than the Borrower and Desert Inn Improvement) shall guaranty the Obligations of the Borrower and shall secure all of its Obligations by granting to the Administrative Agent on behalf of the Lenders Liens on substantially all of its assets (including the Project and related Collateral), in each case as more fully described in this Agreement and the other Loan Documents.

NOW, THEREFORE, in consideration of the premises and the agreements hereinafter set forth, the parties hereto hereby agree as follows:

SECTION 1. DEFINITIONS

1.1 *Defined Terms.* As used in this Agreement, the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1.

"Account": any "Commodity Account," "Deposit Account" or "Securities Account" (as such terms are defined in the UCC) with respect to which the Secured Parties have a perfected first priority Lien (subject only to Permitted Liens) securing the Obligations of the Loan Parties pursuant to a Control Agreement.

"Additional Completion Period": the period, if any, commencing on the Debt Service Availability Date and ending on the Completion Date.

"Additional Land": collectively, the real property and fixtures represented as of the Closing Date by the following Assessor's Parcel Numbers: 162-16-510-019, 162-16-510-020, 162-16-510-023, 162-16-510-026, 162-16-510-027, 162-16-610-020, 162-16-610-023, 162-16-610-024, 162-16-610-025, 162-16-610-026, 162-16-610-027 and 162-16-610-031.

"Additional Material Contracts": any Material Contract entered into after the Closing Date relating to the development, construction, maintenance or operation of the Project.

"Adjustment Date": as defined in the Pricing Grid.

"Administrative Agent": as defined in the preamble hereto.

"Administrative Agent Fee Letter": the Second Amended and Restated Administrative Agent Fee Letter, dated October 30, 2002, among Valvino, Wynn Resorts Holdings, the Borrower, the Administrative Agent and Deutsche Bank Securities Inc., as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with this Agreement.

"Advance Confirmation Notice": as defined in the Disbursement Agreement.

"Advance Requests": as defined in the Disbursement Agreement.

"Affiliate": as applied to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with") as applied to any Person means the power, directly or indirectly, either to (a) vote 10% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

"Affiliated Fund": means, with respect to any Lender that is a fund that invests (in whole or in part) in commercial loans, any other fund that invests (in whole or in part) in commercial loans and is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"Affiliated Overhead Expenses": for any period, the reasonable costs and expenses of, and actually incurred by, Wynn Resorts and the Loan Parties (other than the Borrower and its Subsidiaries), for salary and benefits, office operations, development, advertising, insurance and other corporate or other overhead, for such period, calculated on a consolidated basis, after the elimination of intercompany transactions, and in accordance with GAAP; *provided*, that Affiliated Overhead Expenses shall not include any fee, profit or similar component payable to Wynn Resorts or any other Affiliate of Wynn Resorts (other than with respect to the salary of Mr. Wynn) and shall represent only the payment or reimbursement of actual costs and expenses incurred by Wynn Resorts and the Loan Parties (other than the Borrower and its Subsidiaries).

"Agents": the collective reference to the Syndication Agent, the Documentation Agents and the Administrative Agent.

"Aggregate Exposure": with respect to any Lender at any time, an amount equal to the sum of (i) the amount of such Lender's Term Loan Commitment then in effect or, if the Term Loan Commitments have been terminated, the amount of such Lender's Term Loan Extensions of Credit then outstanding and (ii) the amount of such Lender's Revolving Credit Commitment then in effect or, if the Revolving Credit Commitments have been terminated, the amount of such Lender's Revolving Extensions of Credit then outstanding.

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"Aggregate Exposure Percentage": with respect to any Lender at any time, the ratio (expressed as a percentage) of such Lender's Aggregate Exposure at such time to the Aggregate Exposure of all Lenders at such time.

"Agreement": this Credit Agreement, as amended, supplemented, replaced or otherwise modified from time to time in accordance with this Credit Agreement.

"Aircraft": the Existing Aircraft and, after the Disposition of the Existing Aircraft in accordance with Section 7.5(o), the Replacement Aircraft in the event the Replacement Aircraft is acquired pursuant to Section 7.5(o)(ii)(B).

"Aircraft Operating Agreement": that certain Amended and Restated Aircraft Operating Agreement, dated October 30, 2002 between the Aircraft Trustee and World Travel.

"Aircraft Note": (i) that certain promissory note, dated October 30, 2002, in an aggregate principal amount of \$38,000,000 issued by World Travel in favor of the Borrower or (ii) after the Disposition of the Existing Aircraft in accordance with Section 7.5(o), a replacement note in substantially the form of the note described in clause (i) of this definition issued by World Travel in favor of the Borrower in an amount not greater than the sum of (x) the amount of Indebtedness outstanding under the note described in clause (i) of this definition (immediately prior to the Disposition of the Existing Aircraft) at the time of the Disposition of the Existing Aircraft and (y) the amount of Indebtedness incurred pursuant to the proviso of Section 7.2(f)(ii).

"Aircraft Trustee": Wells Fargo Bank Northwest, National Association, as trustee under a trust agreement in favor of World Travel with respect to the Aircraft, and any successor or replacement trustee.

"Allocable Overhead": for any period, an amount equal to (x) the amount of Affiliated Overhead Expenses for such period divided by (y) the number of gaming and/or hotel projects of Wynn Resorts and its Subsidiaries which were operating during such period or for which debt and/or equity financing has been obtained to finance the development, construction and/or opening thereof; *provided*, that amounts allocated to any such project shall be prorated based on the period within such period that such project was in operation or financing therefor was obtained.

"Amortization Date": (i) with respect to the first Amortization Date, December 31, 2005 and (ii) with respect to each subsequent Amortization Date, the last day of each succeeding fiscal quarter of the Borrower.

"Applicable Facility Lenders": with respect to any Facility, Non-Defaulting Lenders holding more than 33¹/₃% of the Total Term Loan Extensions of Credit of Non-Defaulting Lenders or the Total Revolving Extensions of Credit of Non-Defaulting Lenders, as the case may be, outstanding under such Facility (or, prior to any termination of the Term Loan Commitments or the Revolving Credit Commitments, as the case may be, Non-Defaulting Lenders holding more than 33¹/₃% of the Total Term Loan Credit Commitments (less the aggregate Term Loan Commitments of Defaulting Lenders) or Total Revolving Credit Commitments (less the aggregate Revolving Credit Commitments of Defaulting Lenders), as the case may be).

"Applicable Margin": for each Type of Loan, the rate per annum set forth under the relevant column heading below:

| | Base Rate Loans | Eurodollar Loans |
|---|--------------------|---------------------|
| Revolving Credit Loans and Swing Line Loans | 3.00% | 4.00% |
| Term Loans | 4.50% | 5.50% |

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provided, that on and after the first Adjustment Date occurring after the Opening Date, the Applicable Margin with respect to Revolving Credit Loans and Swing Line Loans will be determined pursuant to the Pricing Grid.

"Arrangers": collectively, Deutsche Bank Securities Inc., in its capacity as a lead arranger, Banc of America Securities LLC, in its capacity as a lead arranger, Bear, Stearns & Co. Inc., in its capacity as an arranger, and Dresdner Bank AG, New York and Grand Cayman Branches, in its capacity as an arranger.

"Art Rental and Licensing Agreement": that certain Second Amended and Restated Art Rental and Licensing Agreement, dated as of September 18, 2002, between Mr. Wynn and Wynn Resorts Holdings.

"Aruze Corp.": Aruze Corp., a Japanese public corporation.

"Aruze USA": Aruze USA, Inc., a Nevada corporation.

"Asset Sale": any Disposition of Property or series of related Dispositions of Property other than (i) the granting of any Lien permitted by Section 7.3, (ii) any Disposition permitted by Section 7.4 and (iii) any Disposition permitted by subsections (a), (b), (c), (d), (f), (h), (i), (j), (k), (l), (m), (n), (o) or (q) of Section 7.5 (*provided*, that in the case of Section 7.5(a), Dispositions of Property thereunder shall be considered "Asset Sales" to the extent of any proceeds thereof not applied to the replacement of Property pursuant to Section 7.5(a)(ii)).

"Assignee": as defined in Section 10.6(c).

"Assignment and Acceptance": as defined in Section 10.6(c).

"Assignor": as defined in Section 10.6(c).

"Available Funds": as defined in the Disbursement Agreement.

"Available Revolving Credit Commitment": as to any Revolving Credit Lender at any time, an amount equal to the excess, if any, of (a) such Revolving Credit Lender's Revolving Credit Commitment then in effect over (b) such Revolving Credit Lender's Revolving Extensions of Credit then outstanding; provided, that in calculating any Lender's Revolving Extensions of Credit for the purpose of determining such Lender's (other than the Swing Line Lender) Available Revolving Credit Commitment pursuant to Section 2.9(a), the aggregate principal amount of Swing Line Loans then outstanding shall be deemed to be zero.

"Available Term Loan Commitments": as to any Term Loan Lender at any time, an amount equal to the excess, if any, of (a) such Term Loan Lender's Term Loan Commitment then in effect over (b) such Term Loan Lender's Term Loan Extensions of Credit then outstanding.

"Bankruptcy Code": Title 11 of the United States Code entitled "Bankruptcy", as now or hereafter in effect, or any successor statute.

"Bank Company Collateral Account Agreement": as defined in the Disbursement Agreement.

"Bank Completion Guaranty Collateral Account Agreement": as defined in the Disbursement Agreement.

"Bank Debt Service": for any period, (a) all fees payable during such period to the Administrative Agent, the Issuing Lender, the Swing Line Lender and the Lenders, (b) interest on Term Loans, Swing Line Loans, Revolving Credit Loans and, without duplication, interest on any outstanding Reimbursement Obligations, in each case payable during such period, (c) scheduled Term Loan principal payments (as reduced to reflect actual prepayments through the date of such calculation) and payments with respect to the principal amount of any outstanding Reimbursement

Obligations, in each case payable during such period, and (d) net payments, if any, payable during such period pursuant to Specified Hedge Transactions.

"Bank Local Company Collateral Account Agreement(s)": as defined in the Disbursement Agreement.

"Base Rate": for any day, a rate per annum (rounded upwards, if necessary, to the next $\frac{1}{16}$ of 1%) equal to the greatest of (a) the Prime Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day plus $\frac{1}{2}$ of 1%. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective as of the opening of business on the effective day of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

"Base Rate Loans": Loans for which the applicable rate of interest is based upon the Base Rate.

"Beneficial Owner": as defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" will be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition. The term "Beneficially Owned" has a corresponding meaning.

"Benefited Lender": as defined in Section 10.7.

"Board": the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Board of Directors": (i) with respect to a corporation, the board of directors of the corporation; (ii) with respect to a partnership, the board of directors of the general partner of the partnership; and (iii) with respect to any other Person, the board or committee of such Person serving a similar function.

"Borrower": as defined in the preamble hereto.

"Borrowing Date": any Business Day specified by the Borrower as a date on which the Borrower requests the relevant Lender(s) to make Loans hereunder.

"Borrower Indemnity Agreement": the Indemnity Agreement, dated as of October 30, 2002, by the Borrower in favor of the Administrative Agent.

"Borrower Mortgage": the Amended and Restated Deed of Trust, Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of October 30, 2002, made by the Borrower to the Title Insurance Company for the benefit of the Administrative Agent.

"Building Lease": that certain Lease Agreement, dated as of October 21, 2002, by and between Valvino, as lessor, and the Borrower, as lessee, with respect to the lease of space in the Phase II Land Building.

"Business Day": (i) for all purposes other than as covered by clauses (ii) and (iii) below, a day other than a Saturday, Sunday or other day on which commercial banks in New York City, New York or Las Vegas, Nevada are authorized or required by law to close, (ii) with respect to all notices and determinations in connection with, and payments of principal and interest on, Eurodollar Loans, any day which is a Business Day described in clause (i) above and which is also a day for trading by and between banks in Dollar deposits in the New York interbank eurodollar market and (iii) with respect to all notices and determinations in connection with Letters of Credit

and payments of principal and interest on Reimbursement Obligations, a day other than a Saturday, Sunday or other day on which commercial banks in New York City, New York are authorized or required by law to close.

"*Capital Corp.*": Wynn Las Vegas Capital Corp., a Nevada corporation.

"*Capital Expenditures*": for any period, with respect to any Person, the aggregate of all expenditures by such Person and its Subsidiaries for the acquisition or leasing (pursuant to a capital lease) of fixed or capital assets (including, without limitation, real property) or additions to equipment (including replacements, capitalized repairs and improvements during such period) which should be capitalized under GAAP on a consolidated balance sheet of such Person and its Subsidiaries; *provided*, that the amount of Capital Expenditures in respect of fixed or capital assets or additions to equipment in any Fiscal Year shall not include (a) to the extent applied during such Fiscal Year to the replacement of Property pursuant to Section 7.5(a)(ii), the Net Disposition Proceeds received by any such Person from the Disposition of Property pursuant to Section 7.5(a) and (b) the Insurance Proceeds and/or Eminent Domain Proceeds received by any such Person for any casualties to, or Taking of, fixed or capital assets and applied during such Fiscal Year to the repair or replacement of fixed or capital assets in accordance with Section 2.24. Notwithstanding the foregoing, any Project Costs, any expenditures in furtherance of the construction of the Entertainment Facility and any expenditures with respect to the purchase of the Replacement Aircraft in accordance with Section 7.5(o), in each case that otherwise would have constituted Capital Expenditures by virtue of the foregoing, shall be excluded from this definition.

"*Capital Lease Obligations*": as to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

"*Capital Stock*": any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all classes of membership interests in a limited liability company, any and all classes of partnership interests in a partnership, any and all equivalent ownership interests in a Person and any and all warrants, rights or options to purchase any of the foregoing.

"*Cash Equivalents*": (a) United States dollars; (b) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (as long as the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than six months from the date of acquisition; (c) interest-bearing demand or time deposits (which may be represented by certificates of deposit) issued by banks having general obligations rated (on the date of acquisition thereof) at least "A" or the equivalent by S&P or Moody's or, if not so rated, secured at all times, in the manner and to the extent provided by law, by collateral security consisting of property of the type specified in clause (a) or (b) of this definition, with a market value of no less than the amount of monies so invested; (d) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (b) and (c) above entered into with any financial institution meeting the qualifications specified in clause (c) above; (e) commercial paper having the highest rating obtainable from Moody's or S&P and in each case maturing within six months after the date of acquisition; (f) money market funds or mutual funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (d) of this definition; and (g) to the extent not permitted in clauses (a) through (f) of this definition, Permitted Securities.

"*Casino Land*": the land owned by the Borrower as described in Exhibit T-4 to the Disbursement Agreement.

"*Change of Control*": the occurrence of any of the following: (i) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Loan Parties, taken as a whole, or of the Borrower and its Subsidiaries, taken as a whole, to any "person" (as that term is used in Section 13(d)(3) of the Exchange Act), other than to Mr. Wynn or a Related Party of Mr. Wynn, (ii) the adoption of a plan relating to the liquidation or dissolution of the Borrower or any successor thereto, (iii) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that (a) any "person" (as defined in clause (i) above), other than Mr. Wynn and any of his Related Parties becomes the Beneficial Owner, directly or indirectly, of more than 50% of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than number of equity interests, (b) any "person" (as defined in clause (i) above) (other than Kazuo Okada, Aruze USA and Aruze Corp., so long as (1) the Stockholders Agreement, as in effect on the Closing Date, remains in full force and effect, (2) a majority of the Board of Directors of Wynn Resorts is constituted of Persons named on any slate of directors chosen by Mr. Wynn and Aruze USA pursuant to the Stockholders Agreement, as in effect on the Closing Date, and (3) Kazuo Okada and his Related Parties either (A) "control" (as that term is used in Rule 405 under the Securities Act) Aruze Corp. and Aruze USA or (B) otherwise remain the direct or indirect Beneficial Owners of the Voting Stock of Wynn Resorts held by Aruze Corp.) becomes the Beneficial Owner, directly or indirectly, of a greater percentage of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than number of equity interests, than is at that time Beneficially Owned by Mr. Wynn and his Related Parties as a group, (c) Mr. Wynn and his Related Parties as a group own less than 20% of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than number of equity interests (excluding, for purposes of calculating the outstanding voting stock of Wynn Resorts pursuant to this clause (iii)(c), shares of voting stock issued in a primary issuance by Wynn Resorts in one or more bona fide public offerings of additional Voting Stock of Wynn Resorts (other than the IPO)), or (d) Mr. Wynn and his Related Parties as a group own less than 10% of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than number of equity interests, (iv) the first day on which Mr. Wynn does not act as either the Chairman of the Board of Directors of Wynn Resorts or the Chief Executive Officer of Wynn Resorts, other than (1) as a result of death or disability or (2) if the Board of Directors of Wynn Resorts, exercising their fiduciary duties in good faith, removes or fails to re-appoint Mr. Wynn as Chairman of the Board of Directors of Wynn Resorts or Chief Executive Officer of Wynn Resorts, (v) the first day on which a majority of the members of the Board of Directors of Wynn Resorts or the Borrower are not Continuing Directors, (vi) the first day on which Wynn Resorts ceases to own, directly or indirectly, 100% of the outstanding Capital Stock of the Borrower or (vii) Wynn Resorts consolidates with, or merges with or into, any Person or sells, assigns, conveys, transfers, leases or otherwise disposes of all or substantially all of its assets to any Person, or any Person consolidates with, or merges with or into, Wynn Resorts, in any such event pursuant to a transaction in which any of the outstanding voting stock of Wynn Resorts is converted into or exchanged for cash, securities or other property, other than any such transaction where the voting stock of Wynn

Resorts outstanding immediately prior to such transaction is converted into or exchanged for voting stock (other than Disqualified Stock) of the surviving or transferee Person constituting a majority of the outstanding shares of such voting stock of such surviving or transferee Person (immediately after giving effect to such issuance).

"*Closing Date*": the date on which this Agreement and the other Loan Documents are executed and delivered and the conditions precedent set forth in Section 3.1 of the Disbursement Agreement and Section 5.1 of this Agreement have been satisfied or waived.

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"*Code*": the Internal Revenue Code of 1986, as amended from time to time.

"*Collateral*": all Property of the Loan Parties, Wynn Resorts or any other Person, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document.

"*Collateral Agency Agreement*": the Collateral Agency Agreement, dated as of October 30, 2002, among the Administrative Agent for the benefit of the Lenders, the Mortgage Notes Trustee for the benefit of the Mortgage Notes Holders, and the Collateral Agent.

"*Collateral Agent*": Bank of America, N.A., as collateral agent under the Collateral Agency Agreement.

"*Collection Account*": as defined in the Disbursement Agreement.

"*Commitment*": as to any Lender, the sum of the Term Loan Commitment and the Revolving Credit Commitment of such Lender.

"*Commonly Controlled Entity*": an entity, whether or not incorporated, which is under common control with the Borrower or any other Loan Party within the meaning of Section 4001 of ERISA or is part of a group that includes such Person and that is treated as a single employer under Section 414 of the Code.

"*Company's Fund Account*": as defined in the Disbursement Agreement.

"*Completion Date*": as defined in the Disbursement Agreement.

"*Completion Guarantor*": Wynn Completion Guarantor, LLC, a Nevada limited liability company.

"*Completion Guaranty*": that certain Completion Guaranty, dated as of October 30, 2002, by the Completion Guarantor in favor of the Administrative Agent on behalf of the Secured Parties, the Disbursement Agent and the Mortgage Notes Indenture Trustee.

"*Completion Guaranty Release Date*": as defined in the Disbursement Agreement.

"*Compliance Certificate*": a certificate duly executed by a Responsible Officer substantially in the form of Exhibit B hereto.

"*Confidential Information Memorandum*": the Confidential Information Memorandum, dated July 2002 and furnished to the initial Lenders.

"*Consents*": as defined in the Disbursement Agreement.

"*Consolidated Current Assets*": at any date, all amounts (other than cash and Cash Equivalents) which would, in conformity with GAAP, be set forth opposite the caption "total current assets" (or any like caption) on a consolidated balance sheet of the Borrower and its Subsidiaries at such date.

"*Consolidated Current Liabilities*": at any date, all amounts that would, in conformity with GAAP, be set forth opposite the caption "total current liabilities" (or any like caption) on a consolidated balance sheet of the Borrower and its Subsidiaries at such date, but excluding (a) the current portion of any Funded Debt of the Borrower and its Subsidiaries and (b) without duplication of clause (a) above, all Indebtedness consisting of Revolving Credit Loans or Swing Line Loans to the extent otherwise included therein.

"*Consolidated EBITDA*": of any Person for any period, Consolidated Net Income of such Person and its Subsidiaries for such period *plus*, without duplication and to the extent reflected as a charge in the statement of such Consolidated Net Income for such period, the sum of (a) income tax expense or the Tax Amount (whether or not paid during such period), (b) Consolidated

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Interest Expense of such Person and its Subsidiaries, amortization or write-off of debt discount and debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness (including, in the case of the Borrower, the Loans and Letters of Credit), (c) depreciation and amortization expense, (d) amortization of intangibles (including, but not limited to, goodwill) and (e) any extraordinary expenses or losses (and, whether or not otherwise includable as separate items in the statement of such Consolidated Net Income for such period, non-cash losses on sales of assets outside of the ordinary course of business and pre-opening expenses related to the initial opening of the Project (such pre-opening expenses to be no greater than that set forth in the Project Budget) and the opening of the Entertainment Facility (such pre-opening expenses in the aggregate to be no greater than \$5,000,000)) and minus, to the extent included in the statement of such Consolidated Net Income for such period, the sum of (a) interest income (except to the extent deducted in determining Consolidated Interest Expense) and (b) any extraordinary income or gains (and, whether or not otherwise includable as a separate item in the statement of such Consolidated Net Income for such period, gains on the sales of assets outside of the ordinary course of business), all as determined on a consolidated basis in accordance with GAAP.

"*Consolidated Interest Coverage Ratio*": for any period, the ratio of (a) Consolidated EBITDA of the Borrower and its Subsidiaries for such period to (b) Consolidated Interest Expense of the Borrower and its Subsidiaries for such period.

"*Consolidated Fixed Charge Coverage Ratio*": for any period, the ratio of (a) Consolidated EBITDA of the Borrower and its Subsidiaries to (b) Consolidated Fixed Charges of the Borrower and its Subsidiaries for such period.

"*Consolidated Fixed Charges*": of any Person for any period, the sum (without duplication) of (a) Consolidated Interest Expense of such Person and its Subsidiaries for such period, (b) provision for cash income taxes made by such Person or any of its Subsidiaries on a consolidated basis in respect of such period and the payment of any Tax Amount during such period, (c) scheduled payments made during such period on account of principal of Indebtedness of such Person or any of its Subsidiaries (including, without limitation, with respect to the Borrower, scheduled principal payments in respect of the Term Loans or any other Indebtedness under the Financing Agreements), (d) the aggregate amount actually paid by the Borrower and its Subsidiaries in cash during such period on account of Capital Expenditures, and (e) Consolidated Lease Expense of such Person and its Subsidiaries for such period.

"*Consolidated Interest Expense*": of any Person for any period, total cash interest expense (including that attributable to Capital Lease Obligations) of such Person and its Subsidiaries for such period with respect to all outstanding Indebtedness of such Person and its Subsidiaries (including, without limitation, all commissions, discounts and other fees and charges owed by such Person with respect to letters of credit and bankers' acceptance financing and net costs of such Person under Hedge Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP).

"*Consolidated Lease Expense*": for any period, the aggregate amount of fixed and contingent rentals payable by the Borrower and its Subsidiaries, determined on a consolidated basis in accordance with GAAP, for such period with respect to leases of real and personal property.

"*Consolidated Leverage Ratio*": for any period, the ratio of (a) Consolidated Total Debt on the last day of such period to (b) Consolidated EBITDA of the Borrower and its Subsidiaries for such period.

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"*Consolidated Member*": a corporation, other than the common parent, that is a member of an affiliated group (as defined in Section 1504 of the Code) of which Wynn Resorts or any of the Loan Parties is the common parent.

"*Consolidated Net Income*": of any Person for any period, the consolidated net income (or loss) of such Person and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP and before any reduction in respect of preferred equity dividends, but giving effect to, without duplication, any amounts paid or distributed by such Person or its Subsidiaries as a Tax Amount or Allocable Overhead if and to the same extent that such amounts would have been included in the calculation of net income if incurred by such Person or its Subsidiaries directly; *provided*, that in calculating Consolidated Net Income of a Person (for purposes of this definition only, the "*Parent*") and its consolidated Subsidiaries for any period, there shall be excluded (a) the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary of the Parent or is merged into or consolidated with the Parent or any of its Subsidiaries, (b) the income (or deficit) of any Person (other than a Subsidiary of the Parent) in which the Parent or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Parent or such Subsidiary in the form of dividends or similar distributions, (c) the undistributed earnings of any Subsidiary of the Parent to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any Contractual Obligation (other than under any Financing Agreement) or Requirement of Law applicable to such Subsidiary, (d) to the extent not reflected as a charge in the statement of such Consolidated Net Income, any Management Fees paid during such Period and (e) the cumulative effect of a change in accounting principles.

"*Consolidated Net Worth*": at any date, all amounts that would, in conformity with GAAP, be included on a consolidated balance sheet of the Borrower and its Subsidiaries under stockholders' equity at such date.

"*Consolidated Total Debt*": at any date, the aggregate principal amount of all Indebtedness of the Borrower and its Subsidiaries at such date, determined on a consolidated basis in accordance with GAAP.

"*Consolidated Working Capital*": at any date, the excess of Consolidated Current Assets on such date over Consolidated Current Liabilities on such date.

"*Construction Consultant*": Inspection & Valuation International, Inc. or such other construction consultant of recognized national standing appointed by the Administrative Agent.

"*Construction Contract*": a "Contract" as defined in the Disbursement Agreement.

"*Continuing Directors*": as of any date of determination, with respect to any Person, any member of the Board of Directors of such Person who (i) was a member of such board of directors on the Closing Date, (ii) was nominated for election or elected to such Board of Directors with the approval of a majority of the Continuing Directors who were members of such board at the time of such nomination or election or (iii) in the case of a limited liability company, was nominated by the direct or indirect Board of Directors of its managing member or sole member.

"*Contractual Obligation*": as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its Property is bound.

"*Control Agreements*": collectively, (i) the Bank Completion Guaranty Collateral Account Agreement, (ii) the Bank Company Collateral Account Agreement, (iii) the Bank Local Company Collateral Account Agreement(s), (iv) each Control Agreement to be executed and delivered by

each Loan Party pursuant to the Guarantee and Collateral Agreement, substantially in the form of Exhibit B, Exhibit C or Exhibit D, as the case may be, thereto, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with this Agreement.

"*Converted Revolving Loan Amount*": as defined in Section 2.4(a).

"*Dealership Lease Agreement*": that certain Lease Agreement, to be entered into between the Borrower, as lessor, and an Affiliate of the Borrower, as lessee, with respect to the lease of space at the Casino Land for the development and operation of a Ferrari and Maserati automobile dealership.

"*Debt Service*": collectively, the Bank Debt Service, the Note Debt Service and the FF&E Debt Service.

"*Debt Service Availability Date*": April 30, 2005.

"*Default*": any of the events specified in Section 8, whether or not any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

"*Defaulting Lender*": at any time, (i) any Lender with respect to which a Lender Default is in effect, (ii) any Lender that is the subject (as a debtor) of any action or proceeding (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, (iii) any Lender that shall make a general assignment for the benefit of its creditors or (iv) any Lender that shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due.

"*Delivery Requirement*": with respect to each Additional Material Contract:

(a) with respect to each Person party to such Additional Material Contract (other than any Loan Party), copies of the Governing Documents of each such Person (with respect to Persons other than Affiliates of the Borrower, to the extent the same are publicly available from the secretary of state of the state of formation of such Person), certified, if applicable, by the secretary of state of the state of formation of such Person;

(b) with respect to each Person party to such Additional Material Contract (other than any Loan Party), certificates issued by the secretary of state of the state where the Project is located and, if other than such state, the state of formation of such Person certifying that such Person is in good standing and is qualified to do business in, and has paid all franchise taxes or similar taxes due to, such states; and

(c) to the extent reasonably obtainable, the most recent annual financial statements (audited if available) or Form 10-K and most recent quarterly financial statements or Form 10-Q from each Person party to such Additional Material Contract (other than any Loan Party), together (in the case of any Affiliates of Loan Parties) with certificates from the appropriate Responsible Officer thereof, stating that no material adverse change in the consolidated assets, liabilities, operations or financial condition of such Person has occurred from those set forth in the most recent financial statements or the balance sheet, as the case may be, provided to the Administrative Agent pursuant to this clause (c).

"*Derivatives Counterparty*": as defined in Section 7.6.

"*Desert Inn Improvement*": Desert Inn Improvement Co., a Nevada corporation.

"*Desert Inn Water*": Desert Inn Water Company, LLC, a Nevada limited liability company.

"*DIIC Casino Water Permit*": the Permit identified as of the Closing Date as Permit No. 13393 (Cert. 4731) as shown in the records of the State of Nevada, Division of Water Resources, in Carson City Nevada (and any successor or replacement Permit thereto).

"*DIIC Land Use Agreement*": that certain Agreement Re Use of Real Property, dated October 30, 2002, among Desert Inn Improvement, the Borrower and Wynn Resorts Holdings.

"*DIIC Water Permits*": collectively, the DIIC Casino Water Permit and the permits identified as of the Closing Date as Permit No. 16938 (Cert. 4765), Permit No. 16939 (Cert. 4766), Permit No. 24558 (Cert. 7828), Permit No. 24560 (Cert. 7827), Permit No. 24561 (Cert. 7829), and Permit No. 25223 (Cert. 7830), in each case as shown in the records of the State of Nevada, Division of Water Resources, in Carson City Nevada (and any successor or replacement Permits thereto).

"*DIIC Water Transfer*": a transfer by Desert Inn Improvement at no cost and in accordance with all Requirements of Law and pursuant to all necessary consents of Governmental Authorities (including, if applicable, the Nevada Public Utilities Commission and the State of Nevada, Division of Water Resources) of (a) the fee ownership of the Water Utility Land to Wynn Resorts Holdings and (b) the DIIC Water Permits to (x) in the case of the DIIC Casino Water Permit, the Borrower and (y) in the case of all other DIIC Water Permits, Wynn Resorts Holdings.

"*Disbursement Agent*": Deutsche Bank Trust Company Americas, in its capacity as Disbursement Agent under the Disbursement Agreement, and any successor Disbursement Agent appointed pursuant to the terms of the Disbursement Agreement.

"*Disbursement Agreement*": that certain Master Disbursement Agreement in the form of Exhibit C hereto and dated as of the date hereof among the Borrower, the Administrative Agent, the Mortgage Notes Indenture Trustee, the FF&E Agent and the Disbursement Agent.

"*Disbursement Agreement Event of Default*": an "Event of Default" as defined in the Disbursement Agreement.

"*Disposition*": with respect to any Property, any sale, lease, sale and leaseback, assignment, conveyance, grant of restriction, transfer or other disposition thereof; and the terms "*Dispose*" and "*Disposed of*" shall have correlative meanings.

"Disqualified Stock": any Capital Stock or other ownership or profit interest of any Loan Party that any Loan Party is or, upon the passage of time or the occurrence of any event, may become obligated to redeem, purchase, retire, defease or otherwise make any payment in respect of in consideration other than Capital Stock (other than Disqualified Stock).

"Documentation Agents": collectively, Bear Stearns Corporate Lending Inc., in its capacity as a joint documentation agent, Dresdner Bank AG, New York and Grand Cayman Branches, in its capacity as a joint documentation agent, and JPMorgan Chase Bank, in its capacity as a joint documentation agent.

"Dollars" and "\$": dollars in lawful currency of the United States of America.

"Domestic Subsidiary": any Subsidiary of the Borrower organized under the laws of any jurisdiction within the United States of America.

"Driving Range": the driving range for the Golf Course to be located on the Phase II Land and leased to the Borrower pursuant to the Driving Range Lease.

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"Driving Range Lease": that certain Lease Agreement, dated as of October 21, 2002, by and between Valvino, as lessor, and the Borrower, as lessee, with respect to the lease of land on which the driving range for the Golf Course is to be located.

"ECF Percentage": with respect to any Fiscal Year, 75%; provided, that, if the Consolidated Leverage Ratio as of the last day of any such Fiscal Year is not greater than 3.5 to 1.0, 50% with respect to such Fiscal Year.

"Eligible Assignee": (A) (i) a commercial bank organized under the laws of the United States or any state thereof; (ii) a savings and loan association or savings bank organized under the laws of the United States or any state thereof; (iii) a commercial bank organized under the laws of any other country or a political subdivision thereof; provided, that (x) such bank is acting through a branch or agency located in the United States or (y) such bank is organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development or a political subdivision of such country; and (iv) any other entity which is an "accredited investor" (as defined in Regulation D under the Securities Act) which extends credit or buys loans as one of its businesses including insurance companies, mutual funds and lease financing companies; and (B) for purposes of Section 10.1, any Affiliate or Affiliated Fund of any Lender (provided, that if any funding obligations are assigned to an Affiliate of a Lender or Affiliated Fund, such Affiliate or Affiliated Fund, as applicable, shall have demonstrable resources to comply with such obligations); provided, that neither an Affiliate of the Borrower nor any Person which has been denied an approval or a license, or otherwise found unsuitable, under the Nevada Gaming Laws applicable to the Lenders shall be an Eligible Assignee; provided, further that so long as no Event of Default shall have occurred and be continuing, no (i) Person that owns or operates a casino located in the State of Nevada (or is an Affiliate of such a Person) (provided, that a passive investment constituting less than 20% of the common stock of any such casino shall not constitute ownership thereof for the purposes of this definition) or (ii) Person that owns or operates a convention, trade show or exhibition facility in Las Vegas, Nevada or Clark County, Nevada (or an Affiliate of such a Person) (provided, that a passive investment constituting less than 20% of the common stock of any such convention or trade show facility shall not constitute ownership for the purpose of this definition), shall be an Eligible Assignee.

"Eminent Domain Proceeds": all amounts and proceeds (including instruments) received in respect of any Event of Eminent Domain relating to the Project.

"Employee Parking Lot": the parking lot structure located on the Phase II Land that will be used for parking for the employees of the Borrower pursuant to the Employee Parking Lot Lease.

"Employee Parking Lot Lease": that certain Lease Agreement, dated as of October 21, 2002, by and between Valvino, as lessor, and the Borrower, as lessee, with respect to the lease of land on which the parking lot structure for use by the Borrower's employees is located.

"Entertainment Facility": a showroom or entertainment facility located on the Casino Land and the Phase II Land, adjoining and connected directly to the Le Rêve hotel and casino.

"Entertainment Facility Equity Proceeds": the aggregate net cash proceeds received by the Borrower from any Person other than another Loan Party (except to the extent another Loan Party is acting as an intermediary for purposes of contributing equity capital contributions from such other Persons), directly or indirectly, as a contribution to its common equity capital and deposited into the Entertainment Facility Funding Account and to be used solely and exclusively for the development, construction and opening of the Entertainment Facility.

"Entertainment Facility Funding Account": the Funding Account in which Entertainment Facility Equity Proceeds are deposited in accordance with the definition thereof.

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"Environmental Claim": any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any governmental authority or any other Person, arising (a) pursuant to or in connection with any actual or alleged violation of any Environmental Law, (b) in connection with any Hazardous Materials or any actual or alleged Hazardous Materials Activity, or (c) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"Environmental Laws": any and all laws, rules, orders, regulations, statutes, ordinances, guidelines, codes, decrees, or other legally enforceable requirements (including, without limitation, common law) of any international authority, foreign government, the United States, or any state, local, municipal or other Governmental Authority, regulating, relating to or imposing liability or standards of conduct concerning protection of the environment or of human health, or employee health and safety, as has been, is now, or may at any time hereafter be, in effect, including, without limitation,

(a) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Section 9601 *et seq.*) ("*CERCLA*");

(b) the Federal Water Pollution Control Act (33 U.S.C. Section 1251 *et seq.*) ("*Clean Water Act*" or "*CWA*");

(c) the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 *et seq.*) ("*RCRA*");

(d) the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 *et seq.*) ("*AEA*");

(e) the Clean Air Act (42 U.S.C. Section 7401 *et seq.*) ("*CAA*");

(f) the Emergency Planning and Community Right to Know Act (42 U.S.C. Section 11001 *et seq.*) ("*EPCRA*");

(g) the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 *et seq.*) ("*FIFRA*");

(h) the Oil Pollution Act of 1990 (P.L. 101-380, 104 Stat. 486);

(i) the Safe Drinking Water Act (42 U.S.C. Sections 300f *et seq.*) ("*SDWA*");

(j) the Surface Mining Control and Reclamation Act of 1974 (30 U.S.C. Sections 1201 *et seq.*) ("*SMCRA*");

(k) the Toxic Substances Control Act (15 U.S.C. Section 2601 *et seq.*) ("*TSCA*");

(l) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 *et seq.*) ("*HMTA*");

(m) the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. Section 7901 *et seq.*) ("*UMTRCA*");

(n) the Occupational Safety and Health Act (29 U.S.C. Section 651 *et seq.*) ("*OSHA*");

(o) the Nevada Hazardous Materials law (NRS Chapter 459);

(p) the Nevada Collection and Disposal of Solid Waste/Sewage law (NRS Chapter 444);

(q) the Nevada Water Controls/Pollution law (NRS Chapter 445A);

(r) the Nevada Air Pollution law (NRS Chapter 445B);

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(s) the Nevada Cleanup of discharged Petroleum law (NRS 590.700 to 590.920, inclusive);

(t) the Nevada Control of Asbestos law (NRS 618.750 to 618.850);

(u) the Nevada Appropriation of Public Waters law (NRS 533.324 to 533.435, inclusive);

(v) the Nevada Artificial Water Body Development Permit law (NRS 502.390);

(w) the Nevada Environmental Requirements Law (NRS 445C.010 to NRS 445C.120, inclusive);

(x) the Nevada Occupational Safety and Health Act (NRS 618.005 to 618.900, inclusive);

(y) the Laws Regarding the Authority of Nevada State Fire Marshall Division (NRS 477.010 to 477.250, inclusive);

(z) the Uniform Fire Code, as now or hereafter adopted in the State of Nevada;

(aa) the Nevada Protection of Endangered Species, Endangered Wildlife Permit (NRS 503.585) and Endangered Flora Permit law (NRS 527.270); and

(bb) and all other Federal, state and local Legal Requirements which govern Hazardous Substances, and the regulations adopted and publications promulgated pursuant to all such foregoing laws.

"*Environmental Matter*": any:

(a) release, emission, entry or introduction into the air including, without limitation, the air within buildings and other natural or man-made structures above ground;

(b) discharge, release or entry into water including, without limitation, into any river, watercourse, lake, or pond (whether natural or artificial or above ground or which joins or flows into any such water outlet above ground) or reservoir, or the surface of the riverbed or of other land supporting such waters, ground waters, sewer or the sea;

(c) deposit, disposal, keeping, treatment, importation, exportation, production, transportation, handling, processing, carrying, manufacture, collection, sorting or presence of any Hazardous Substance (including, without limitation, in the case of waste, any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process or activity (including making it re-usable or reclaiming substances from it) and any substance or article which is required to be disposed of as being broken, worn out, contaminated or otherwise spoiled);

(d) nuisance, noise, defective premises, health and safety at work, industrial illness, industrial injury due to environmental factors, environmental health problems (including, without limitation, asbestosis or any other illness or injury caused by exposure to asbestos) or genetically modified organisms;

(e) conservation, preservation or protection of the natural or man made environment or any living organisms supported by the natural or man made environment; or

(f) other matter howsoever directly affecting the environment or any aspect of it.

"*Environmental Permits*": any and all permits, licenses, approvals, registrations, notifications, exemptions and any other authorization required under any Environmental Law.

"*ERISA*": the Employee Retirement Income Security Act of 1974, as amended from time to time.

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"*Eurocurrency Reserve Requirements*": for any day as applied to a Eurodollar Loan, the then stated maximum rate of all reserve requirements (including, without limitation, any marginal, emergency, supplemental, special or other reserves under any regulations of the Board or other Governmental Authority having jurisdiction with respect thereto or otherwise required by applicable law) applicable to any member bank of the Federal Reserve System in respect of eurocurrency funding or liabilities as defined in Regulation D (or any successor category of liabilities under Regulation D).

"*Eurodollar Loans*": Loans the rate of interest applicable to which is based upon the Eurodollar Rate.

"*Eurodollar Rate*": with respect to each day during each Interest Period pertaining to a Eurodollar Loan, a rate per annum equal to (a) the offered quotation to first-class banks in the New York interbank Eurodollar market by the Administrative Agent for Dollar deposits of amounts in immediately available funds comparable to the outstanding principal amount of such Eurodollar Loan of the Administrative Agent (in its capacity as a Lender) with maturities comparable to the Interest Period applicable to such Eurodollar Loan commencing two Business Days thereafter as of 10:00 A.M. (New York time) on the first day of such Interest Period, divided (and rounded upward to the nearest $\frac{1}{16}$ of 1%) by (b) a percentage equal to 100% minus the Eurocurrency Reserve Requirements.

"*Eurodollar Tranche*": the collective reference to Eurodollar Loans the then current Interest Periods with respect to all of which begin on the same date and end on the same later date (whether or not such Loans shall originally have been made on the same day).

"*Event of Default*": any of the events specified in Section 8, *provided* that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

"*Event of Eminent Domain*": with respect to any Property, (i) any compulsory transfer or taking by condemnation, seizure, eminent domain or exercise of a similar power, or transfer under threat of such compulsory transfer or taking or confiscation of such Property or the requisition of the use of such Property, by any agency, department, authority, commission, board, instrumentality or political subdivision of any state, the United States or another Governmental Authority having jurisdiction or (ii) any settlement in lieu of clause (i) above.

"*Excess Cash Flow*": for any Fiscal Year, the excess, if any, of (a) the sum, without duplication, of (i) Consolidated Net Income of the Loan Parties for such Fiscal Year, (ii) an amount equal to the amount of all non-cash charges (including depreciation and amortization) deducted in arriving at such Consolidated Net Income, (iii) decreases in Consolidated Working Capital of the Loan Parties for such Fiscal Year, (iv) an amount equal to the aggregate net non-cash loss on the Disposition of Property by the Loan Parties during such Fiscal Year (other than sales of inventory in the ordinary course of business), to the extent deducted in arriving at such Consolidated Net Income and (v) the net increase during such Fiscal Year (if any) in deferred tax accounts of the Loan Parties *over* (b) the sum, without duplication, of (i) an amount equal to the amount of all non-cash credits included in arriving at such Consolidated Net Income, (ii) the aggregate amount actually paid by the Loan Parties in cash during such Fiscal Year on account of Capital Expenditures (excluding the principal amount of Indebtedness incurred in connection with such expenditures and any such expenditures financed with the proceeds of any Reinvestment Deferred Amount), (iii) the aggregate amount of all prepayments of Revolving Credit Loans and Swing Line Loans during such Fiscal Year to the extent accompanying permanent optional reductions of the Revolving Credit Commitments and all optional prepayments of the Term Loans during such Fiscal Year, (iv) the aggregate amount of all regularly scheduled principal payments of Funded Debt (including, without limitation, the Term Loans) of the Loan Parties made during such Fiscal Year (other than in respect of any revolving credit facility to the

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extent there is not an equivalent permanent reduction in commitments thereunder such that after giving effect to such commitment reduction the applicable Loan Party, as the case may be, would not be able to reborrow all or any of the amount so prepaid), (v) increases in Consolidated Working Capital of the Loan Parties for such Fiscal Year, (vi) an amount equal to the aggregate net non-cash gain on the Disposition of Property by the Loan Parties during such Fiscal Year (other than sales of inventory in the ordinary course of business), to the extent included in arriving at such Consolidated Net Income, and (vii) the net decrease during such Fiscal Year (if any) in deferred tax accounts of the Loan Parties.

"*Excess Cash Flow Application Date*": as defined in Section 2.12(d).

"*Existing Aircraft*": that certain Bombardier Global Express aircraft (manufacturer's serial number 9065 and United States Registration No. N711SW (formerly N789TP)), owned by a trust of which World Travel is the beneficial interest holder.

"*Existing Aircraft Indebtedness*": all Indebtedness and other obligations of the Loan Parties under that certain Amended and Restated Business Loan Agreement, dated as of May 30, 2002, between Bank of America, N.A. and World Travel set forth on Schedule 7.2(d) and any documents or other arrangements related thereto.

"Existing Stockholders": collectively, Mr. Wynn, Aruze USA, Inc., a Nevada corporation, Baron Asset Fund, a Massachusetts business trust, and the Kenneth R. Wynn Family Trust and, in each case, any Affiliates thereof.

"Extraordinary Deposit Receipts": any amounts received by any Loan Party from the refund or return of any amounts deposited with any Person as security or cash collateral with respect to any acceptance, letter of credit, completion guaranty, performance bond or similar facility.

"Facility": each of (a) the Term Loan Commitments and the Term Loans made thereunder (the "Term Loan Facility") and (b) the Revolving Credit Commitments and the extensions of credit made thereunder (the "Revolving Credit Facility").

"Facility Fee Letter": the Amended and Restated Credit Facilities Fee Letter, dated June 14, 2002, among Valvino, Wynn Resorts Holdings, the Borrower, the Initial Agents, the Initial Arrangers, the Managers and Bank of America N.A., as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with this Agreement.

"Federal Funds Effective Rate": for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for the day of such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it.

"FF&E Agent": Wells Fargo Bank Nevada, National Association, as collateral agent for the FF&E Lenders under the FF&E Facility Agreement.

"FF&E Debt Service": for any period, (a) all fees payable during such period to the FF&E Agent and the FF&E Lenders under the FF&E Facility Agreement and related agreements, documents and instruments (including, without limitation, the Other Security Documents related to the FF&E Facility Agreement and the FF&E Guarantee) and (b) interest on the FF&E Notes payable during such period.

"FF&E Facility": the credit facilities, equipment leases or similar agreements to finance the purchase and installment of the Specified FF&E pursuant to the FF&E Facility Agreement.

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"FF&E Facility Agreement": the credit agreement among the Borrower, the FF&E Agent and the other FF&E Lenders party thereto dated as of October 30, 2002.

"FF&E Guarantee": the Guaranty Agreement dated as of October 30, 2002 among each Loan Party (other than Desert Inn Improvement), the FF&E Agent and the FF&E Lenders.

"FF&E Intercreditor Agreement": that certain Intercreditor Agreement, dated as of the Closing Date among the Administrative Agent, the Mortgage Notes Indenture Trustee and the FF&E Agent, in the form of Exhibit K-2 hereto.

"FF&E Lenders": the lenders that are parties to the FF&E Facility Agreement from time to time.

"FF&E Notes": those certain promissory notes issued by the Borrower to the FF&E Lenders pursuant to the FF&E Facility Agreement.

"Final Completion Date": as defined in the Disbursement Agreement.

"Financing Agreements": collectively, this Agreement and the other Loan Documents, the Mortgage Notes, the Mortgage Notes Indenture, the Mortgage Notes Guarantee, the FF&E Facility Agreement, the FF&E Guarantee, the Other Security Documents, and any other loan, security, support or similar agreements entered into on, prior to or after the Closing Date to finance the development, construction and/or operation of the Project, whether with respect to Other Indebtedness or otherwise and including, without limitation, any agreements with respect to Permitted Refinancing Indebtedness.

"Fiscal Year": the fiscal year of the Borrower and the other Loan Parties ending on December 31 of each calendar year.

"Former Lender": as defined in Section 10.13(a).

"Funded Debt": as to any Person, all Indebtedness of such Person of the types described in clauses (a) through (e) of the definition of "Indebtedness" in this Section.

"Funding Account": any Account with respect to which the Secured Parties have a perfected first priority Lien (subject only to Permitted Liens) securing the Obligations of the Loan Parties pursuant to a Control Agreement described in clause (iv) of the definition thereof.

"Funding Office": the office specified from time to time by the Administrative Agent as its funding office by notice to the Borrower and the Lenders.

"GAAP": generally accepted accounting principles in the United States of America as in effect from time to time, except that for purposes of Sections 2.12(d), 2.12(f), 7.1, 7.5(k), 7.5(l), 7.5(m), 7.10 and 7.22, the Pricing Grid and the definition of "ECF Percentage," GAAP shall be determined on the basis of such principles in effect on the date hereof and consistent with those used in the preparation of the most recent audited financial statements delivered pursuant to Section 4.1, unless otherwise modified pursuant to Section 10.17.

"Gaming Facility": any building or other structure used or expected to be used to enclose space in which a gaming operation is conducted and (a) is wholly or partially owned, directly or indirectly, by the Borrower or an Affiliate of the Borrower or (b) any portion or aspect of which is managed or used, or expected to be managed or used, by the Borrower or an Affiliate of the Borrower.

"Golf Course": Le Rêve's Tom Fazio/Stephen A. Wynn designed 18-hole golf course to be situated on the Golf Course Land, as more particularly described in Exhibit T-4 to the Disbursement Agreement.

"Golf Course Land": the land owned by Wynn Resorts Holdings, Palo and Desert Inn Improvement on which the Golf Course is to be located, as described in Exhibit T-4 to the Disbursement Agreement. The Golf Course Land shall include (a) the Wynn Home Site Land until such time (if ever) as the Wynn Home Site Land has been Disposed of in accordance with Section 7.5(j), (b) the Home Site Land until such time (if ever) as the Home Site Land has been Disposed of in accordance with Section 7.5(l), (c) the Palo Home Site Land, (d) the Water Utility Land and (e) if at any time acquired by a Loan Party, the Additional Land (or any part thereof).

"Golf Course Land Owners": collectively, Wynn Resorts Holdings, Desert Inn Improvement, Palo and, to the extent the Additional Land (or any part thereof) is acquired by one or more Loan Parties, such Loan Parties.

"Golf Course Lease": that certain Lease Agreement, dated as of October 21, 2002, by and between Wynn Resorts Holdings and Palo, on the one hand, as lessor, and the Borrower, on the other hand, as lessee, with respect to the lease of land on which the Golf Course is to be located.

"Governing Documents": collectively, as to any Person, the articles or certificate of incorporation and bylaws, any shareholders agreement, certificate of formation, limited liability company agreement, partnership agreement or other formation or constituent documents of such Person.

"Governmental Authority": any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity, (including the Nevada Gaming Authorities, any zoning authority, the FDIC, the Comptroller of the Currency or the Federal Reserve Board, any central bank or any comparable authority), any self-regulatory agency [e.g., NASD], any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any arbitrator with authority to bind a party at law.

"Guarantee and Collateral Agreement": the Guarantee and Collateral Agreement to be executed and delivered by the Borrower and each other Loan Party (other than Desert Inn Improvement), substantially in the form of Exhibit A hereto, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with this Agreement.

"Guarantee Obligation": as to any Person (the "guaranteeing person"), any obligation of (a) the guaranteeing person or (b) another Person (including, without limitation, any bank under any letter of credit) to induce the creation of which the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends or other obligations (the "primary obligations") of any other third Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any Property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase Property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof or (v) under Hedge Agreements; *provided, however*, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such

guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

"Guarantors": the collective reference to Wynn Resorts and each of the Loan Parties, other than Desert Inn Improvement and the Borrower.

"Hazardous Materials Activity": any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Substances, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Substances, and any corrective action or response action with respect to any of the foregoing.

"Hazardous Substances": (statutory acronyms and abbreviations having the meaning given them in the definition of "Environmental Laws") substances defined as "hazardous substances," "pollutants" or "contaminants" in *Section 101* of the CERCLA; those substances defined as "hazardous waste," "hazardous materials" or "regulated substances" by the RCRA; those substances designated as a "hazardous substance" pursuant to *Section 311* of the CWA; those substances defined as "hazardous materials" in *Section 103* of the HMTA; those substances regulated as a hazardous chemical substance or mixture or as an imminently hazardous chemical substance or mixture pursuant to *Sections 6* or *7* of the TSCA; those substances defined as "contaminants" by *Section 1401* of the SDWA, if present in excess of permissible levels; those substances regulated by the Oil Pollution Act; those substances defined as a pesticide pursuant to *Section 2(u)* of the FIFRA; those substances defined as a source, special nuclear or by-product material by *Section 11* of the AEA; those substances defined as "residual radioactive material" by *Section 101* of the UMTRCA; those substances defined as "toxic materials" or "harmful physical agents" pursuant to *Section 6* of the OSHA; those substances defined as hazardous wastes in 40 C.F.R. Part 261.3; those substances defined as hazardous waste constituents in 40 C.F.R. Part 260.10, specifically including Appendix VII and VIII of Subpart D of 40 C.F.R. Part 261; those substances designated as hazardous substances in 40 C.F.R. Parts 116.4 and 302.4; those substances defined as hazardous substances or hazardous materials in 49 C.F.R. Part 171.8; those substances regulated as hazardous materials, hazardous substances, or toxic substances in 40 C.F.R. Part 1910, in any other Environmental Laws, and in the regulations adopted and publications promulgated pursuant to said laws, whether or not such regulations or publications are specifically referenced herein.

"*Hedge Agreements*": all interest rate swaps, caps or collar agreements or similar arrangements entered into by the Borrower providing for protection against fluctuations in interest rates or currency exchange rates or the exchange of nominal interest obligations, either generally or under specific contingencies.

"*Home Site Land*": a tract of land not greater than 20 acres located on the Golf Course Land where residential and non-gaming related developments may, after Disposition of the Home Site Land in accordance with Section 7.5(l), be built.

"*Increased Commitments*": as defined in Section 10.1.

"*Indebtedness*": of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of Property or services (other than trade payables incurred in the ordinary course of such Person's business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar

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instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property), (e) all Capital Lease Obligations or Synthetic Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party under acceptance, letter of credit, completion guaranties, performance bonds or similar facilities, (g) all obligations of such Person, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any Capital Stock of such Person, (h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above; (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on Property (including, without limitation, accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation, (j) for the purposes of Section 8(e) only, all obligations of such Person in respect of Hedge Agreements and (k) the liquidation value of any preferred Capital Stock of such Person or its Subsidiaries held by any Person other than such Person and its Wholly Owned Subsidiaries. All obligations under the Financing Agreements shall constitute Indebtedness.

"*Indemnified Liabilities*": as defined in Section 10.5.

"*Indemnitee*": as defined in Section 10.5.

"*Indemnity Agreements*": collectively, each of the Indemnity Agreements executed by a Loan Party with respect to its Mortgaged Properties in favor of the Administrative Agent substantially in the form of Exhibit F hereto, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with this Agreement, and including, without limitation, the Borrower Indemnity Agreement, the Palo Indemnity Agreement, the Valvino Indemnity Agreement and the Wynn Resorts Holdings Indemnity Agreement.

"*Independent Director*": means, in the case of any Person, a member of the Board of Directors of such Person who (a) does not have (and whom the Board of Directors of such Person has affirmatively determined does not have) any material relationship (including, without limitation, any commercial, industrial, banking, consulting, legal, accounting, charitable or familial relationship) with such Person, either directly or indirectly or as a partner, equity holder or officer of an organization that has a relationship with such Person, and (b) is not Mr. Wynn or a Related Party. For purposes of this definition, no member of the Board of Directors of any Person who (i) is a former employee of such Person shall be eligible for consideration as an "Independent Director" until the fifth anniversary of the date on which such employment ended, (ii) in the five years prior to the date of determination, has been affiliated with or employed by a present or former auditor of such Person or of any Affiliate of such Person shall be eligible for consideration as an "Independent Director" until the fifth anniversary of the date on which such affiliation or the auditing relationship ended, or (iii) in the five years prior to the date of determination, has been part of an interlocking directorate in which an executive officer of such Person serves on the compensation committee of another Person that employs such board member shall be eligible for consideration as an "Independent Director." Notwithstanding the preceding, no Person shall be deemed not to be an Independent Director of Wynn Resorts or any Loan Party solely because such Person is a member of the Board of Directors of any direct or indirect parent of a Loan Party.

"*Initial Agents*": the collective reference to the Syndication Agent, Bear Stearns Corporate Lending Inc. in its capacity as documentation agent, and the Administrative Agent.

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"*Initial Arrangers*": collectively, Deutsche Bank Securities Inc., in its capacity as a lead arranger, Banc of America Securities LLC, in its capacity as a lead arranger, and Bear, Stearns & Co. Inc., in its capacity as an arranger.

"*Initial Advance Date*": as defined in the FF&E Facility Agreement.

"*Initial EBITDA Calculation Date*": the last day of the fiscal quarter of the Borrower in which the Opening Date occurs unless such date is less than 45 days after the Opening Date, in which case the last day of the first full fiscal quarter of the Borrower beginning after the Opening Date; *provided*, that unless the Initial EBITDA Calculation Date has occurred by September 30, 2005, there shall be no Initial EBITDA Calculation Date.

"*Initial Loan Funding Date*": the date the initial Loans are made by the Lenders to the Borrower under this Agreement.

"*Insolvency*": with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of Section 4245 of ERISA.

"*Insolvent*": pertaining to a condition of Insolvency.

"*Insurance Advisor*": Marsh USA, Inc., or its successor, appointed by the Administrative Agent.

"*Insurance Proceeds*": all amounts and proceeds (including instruments) paid under any insurance policy maintained by a Loan Party (including, without limitation, any insurance policy required to be maintained by a Loan Party under any Operative Document) other than any such proceeds received in respect of the Aircraft which shall be governed by the FF&E Facility Agreement.

"*Insurance Requirements*": all material terms of any insurance policy required pursuant to this Agreement or any Security Document and all material regulations and then current standards applicable to or affecting any Mortgaged Property or any part thereof or any use or condition thereof, which may, at any time, be recommended by the Board of Fire Underwriters, if any, having jurisdiction over any Mortgaged Property, or any other body exercising similar functions.

"*Intellectual Property*": the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, state, multinational or foreign laws or otherwise, including, without limitation, copyrights, patents, trademarks, service-marks, technology, know-how and processes, recipes, formulas, trade secrets, or licenses (under which the applicable Person is licensor or licensee) relating to any of the foregoing and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

"*Intellectual Property Collateral*": all Intellectual Property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by the Intellectual Property Security Agreements or the Guarantee and Collateral Agreement.

"*Intellectual Property Security Agreement*": any the Intellectual Property Security Agreement to be executed and delivered by a Loan Party, substantially in the form of Exhibit C to the Guarantee and Collateral Agreement, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with this Agreement.

"*Intercreditor Agreements*": collectively, the Project Lender Intercreditor Agreement and the FF&E Intercreditor Agreement.

"*Interest Payment Date*": (a) as to any Base Rate Loan, the last day of each March, June, September and December to occur while such Loan is outstanding and the final maturity date of

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such Loan, (b) as to any Eurodollar Loan having an Interest Period of three months or less, the last day of such Interest Period, (c) as to any Eurodollar Loan having an Interest Period longer than three months, each day which is three months, or a whole multiple thereof, after the first day of such Interest Period and the last day of such Interest Period and (d) as to any Loan (other than any Revolving Credit Loan that is a Base Rate Loan (unless all Revolving Credit Loans are being repaid in full in immediately available funds and the Revolving Credit Commitments terminated) and any Swing Line Loan), the date of any repayment or prepayment made in respect thereof.

"*Interest Period*": as to any Eurodollar Loan, (a) initially, the period commencing on the borrowing or conversion date, as the case may be, with respect to such Eurodollar Loan and ending one, two, three or six months thereafter, as selected by the Borrower in its Advance Request, Notice of Funding Request, Notice of Borrowing or notice of conversion, as the case may be, given with respect thereto; and (b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Eurodollar Loan and ending one, two, three or six months thereafter, as selected by the Borrower by irrevocable notice to the Administrative Agent not less than three Business Days prior to the last day of the then current Interest Period with respect thereto; *provided*, that all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period that would otherwise extend beyond the Scheduled Revolving Credit Termination Date or the Scheduled Term Loan Termination Date, as the case may be, shall end on the Revolving Credit Termination Date or the Term Loan Termination Date, as applicable;

(iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month; and

(iv) the Borrower shall select Interest Periods so as not to require a payment or prepayment of any Eurodollar Loan during an Interest Period for such Loan.

"*Investments*": as defined in Section 7.8.

"*IPO*": a bona fide underwritten initial public offering of Wynn Resorts' common stock (other than Disqualified Stock) concurrently with the closing of the transaction represented by this Agreement pursuant to a registration statement that has been declared effective by the Securities and Exchange Commission.

"*Issuing Lender*": Deutsche Bank Trust Company Americas and any other Revolving Credit Lender which at the request of the Borrower and with the consent of the Administrative Agent agrees to issue Letters of Credit. As of the Closing Date, the sole Issuing Lender shall be Deutsche Bank Trust Company Americas.

"*L/C Commitment*": \$25,000,000.

"*L/C Fee Payment Date*": the last day of each March, June, September and December and the last day of the Revolving Credit Commitment Period.

"*L/C Obligations*": at any time, an amount equal to the sum of (a) the aggregate then undrawn and unexpired amount of the then outstanding Letters of Credit and (b) the aggregate

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amount of drawings under Letters of Credit that have not then been reimbursed pursuant to Section 3.5.

"*L/C Participants*": the collective reference to all the Revolving Credit Lenders other than the Issuing Lender.

"*Las Vegas Jet*": Las Vegas Jet, LLC, a Nevada limited liability company.

"*Lender Addendum*": with respect to any initial Lender, a Lender Addendum, substantially in the form of Exhibit J hereto, to be executed and delivered by such Lender on the Closing Date as provided in Section 10.16.

"*Lender Default*": the failure or refusal (which has not been retracted in writing) of a Lender to make available (i) its portion of any Loan required to be made by such Lender hereunder (including, without limitation, under Section 2.7(b)), (ii) its portion of any unreimbursed payment required to be made by such Lender under Section 3.4, (iii) its portion of any participating interest required to be purchased by such Lender pursuant to Section 2.7(c) or (iv) any amount required to be paid and/or reimbursed by such Lender to any Agent or any other Lender hereunder or under any other Loan Document (whether pursuant to Section 2.18(e) or otherwise), in each case at or prior to such time that the same is required to be so made, reimbursed or purchased by such Lender.

"*Lenders*": as defined in the preamble hereto and includes the Issuing Lender.

"*Letter of Credit Commitment Period*": the period from and including the Closing Date to the date that is 30 days prior to the Revolving Credit Termination Date.

"*Letter of Credit Request*": a certificate duly executed by a Responsible Officer of the Borrower substantially in the form of Exhibit O hereto.

"*Letters of Credit*": as defined in Section 3.1(a).

"*License Revocation*": the revocation, failure to renew or suspension of, or the appointment of a receiver or similar official with respect to, any casino, gambling or gaming license, including, without limitation, any Nevada Gaming Approvals, covering any portion of the Project.

"*Lien*": with respect to any Property, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such Property, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in such Property and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction).

"*Liquidated Damages*": any proceeds or liquidated damages paid pursuant to any obligation, default or breach under the Project Documents (net of costs incurred by a Loan Party pursuant to arm's length transactions in connection with adjustment or settlement thereof and taxes paid with respect thereto). For purposes of this definition, so-called "liquidated damages" insurance policies shall be deemed to be Project Documents.

"*Liquidity Reserve Payment Date*": the date no later than five days after the earlier of (i) the date on which the financial statements of the Loan Parties referred to in Section 6.1(a) or (b), as the case may be, for the Quarterly Date upon which the requirements of Section 2.12(f) are satisfied, are required to be delivered to the Lenders and (ii) the date such financial statements are actually delivered.

"*Loan*": any loan made by any Lender pursuant to this Agreement.

"*Loan Conversion*": as defined in Section 2.4(a).

"*Loan Conversion Date*": as defined in Section 2.4(a).

"*Loan Documents*": this Agreement, the Security Documents, the Disbursement Agreement, the Intercreditor Agreements, the Management Fee Subordination Agreement, the Completion Guaranty, the Indemnity Agreements, the Notes, the Administrative Agent Fee Letter and the Facility Fee Letter.

"*Loan Parties*": the Borrower, Valvino, Capital Corp., Palo, Wynn Resorts Holdings, Desert Inn Water, Desert Inn Improvement, Wynn Design, World Travel, Las Vegas Jet and each other Subsidiary of Valvino other than the Completion Guarantor (including any such Subsidiaries that become party to a Loan Document pursuant to Section 6.10).

"*Loss Proceeds*": as defined in the Disbursement Agreement.

"*Majority Initial Arrangers*": at any time, the Initial Arrangers holding more than 50% of the sum of (i) the Total Initial Arranger Term Loan Commitments then in effect or, if the Term Loan Commitments have been terminated, the Total Initial Arranger Term Loan Extensions of Credit then outstanding and (ii) the Total Initial Arranger Revolving Credit Commitments then in effect or, if the Revolving Credit Commitments have been terminated, the Total Initial Arranger Revolving Extensions of Credit then outstanding; *provided*, that, for purposes of determining the Revolving Credit Commitments, Term Loan Commitments, Revolving Extensions of Credit or Term Loan Extensions of Credit, as applicable, held by an Initial Arranger at any time pursuant to this definition only, each Initial Arranger shall be deemed to hold such Revolving Credit Commitments, Term Loan Commitments, Revolving Extensions of Credit or Term Loan Extensions of Credit, as applicable, held by its Affiliates in addition to that held by it directly.

"*Management Agreement*": the Management Agreement, dated as of October 30, 2002, between the Loan Parties, on the one hand, and Wynn Resorts, on the other hand.

"*Management Fee Subordination Agreement*": the Management Fee Subordination Agreement, dated as of the date hereof, among the Loan Parties, Wynn Resorts, the Mortgage Notes Indenture Trustee and the Administrative Agent.

"*Management Fees*": as defined in the Management Agreement.

"*Managers*": collectively, Deutsche Bank Securities Inc., in its capacity as a joint book running manager, Banc of America Securities LLC, in its capacity as a joint book running manager, and Bear, Stearns & Co. Inc., in its capacity as a joint book running manager.

"*Material Adverse Effect*": (i) one or a combination of conditions or changes affecting, in a material adverse way (a) the business, assets, liabilities, property, condition (financial or otherwise), results of operations, prospects, value or management of the Borrower and the other Loan Parties taken as a whole, (b) the Project, (c) the validity or enforceability of this Agreement or any of the other Loan Documents, (d) the validity, enforceability or priority of the Liens purported to be created by the Security Documents, or (e) the rights or remedies of any Secured Party hereunder or under any of the other Loan Documents or (ii) any event or circumstance that calls into question in any material respect the Projections or any of the material assumptions on which the Projections were prepared.

"*Material Affiliated Contracts*": any Material Contract to which a Loan Party, on the one hand, and an Affiliate of such Loan Party (including any other Loan Party), on the other hand, are parties.

"*Material Contract*": (i) the Golf Course Lease, the Driving Range Lease, the Employee Parking Lot Lease, the Management Agreement, the Tax Indemnification Agreement, the WDD Agreement, the Building Lease, the Water Supply Agreement and the Water Show Entertainment

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and Production Agreement and (ii) any other contract or arrangement to which (a) a Loan Party, on the one hand, and an Affiliate of such Loan Party (including any other Loan Party), on the other hand, are parties pursuant to which the Loan Parties are, or any one of them is, reasonably expected to incur obligations or liabilities with a Dollar value in excess of \$1,000,000 during the term of such contract or arrangement or (b) any Loan Party is a party (other than the Financing Documents) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect (taking into consideration any viable replacements or substitutions therefor at the time such determination is made).

"*Moody's*": Moody's Investors Service, Inc., a Delaware corporation, or any successor thereof.

"*Mortgage Notes*": the 12% Mortgage Notes due 2010 issued by the Borrower and Capital Corp. pursuant to the Mortgage Notes Indenture.

"*Mortgage Notes Guarantee*": the Guarantee and Collateral Agreement dated as of October 30, 2002 among each Loan Party (other than Desert Inn Improvement) and the Mortgage Notes Indenture Trustee.

"*Mortgage Notes Holders*": the holders of the Mortgage Notes from time to time.

"*Mortgage Notes Indenture*": that certain Indenture, dated as of October 30, 2002, between the Borrower, Capital Corp., certain guarantors named therein and the Mortgage Notes Indenture Trustee.

"*Mortgage Notes Indenture Trustee*": Wells Fargo Bank, National Association in its capacity as the trustee under the Mortgage Notes Indenture and its successors in such capacity.

"*Mortgaged Properties*": the real properties and leasehold estates listed on *Schedule 1.1* or otherwise as to which the Administrative Agent for the benefit of the Secured Parties shall be granted a Lien pursuant to the Mortgages (including at such time, if any, as Desert Inn Improvement executes the Water Property Mortgage, the Water Utility Land).

"*Mortgages*": each of the mortgages, deeds of trust and deeds to secure Obligations made by any Loan Party in favor of, or for the benefit of, the Administrative Agent for the benefit of the Secured Parties (including, without limitation, the Borrower Mortgage, the Palo Mortgage, the Valvino Mortgage, the Wynn Resorts Holdings Mortgage and, at such time, if any, as Desert Inn Improvement executes the Water Property Mortgage, such Water Property Mortgage), substantially in the form of Exhibit D hereto (with such changes thereto as shall be advisable under the law of the jurisdiction in which such mortgage or deed of trust is to be recorded), as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with this Agreement.

"*Mr. Wynn*": Stephen A. Wynn, an individual.

"*Multiemployer Plan*": a Plan that is a multiemployer plan as defined in Section 3(37) or 4001(a)(3) of ERISA.

"*Net Cash Proceeds*": (a) in connection with any Asset Sale, the proceeds thereof in the form of cash and Cash Equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received) of such Asset Sale, net of arm's length attorneys' fees, accountants' fees, investment banking fees, amounts required to be applied to the repayment of Indebtedness secured by a Lien expressly permitted hereunder on any asset which is the subject of such Asset Sale (other than any Lien pursuant to a Security Document or an Other Security Document relating to the Mortgage Notes Indenture) (*provided*, that Net Cash Proceeds shall not

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include amounts required to be applied to the repayment of Indebtedness under the FF&E Facility secured by such a Lien to the extent that (i) such payment is not prohibited under the Intercreditor Agreements or this Agreement and (ii) such Lien on the Collateral subject to such Asset Sale is a Senior

Permitted Lien with respect to such Collateral) and other arm's length fees and expenses, in each case, to the extent actually incurred in connection with such Asset Sale and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any tax credits or deductions and any tax sharing arrangements, in each case reducing the amount of taxes so paid or estimated to be payable) and (b) in connection with any issuance or sale of debt securities or instruments or the incurrence of loans, the cash proceeds received from such issuance or incurrence, net of arm's length attorneys' fees, investment banking fees, accountants' fees, underwriting discounts and commissions and other arm's length fees and expenses, in each case, to the extent actually incurred by the Borrower or another Loan Party in connection therewith.

"Net Disposition Proceeds": in connection with any Disposition, the proceeds thereof in the form of cash or Cash Equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received) of such Disposition, net of arm's length attorneys' fees, accountants' fees, investment banking fees, amounts required to be applied to the repayment of Indebtedness secured by a Lien expressly permitted hereunder on any asset which is the subject of such Disposition (other than any Lien pursuant to a Security Document or an Other Security Document relating to the Mortgage Notes Indenture) (*provided*, that Net Disposition Proceeds shall not include amounts required to be applied to the repayment of Indebtedness under the FF&E Facility secured by such a Lien to the extent that (i) such payment is not prohibited under the Intercreditor Agreements or this Agreement and (ii) such Lien on the Collateral subject to such Disposition is a Senior Permitted Lien with respect to such Collateral) and other arm's length fees and expenses, in each case, to the extent actually incurred in connection therewith and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any tax credits or deductions and any tax sharing arrangements, in each case reducing the amount of taxes so paid or estimated to be payable).

"Net Revenues": for any period, the net revenues of the Borrower and its consolidated Subsidiaries, as set forth on the Borrower's income statement for the relevant period under the line item "net revenues," calculated in accordance with GAAP and with Regulation S-X under the Securities Act and in a manner consistent with that customarily utilized in the gaming industry.

"Nevada Gaming Approvals": with respect to any action by a particular Person, any consent, approval or other authorization required for such action by such Person from a Nevada Gaming Authority or under Nevada Gaming Laws.

"Nevada Gaming Authorities": collectively, the Nevada Gaming Commission, the Nevada State Gaming Control Board, the Clark County Liquor and Gaming Licensing Board and any other federal or state agency having jurisdiction over gaming operations in the State of Nevada.

"Nevada Gaming Laws": the Nevada Gaming Control Act, as codified in Chapter 463 of the NRS, as amended from time to time, the regulations of the Nevada Gaming Commission promulgated thereunder, as amended from time to time, and other laws promulgated by the Nevada Gaming Authorities and applying to gaming operations in the State of Nevada.

"Non-Defaulting Lender": any Lender other than a Defaulting Lender.

"Non-Equity Cost": with respect to any replacement of any "FF&E Component Collateral" (as defined in the FF&E Intercreditor Agreement), the difference between (a) the purchase price of such replacement and (b) the sum of (i) the proceeds of any equity capital contributions from

Wynn Resorts (or another Loan Party to the extent acting as an intermediary for purposes of contributing equity capital contributions from Wynn Resorts) and (ii) any amounts otherwise permitted to be distributed as a Restricted Payment pursuant to Section 7.6(g), in each case to the extent applied to the purchase of such replacement.

"Non-Excluded Taxes": as defined in Section 2.20(a).

"Non-U.S. Lender": as defined in Section 2.20(f).

"Note Debt Service": for any period, (a) all fees payable during such period to the Mortgage Notes Indenture Trustee and the Mortgage Notes Holders under the Mortgage Notes Indenture and related agreements, documents and instruments (including, without limitation, the Mortgage Notes Guarantee and the Other Security Documents related to the Mortgage Notes Indenture and the Mortgage Notes Guarantee) and (b) interest on the Mortgage Notes payable during such period.

"Note Debt Service Shortfall Notice": a written notice by the Mortgage Notes Indenture Trustee to the Administrative Agent pursuant to Section 3.2.3(b) of the Project Lender Intercreditor Agreement certifying that the Borrower has notified the Mortgage Notes Indenture Trustee in writing that the Borrower does not have sufficient funds to pay Note Debt Service as the same will become due and owing.

"Notes": the collective reference to the Revolving Credit Notes, the Term Notes and the Swing Line Notes, if any, evidencing Loans.

"Notice of Advance Requests": as defined in the Disbursement Agreement.

"Notice of Borrowing": a certificate duly executed by a Responsible Officer of the Borrower substantially in the form of Exhibit M hereto.

"Notice of Loan Conversion": as defined in Section 2.4(b).

"NRS": the Nevada Revised Statutes, as amended from time to time.

"Obligations": the unpaid principal of and interest on (including, without limitation, interest accruing after the maturity of the Loans and Reimbursement Obligations and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Loan Party, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Loans and all other obligations and liabilities of the Loan Parties or Wynn Resorts to any Arranger, to any Agent, to any Manager or to any Lender (or, in the case of Specified Hedge Agreements, any affiliate of any Lender), whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document, the Letters of Credit, any Specified Hedge Agreement or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest,

reimbursement obligations, fees, indemnities, costs, expenses (including, without limitation, all fees, charges and disbursements of counsel to any Arranger, to any Agent, to any Manager or to any Lender that are required to be paid by any Loan Party pursuant hereto or to any other Loan Document) or otherwise; *provided*, that (i) Obligations of the Borrower under any Specified Hedge Agreement shall be secured and guaranteed pursuant to the Security Documents only to the extent that, and for so long as, the other Obligations are so secured and guaranteed and (ii) any release of Collateral or Guarantors effected in the manner permitted by this Agreement shall not require the consent of holders of obligations under Specified Hedge Agreements.

"*On-Site Cash*": amounts held in cash at the Site in connection with and necessary for the ordinary course operations of the Project.

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"*Opening Conditions*": as defined in the Disbursement Agreement.

"*Opening Date*": as defined in the Disbursement Agreement.

"*Operative Documents*": the Financing Agreements and the Project Documents.

"*Other Indebtedness*": (i) the Indebtedness of any Loan Party evidenced by the Mortgage Notes or the Mortgage Notes Guarantee and (ii) the Indebtedness of any Loan Party evidenced by the FF&E Facility Agreement or the FF&E Guarantee.

"*Other Security Documents*": any agreement, document, instrument or deed granting, creating or evidencing any security or lien for any Other Indebtedness, including, without limitation, the "Security Documents" as defined in the Disbursement Agreement, other than the Security Documents.

"*Palo*": Palo, LLC, a Delaware limited liability company.

"*Palo Home Site Land*": the approximately 1.24 acre tract of land adjacent to the Golf Course owned by Palo, as more particularly described in Exhibit T-4 to the Disbursement Agreement.

"*Palo Indemnity Agreement*": the Indemnity Agreement, dated as of October 30, 2002, by Palo in favor of the Administrative Agent.

"*Palo Mortgage*": the Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of October 30, 2002, made by Palo to the Title Insurance Company for the benefit of the Administrative Agent.

"*Participant*": as defined in Section 10.6(b).

"*Pass Through Entity*": any of (1) a grantor trust for federal or state income tax purposes or (2) an entity treated as a partnership or a disregarded entity for federal or state income tax purposes.

"*Payment Amount*": as defined in Section 3.5.

"*Payment Office*": the office of the Administrative Agent specified in Section 10.2 or as otherwise specified from time to time by the Administrative Agent as its payment office by notice to the Borrower and the Lenders.

"*PBGC*": the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor).

"*Permits*": the collective reference to (i) Environmental Permits, and (ii) any and all other franchises, licenses, leases, permits, approvals, notifications, certifications, registrations, authorizations, exemptions, variances, qualifications, easements, rights of way, Liens and other rights, privileges and approvals required under any Requirement of Law (including Nevada Gaming Laws).

"*Permitted Businesses*": (i) the gaming business, (ii) the development, construction, ownership and operation of a Gaming Facility, (iii) all businesses, whether or not licensed by the Nevada Gaming Authorities, which are necessary for, incident to, useful to, arising out of, supportive of or connected to the development, construction, ownership or operation of a Gaming Facility, (iv) any development, construction or operation of lodging, retail, restaurant or convention facilities, sports or entertainment facilities, food and beverage distribution operations, transportation services (including operation of the Aircraft and chartering thereof), parking services, sales and marketing services or other activities related to the foregoing, (v) any business (including any related internet business) that is a reasonable extension, development or expansion of any of the foregoing or

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incidental thereto and/or (vi) the ownership by a Person of Capital Stock in its directly Wholly Owned Subsidiaries; *provided, however*, that with respect to the Borrower and its Subsidiaries other than, with respect to the ownership and operation of the Aircraft only, World Travel and Las Vegas Jet, the foregoing shall only be Permitted Businesses to the extent related to the Project or furtherance of the Project's development, construction, ownership or operation; *provided, further*, that, notwithstanding the foregoing, the Borrower shall be permitted to (a) sublease space within the Phase II Building to Persons not related to the development, construction, ownership or operation of the Project and (b) pay Allocable Overhead as otherwise permitted under this Agreement.

"*Permitted Encumbrances*": as defined in the Disbursement Agreement.

"*Permitted Liens*": the collective reference to (i) in the case of Collateral other than Pledged Stock, Liens permitted by Section 7.3 (but only of the priority and to the extent of coverage expressly set forth in Section 7.3 and subject to the provisions of the Intercreditor Agreements) and (ii) in the case of Collateral consisting of Pledged Stock, non-consensual Liens permitted by Section 7.3 to the extent arising by operation of law and Liens permitted by Section 7.3(k).

"*Permitted Refinancing Indebtedness*": any Indebtedness of the Borrower and, with respect to the Mortgage Notes, Capital Corp. (and, with respect to Guaranty Obligations in support thereof, the other Loan Parties) issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund the Mortgage Notes or Indebtedness under the FF&E Facility; *provided*, that (i) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded (plus all accrued interest on such Indebtedness and the amount of all expenses and premiums incurred in connection therewith), (ii) such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded, (iii) the restrictions on the Loan Parties contained in the agreements governing such Permitted Refinancing Indebtedness are no more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded, (iv) if such Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of payment to the Loan Documents, such Permitted Refinancing Indebtedness is subordinated in right of payment to the Loan Documents on terms at least as favorable to the Lenders as those contained in the applicable documents reflecting such subordination (whether the Intercreditor Agreements or otherwise), (v) the relevant holders of such Permitted Refinancing Indebtedness become party to the Intercreditor Agreements, as applicable, and (vi) all agreements, instruments, documentation and other arrangements associated with such Permitted Refinancing Indebtedness is in form and substance reasonably satisfactory to the Administrative Agent. In the event Permitted Refinancing Indebtedness is used to extend, refinance, renew, replace, amend and restate, restate, defease or refund the Mortgage Notes or the Indebtedness under the FF&E Facility, all relevant definitions and provisions of the Loan Documents related to the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded shall be amended, as necessary, to reflect such Permitted Refinancing Indebtedness and related documentation and/or arrangements.

"*Permitted Securities*": (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within 18 months from the date of acquisition, or (b) shares of money market, mutual or similar funds which invest exclusively in assets satisfying the requirements of clause (a) of this definition.

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"*Person*": an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"*Phase II Land*": the approximately 20-acre tract of land adjacent to the Le Rêve hotel and casino resort owned by Valvino, as more particularly described in Exhibit T-4 to the Disbursement Agreement.

"*Phase II Land Building*": the building existing on the Phase II Land as of the Closing Date that is subject to the Building Lease.

"*Plan*": at a particular time, any employee benefit plan that is subject to the requirements of Section 412 of the Code or that is a Single Employer Plan and which the Borrower or any other Loan Party or any Commonly Controlled Entity maintains, administers, contributes to or is required to contribute to or under which the Borrower or any other Loan Party or any Commonly Controlled Entity could incur any liability.

"*Plans and Specifications*": as defined in the Disbursement Agreement.

"*Pledged Stock*": as defined in the Guarantee and Collateral Agreement.

"*Point of Diversion*": with respect to any Water Permit, the location designated under such Water Permit where a well can be located for the draw of water under such Water Permit.

"*Presumed Tax Liability*": for any Person that is not a Pass Through Entity for any period, an amount equal to the product of (a) the Taxable Income allocated or attributable to such Person (directly or through one or more tiers of Pass Through Entities) (net of taxable losses allocated to such Person with respect to any Loan Party that (i) are, or were previously, deductible by such Person and (ii) have not previously reduced Taxable Income), and (b) the Presumed Tax Rate.

"*Presumed Tax Rate*": with respect to any Person for any period means the highest effective combined Federal, state and local income tax rate applicable during such period to a corporation organized under the laws of the State of Nevada, taxable at the highest marginal Federal income tax rate and the highest marginal Nevada and Las Vegas income tax rates (after giving effect to the Federal income tax deduction for such state and local income taxes, taking into account the effects of the alternative minimum tax, such effects being calculated on the assumption that such Person's only taxable income is the income allocated or attributable to such Person for such period (directly or through one or more tiers of Pass Through Entities) with respect to its equity interest in any of the Loan Parties that is a Pass Through Entity.) In determining the Presumed Tax Rate, the character of the items of income and gain comprising Taxable Income (e.g. ordinary income or long term capital gain) shall be taken into account.

"*Pricing Grid*": the pricing grid attached hereto as Annex A.

"*Prime Rate*": shall mean the rate which Deutsche Bank Trust Company Americas announces, from time to time, as its prime lending rate, the Prime Rate to change when and as such prime lending rate changes. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged by Deutsche Bank Trust Company Americas to any customer of Deutsche Bank Trust Company Americas. The Borrower acknowledges that Deutsche Bank Trust Company Americas may, from time to time, make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

"*Proceedings*": as defined in Section 6.7(c).

"*Project*": the Le Rêve Casino Resort, a hotel and casino resort, with related parking structure and golf course facilities to be developed on the Site, all as more particularly described in Exhibit T-1 to the Disbursement Agreement.

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"Project Budget" as defined in the Disbursement Agreement.

"Project Costs": as defined in the Disbursement Agreement.

"Project Documents": any and all "Project Documents" as defined in the Disbursement Agreement and any other document or agreement entered into on, prior to or after the Closing Date (including Material Contracts and Additional Material Contracts) relating to the design, engineering, development, construction, installation, maintenance or operation of the Project (including any Guarantee Obligations in furtherance thereof).

"Project Lender Intercreditor Agreement": that certain Intercreditor Agreement, as of the Closing Date among the Administrative Agent and the Mortgage Notes Indenture Trustee, in the form of Exhibit K-1 hereto.

"Project Liquidity Reserve Account": as defined in the Disbursement Agreement.

"Project Revenues": all income and receipts of the Loan Parties including, without limitation, those derived from the ownership or operation of the Project or the Permitted Businesses, including payments received by the Loan Parties under any Project Document, Material Contract or Additional Material Contract, net payments, if any, received under Hedge Agreements, Liquidated Damages, Insurance Proceeds, Eminent Domain Proceeds, together with any receipts derived from the sale of any property pertaining to the Project or the Permitted Businesses or incidental to the operation of the Project or the Permitted Businesses, all as determined in conformity with cash accounting principles, and the proceeds of any condemnation awards relating to the Project or the Permitted Businesses.

"Projections": as defined in Section 6.2(c).

"Property": any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Capital Stock.

"Qualified Affiliate Transaction": any transaction by or among one or more of the Loan Parties, on the one hand, and one or more of Wynn Resorts or any of its Subsidiaries, on the other hand, for the provision of goods, rights and/or services to be used in Permitted Businesses related to or in connection with and, in any event, for the benefit of, the Project.

"Quarterly Date": (i) with respect to the first Quarterly Date, (a) the last day of the first full fiscal quarter of the Borrower beginning after the Initial EBITDA Calculation Date or (b) if there is no Initial EBITDA Calculation Date, December 31, 2005 and (ii) with respect to each subsequent Quarterly Date, the last day of the next succeeding fiscal quarter of the Borrower.

"Real Estate": All real property held or used by the Loan Parties, which the relevant Loan Party owns in fee or in which it holds a leasehold interest as a tenant or in which it holds an easement right as an easement holder or otherwise occupies, including, without limitation, the real property more particularly identified in *Schedule 4.25(a)* and includes, without limitation, the Site and the Site Easements.

"Refunded Swing Line Loans": as defined in Section 2.7(b).

"Refunding Date": as defined in Section 2.7(c).

"Register": as defined in Section 10.6(d).

"Regulation D": Regulation D of the Board as in effect from time to time (and any successor to all or a portion thereof).

"Regulation H": Regulation H of the Board as in effect from time to time (and any successor to all or a portion thereof).

"Regulation T": Regulation T of the Board as in effect from time to time (and any successor to all or a portion thereof).

"Regulation U": Regulation U of the Board as in effect from time to time (and any successor to all or a portion thereof).

"Regulation X": Regulation X of the Board as in effect from time to time (and any successor to all or a portion thereof).

"Reimbursement Obligation": the obligation of the Borrower to reimburse the Issuing Lender pursuant to Section 3.5 for amounts drawn under Letters of Credit.

"Reinvested Amounts": as defined in Section 2.12(e).

"Reinvestment Deferred Amount": with respect to any Reinvestment Event, the aggregate Net Cash Proceeds received by the Borrower or any other Loan Party in connection therewith that are not applied to prepay the Term Loans or reduce the Revolving Credit Commitments pursuant to Section 2.12(b) as a result of the delivery of a Reinvestment Notice.

"Reinvestment Event": any Asset Sale in respect of which the Borrower has delivered a Reinvestment Notice.

"Reinvestment Notice": a written notice executed by a Responsible Officer of the Borrower and, if applicable, a Responsible Officer of any other Loan Party who made or is making the corresponding Asset Sale and delivered to the Administrative Agent within 30 days after such Asset Sale, stating that no Default or Event of Default has occurred and is continuing and that the Borrower (and, if applicable, such other Loan Party) intends and expects to use all or a specified portion of the Net Cash Proceeds of such Asset Sale to acquire assets useful in its Permitted Business.

"*Reinvestment Prepayment Amount*": with respect to any Reinvestment Event, the Reinvestment Deferred Amount relating thereto less any amount expended prior to the relevant Reinvestment Prepayment Date to acquire assets useful in the Borrower's or the other applicable Loan Party's, as the case may be, Permitted Business.

"*Reinvestment Prepayment Date*": with respect to any Reinvestment Event, the earlier of (a) the date occurring six months after such Reinvestment Event (or, if the contemplated acquisition of assets in connection with the corresponding Reinvestment Notice cannot be completed within such six month period but is reasonably expected to be completed within nine months after such Reinvestment Event, nine months after such Reinvestment Event) and (b) the date on which the Borrower or the applicable Loan Party shall have determined not to acquire assets useful in its respective Permitted Business with all or any portion of the relevant Reinvestment Deferred Amount.

"*Related Party*": either (i) any 80% (or more) owned Subsidiary, heir, estate, lineal descendent or immediate family member of Mr. Wynn; or (ii) any trust, corporation, partnership or other entity, the beneficiaries, equity holders, partners, owners or Persons beneficially holding an 80% or more controlling interest of which consist of Mr. Wynn and/or such other Persons referred to in the immediately preceding clause (i).

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"*Release*": any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Substances into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Substances), including the movement of any Hazardous Substances through the air, soil, surface water or groundwater.

"*Remaining Costs*": as defined in the Disbursement Agreement.

"*Reorganization*": with respect to any Multiemployer Plan, the condition that such plan is in reorganization within the meaning of Section 4241 of ERISA.

"*Repair Plan*": as defined in Section 2.24(a)(iv).

"*Replacement Aircraft*": that certain aircraft to be acquired with the proceeds of the Replacement Aircraft Indebtedness.

"*Replacement Aircraft Indebtedness*": Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations incurred by Wynn Resorts or a direct Wholly Owned Subsidiary (which may be a trust) of Wynn Resorts (other than any Loan Party) for the purpose of financing all or part of the purchase price of a Replacement Aircraft, so long as: (a) the principal amount of such Indebtedness does not exceed the cost (including sales and excise taxes, installation and delivery charges, interior buildout and outfitting and other direct costs of, and other direct expenses paid or charged in connection with, such purchase) of the Replacement Aircraft purchased with the proceeds thereof, (b) the aggregate principal amount of such Indebtedness does not exceed \$55.0 million at any time outstanding, and (c) no Loan Party (i) except as permitted pursuant to Section 7.6(i), provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) as to such Indebtedness, (ii) is directly or indirectly liable as a guarantor or otherwise as to such Indebtedness, or (iii) constitutes the lender of such Indebtedness.

"*Reportable Event*": any of the events set forth in Section 4043(c) of ERISA, other than those events as to which the thirty day notice period is waived under subsections .27, .28, .29, .30, .31, .32, .34 or .35 of PBGC Reg. Section 4043.

"*Required Facility Lenders*": with respect to any Facility at any time, Non-Defaulting Lenders holding more than 50% of the Total Term Loan Extensions of Credit of Non-Defaulting Lenders or the Total Revolving Extensions of Credit of Non-Defaulting Lenders, as the case may be, outstanding under such Facility (or, prior to any termination of the Term Loan Commitments or the Revolving Credit Commitments, as the case may be, Non-Defaulting Lenders holding more than 50% of the Total Term Loan Credit Commitments (less the aggregate Term Loan Commitments of Defaulting Lenders) or Total Revolving Credit Commitments (less the aggregate Revolving Credit Commitments of Defaulting Lenders), as the case may be).

"*Required Lenders*": at any time, Non-Defaulting Lenders holding more than 50% of the sum of (i) the Total Term Loan Commitments (less the aggregate Term Loan Commitments of Defaulting Lenders) then in effect or, if the Term Loan Commitments have been terminated, the Total Term Loan Extensions of Credit of Non-Defaulting Lenders then outstanding and (ii) the Total Revolving Credit Commitments (less the aggregate Revolving Credit Commitments of Defaulting Lenders) then in effect or, if the Revolving Credit Commitments have been terminated, the Total Revolving Extensions of Credit of Non-Defaulting Lenders then outstanding.

"*Required Minimum Contingency*": as defined in the Disbursement Agreement.

"*Requirement of Law*": as to any Person, the Governing Documents of such Person, and any law, treaty, order, rule or regulation or determination of an arbitrator or a court or other

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Governmental Authority, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

"*Responsible Officer*": as to any Person, the chief executive officer, president or chief financial officer of such Person, but in any event, with respect to financial matters, the chief financial officer of such Person. Unless otherwise qualified, all references to a "Responsible Officer" shall refer to a Responsible Officer of the Borrower or Wynn Resorts.

"*Restricted Payments*": as defined in Section 7.6.

"*Revolving Commitment Fee*": as defined in Section 2.9(a).

"*Revolving Commitment Fee Rate*": 2.00% per annum; *provided*, that on and after the first Adjustment Date occurring after the Opening Date, the Revolving Commitment Fee Rate will be determined pursuant to the Pricing Grid.

"*Revolving Credit Commitment Period*": the period from and including the Closing Date to the Revolving Credit Termination Date.

"*Revolving Credit Commitment*": as to any Lender, the obligation of such Lender, if any, to make Revolving Credit Loans and/or participate in Swing Line Loans and Letters of Credit, in an aggregate principal and/or face amount not to exceed the amount set forth under the heading "Revolving Credit Commitment" opposite such Lender's name on Schedule 1 to the Lender Addendum delivered by such Lender, or, as the case may be, in the Assignment and Acceptance pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof.

"*Revolving Credit Lender*": each Lender that has a Revolving Credit Commitment or that is the holder of Revolving Credit Loans.

"*Revolving Credit Loans*": as defined in Section 2.3; *provided*, that any Revolving Credit Loans converted to Term Loans pursuant to Section 2.4 shall cease to be deemed Revolving Credit Loans as of the applicable Loan Conversion Date.

"*Revolving Credit Notes*": as defined in Section 2.8(e).

"*Revolving Credit Percentage*": as to any Revolving Credit Lender at any time, the percentage which such Lender's Revolving Credit Commitment then constitutes of the Total Revolving Credit Commitments (or, at any time after the Revolving Credit Commitments shall have expired or terminated, the percentage which the aggregate principal and/or face amount of such Lender's Revolving Extensions of Credit then outstanding constitutes of the aggregate principal and/or face amount of the Total Revolving Extensions of Credit then outstanding).

"*Revolving Credit Termination Date*": the earlier of (a) the Scheduled Revolving Credit Termination Date and (b) the date on which the Loans become due and payable pursuant to Section 8.

"*Revolving Extensions of Credit*": as to any Revolving Credit Lender at any time, an amount equal to the sum of (a) the aggregate principal amount of all Revolving Credit Loans made by such Lender then outstanding, (b) such Lender's Revolving Credit Percentage of the L/C Obligations then outstanding and (c) such Lender's Revolving Credit Percentage of the aggregate principal amount of Swing Line Loans then outstanding.

"*S&P*": Standard & Poor's Ratings Group, a New York corporation, or any successor thereof.

"*Scheduled Completion Date*": as defined in the Disbursement Agreement. As of the Closing Date, the Scheduled Completion Date is April 30, 2005.

"*Scheduled Revolving Credit Termination Date*": the sixth anniversary of the Closing Date.

"*Scheduled Term Loan Termination Date*": the seventh anniversary of the Closing Date.

"*SEC*": the Securities and Exchange Commission (or successors thereto or an analogous Governmental Authority).

"*Second Mortgage Notes Proceeds Account*": as defined in the Disbursement Agreement.

"*Secured Parties*": collectively, the Arrangers, the Agents, the Managers, the Lenders and, with respect to any Specified Hedge Agreement, any affiliate of any Lender party thereto (or any Person that was a Lender or an affiliate thereof when such Specified Hedge Agreement was entered into) that has agreed to be bound by the provisions of Section 7.2 of the Guarantee and Collateral Agreement as if it were a party thereto, and by the provisions of Section 9 hereof as if it were a Lender party hereto.

"*Security Documents*": the collective reference to the Guarantee and Collateral Agreement, the Wynn Resorts Guaranty, the Wynn Resorts Security Agreement (to the extent executed and delivered pursuant to the Wynn Resorts Guaranty), the Intellectual Property Security Agreements, the Control Agreements, the Mortgages, the Consents, the Collateral Agency Agreement and all other pledge and security documents hereafter delivered to the Administrative Agent granting a Lien on any Property (or associated with such a grant) of any Person to secure the obligations and liabilities of any Loan Party, the Completion Guarantor or Wynn Resorts under any Loan Document.

"*Senior Permitted Liens*": Permitted Liens that are expressly permitted by the terms of the Loan Documents to be superior in priority to the Liens of the Security Documents.

"*Shuttle Easement Agreement*": the Easement Agreement, dated as of October 30, 2002, among Wynn Resorts Holdings, Valvino and the Borrower.

"*Single Employer Plan*": any Plan that is covered by Title IV of ERISA, but which is not a Multiemployer Plan.

"*Site*": all or any portion of the Real Estate, as described in Exhibit T-4 to the Disbursement Agreement. The Site includes, without limitation, the Wynn Home Site Land (until such time (if ever) as such Property has been Disposed of in accordance with Section 7.5(j)), the Golf Course Land (until such time (if ever) as such Property has been Disposed of in accordance with Section 7.5(k)), the Home Site Land (until such time (if ever) as such Property has been Disposed of in accordance with Section 7.5(l)), the Phase II Land (until such time (if ever) as such Property has been Disposed of in accordance with Section 7.5(m)) and any other Property which is subject to a lien under any Mortgage.

"*Site Easements*": the easements appurtenant, easements in gross, license agreements and other rights running for the benefit of the Borrower or any other Loan Party and/or appurtenant to the Site, including, without limitation, those certain easements and licenses described in the Title Policies.

"Solvent": when used with respect to any Person, as of any date of determination, (a) the amount of the "present fair saleable value" of the assets of such Person will, as of such date, exceed the amount of all "liabilities of such Person, contingent or otherwise", as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business,

(d) such Person will be able to pay its debts as they mature, and (e) such Person is not insolvent within the meaning of any applicable Requirements of Law. For purposes of this definition, (i) "debt" means liability on a "claim", and (ii) "claim" means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

"Specified Change of Control": a "change of control" or similar event (howsoever defined) as defined (i) in the Mortgage Notes Indenture or (ii) the FF&E Facility Agreement.

"Specified FF&E": collectively, (a) the Aircraft Note, (b) any "FF&E Collateral" (as defined in the FF&E Intercreditor Agreement) and (c) any replacements of any "FF&E Component Collateral" (as defined in the FF&E Intercreditor Agreement) permitted under the FF&E Facility Agreement; *provided*, that with respect to any replacement of any "FF&E Component Collateral" (as defined in the FF&E Intercreditor Agreement), such replacement shall only constitute Specified FF&E hereunder so long as (x) subject to clause (y) below, at least 75% of the Non-Equity Cost of such replacement is paid for with the proceeds from the sale of the "FF&E Component Collateral" being replaced and (y) in the event such replacement is being paid for with any "Loss Proceeds" (as defined in the FF&E Intercreditor Agreement) pursuant to the FF&E Intercreditor Agreement, 100% of the Non-Equity Cost of such replacement is paid for with such "Loss Proceeds".

"Specified Hedge Agreement": any Hedge Agreement (a) entered into by (i) the Borrower and (ii) any Lender or any affiliate thereof, or any Person that was a Lender or an affiliate thereof when such Hedge Agreement was entered into as counterparty and (b) which has been designated by such Lender and the Borrower, by notice to the Administrative Agent not later than 90 days after the execution and delivery thereof by the Borrower, as a Specified Hedge Agreement; *provided*, that the designation of any Hedge Agreement as a Specified Hedge Agreement shall not create in favor of any Lender or affiliate thereof that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Guarantor under the Guarantee and Collateral Agreement.

"Stockholders Agreement": that certain Stockholders Agreement, dated as of April 11, 2002, by and among Mr. Wynn, Baron Asset Fund and Aruze USA, as in effect on the Closing Date.

"Stop Funding Notice": as defined in the Disbursement Agreement.

"Subordinated Debt": Indebtedness that (i) does not have any scheduled principal payment, mandatory principal prepayment, sinking fund payment or similar payment due prior to the Scheduled Term Loan Termination Date, (ii) is not secured by any Lien on any Property, (iii) is subordinated on terms and conditions reasonably satisfactory to the Initial Arrangers and in any event not less favorable to the Lenders than the terms of the Subordinated Intercompany Note and (iv) is subject to such covenants and events of default as may be reasonably acceptable to the Initial Arrangers; *provided*, that Permitted Refinancing Indebtedness or Indebtedness permitted pursuant to Section 7.2(d) shall not be deemed Subordinated Debt.

"Subordinated Intercompany Note": the Subordinated Intercompany Note to be executed and delivered by the Borrower and each of the other Loan Parties, substantially in the form of Exhibit L hereto, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with this Agreement.

"Subsidiary": as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other

than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the directors, managers or trustees of such corporation, partnership, limited liability company or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

"Substitute Lender": as defined in Section 10.13(a).

"Supermajority Facility Lenders": with respect to any Facility at any time, Non-Defaulting Lenders holding more than 66²/₃% of the Total Term Loan Extensions of Credit of Non-Defaulting Lenders or the Total Revolving Extensions of Credit of Non-Defaulting Lenders, as the case may be, outstanding under such Facility (or, prior to any termination of the Term Loan Commitments or the Revolving Credit Commitments, as the case may be, Non-Defaulting Lenders holding more than 66²/₃% of the Total Term Loan Credit Commitments (less the aggregate Term Loan Commitments of Defaulting Lenders) or Total Revolving Credit Commitments (less the aggregate Revolving Credit Commitments of Defaulting Lenders), as the case may be).

"Supermajority Lenders": at any time, Non-Defaulting Lenders holding more than 66²/₃% of the sum of (i) the Total Term Loan Commitments (less the aggregate Term Loan Commitments of Defaulting Lenders) then in effect or, if the Term Loan Commitments have been terminated, the Total

Term Loan Extensions of Credit of Non-Defaulting Lenders then outstanding and (ii) the Total Revolving Credit Commitments (less the aggregate Revolving Credit Commitments of Defaulting Lenders) then in effect or, if the Revolving Credit Commitments have been terminated, the Total Revolving Extensions of Credit of Non-Defaulting Lenders then outstanding.

"*Swing Line Commitment*": the obligation of the Swing Line Lender to make Swing Line Loans pursuant to Section 2.6 in an aggregate principal amount at any one time outstanding not to exceed \$10,000,000.

"*Swing Line Credit Commitment Period*": the period from and including the Completion Date to the Revolving Credit Termination Date.

"*Swing Line Lender*": Deutsche Bank Trust Company Americas, in its capacity as the lender of Swing Line Loans.

"*Swing Line Loans*": as defined in Section 2.6.

"*Swing Line Notes*": as defined in Section 2.8(e).

"*Swing Line Participation Amount*": as defined in Section 2.7(c).

"*Syndication Agent*": Banc of America Securities LLC, in its capacity as syndication agent.

"*Synthetic Lease Obligations*": all monetary obligations of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations which do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the Indebtedness of such Person (without regard to accounting treatment).

"*Taking*": a taking or voluntary conveyance during the term of this Agreement of all or part of any Mortgaged Property, or any interest therein or right accruing thereto or use thereof, as the result of, or in settlement of, any condemnation or other eminent domain proceeding by any Governmental Authority affecting a Mortgaged Property or any portion thereof, whether or not the same shall have actually been commenced.

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"*Tax Amount*": with respect to any period, (i) in the case of any direct or indirect member of a Loan Party that is a Pass Through Entity, the Presumed Tax Liability of such direct or indirect member, and (ii) with respect to any of the Loan Parties that are Consolidated Members, the aggregate federal income tax liability such Persons would owe for such period if each was a corporation filing federal income tax returns on a stand alone basis at all times during its existence and, if any of the Consolidated Members files a consolidated or combined state income tax return such that it is not paying its own state income taxes, then Tax Amount shall also include the aggregate state income tax liability such Consolidated Members would have paid for such period if each was a corporation filing state income tax returns on a stand alone basis at all times during its existence.

"*Tax Indemnification Agreement*": that certain Tax Indemnification Agreement, dated as of September 24, 2002 among the Existing Stockholders, Valvino and Wynn Resorts, as in effect as of the date hereof.

"*Taxable Income*": with respect to any Person for any period, the taxable income or loss of such Person for such period for federal income tax purposes as a result of such Person's equity ownership of one or more Loan Parties that are Pass Through Entities for such period; *provided, however*, that all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss.

"*Term Loan Commitment*": as to any Term Loan Lender, the obligation of such Lender, if any, to make a Term Loan to the Borrower hereunder in a principal amount not to exceed the amount set forth under the heading "Term Loan Commitment" opposite such Lender's name on Schedule 1 to the Lender Addendum delivered by such Lender, or, as the case may be, in the Assignment and Acceptance pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof; *provided*, that the original aggregate amount of the Term Loan Commitments is \$250,000,000.

"*Term Loan Commitment Fee Rate*": 2.50% per annum for the period from the Closing Date through December 31, 2002, 3.00% per annum for the period from January 1, 2003 through June 30, 2003 and 4.00% per annum for the period from July 1, 2003 through the Term Loan Commitment Termination Date.

"*Term Loan Commitment Period*": the period from and including the Closing Date to the Term Loan Commitment Termination Date.

"*Term Loan Commitment Termination Date*": the date that is the last day of the 27th full calendar month after the calendar month in which the Closing Date occurs.

"*Term Loan Extensions of Credit*": as to any Term Loan Lender at any time, an amount equal to the sum of the aggregate principal amount of all Term Loans made by such Lender then outstanding.

"*Term Loan Lender*": each Lender that has a Term Loan Commitment or is the holder of a Term Loan.

"*Term Loan Percentage*": as to any Term Loan Lender at any time, the percentage which such Lender's Term Loan Commitment then constitutes of the aggregate Term Loan Commitments (or, at any time after the Term Loan Commitments shall have expired or terminated, the percentage which the aggregate principal amount of such Lender's Term Loans then outstanding constitutes of the aggregate principal amount of the Term Loans then outstanding).

"*Term Loan Termination Date*": the earlier of (a) the Scheduled Term Loan Termination Date and (b) the date on which the Loans become due and payable pursuant to Section 8.

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"*Term Loans*": as defined in Section 2.1 and shall include any Revolving Credit Loans converted to Term Loans on any Loan Conversion Date pursuant to Section 2.4.

"*Term Notes*": as defined in Section 2.8(e).

"*Title Insurance Company*": collectively, Nevada Title Company and such other title insurance companies that have issued Title Policies to the Administrative Agent on behalf of the Lenders in connection with or related to any Mortgage.

"*Title Policies*": collectively, the policies of title insurance issued by the Title Insurance Company with respect to the Mortgages.

"*Total Extensions of Credit*": at any time, the sum of (a) the Total Revolving Extensions of Credit and (b) the Total Term Loan Extensions of Credit.

"*Total Initial Arranger Revolving Credit Commitments*": at any time, the aggregate amount of the Revolving Credit Commitments then in effect and held by the Initial Arrangers or their Affiliates.

"*Total Initial Arranger Revolving Extensions of Credit*": at any time, the aggregate amount of the Revolving Extensions of Credit of the Revolving Credit Lenders outstanding at such time and held by the Initial Arrangers or their Affiliates.

"*Total Initial Arranger Term Loan Commitments*": at any time, the aggregate amount of the Term Loan Commitments then in effect and held by the Initial Arrangers or their Affiliates.

"*Total Initial Arranger Term Loan Extensions of Credit*": at any time, the aggregate amount of the Term Loan Extensions of Credit of the Term Loan Lenders outstanding at such time and held by the Initial Arrangers or their Affiliates.

"*Total Revolving Credit Commitments*": at any time, the aggregate amount of the Revolving Credit Commitments then in effect; *provided*, that the amount of the Total Revolving Credit Commitments on the Closing Date shall be \$750,000,000.

"*Total Revolving Credit Exposure*": the Total Revolving Credit Commitments then in effect or, if the Revolving Credit Commitments have been terminated, the Total Revolving Extensions of Credit then outstanding.

"*Total Revolving Extensions of Credit*": at any time, the aggregate amount of the Revolving Extensions of Credit of the Revolving Credit Lenders outstanding at such time.

"*Total Term Loan Commitments*": at any time, the aggregate amount of the Term Loan Commitments then in effect; *provided*, that the amount of the Total Term Loan Commitments on the Closing Date shall be \$250,000,000.

"*Total Term Loan Exposure*": the Total Term Loan Commitments then in effect or, if the Term Loan Commitments have been terminated, the Total Term Loan Extensions of Credit then outstanding.

"*Total Term Loan Extensions of Credit*": at any time, the aggregate amount of the Term Loan Extensions of Credit of the Term Loan Lenders outstanding at such time.

"*Transferee*": as defined in Section 10.15.

"*Type*": as to any Loan, its nature as a Base Rate Loan or a Eurodollar Loan.

"*UCC*": the Uniform Commercial Code, as in effect from time to time in any jurisdiction.

"*Unallocated Contingency Balance*": as defined in the Disbursement Agreement.

"*Valvino*": Valvino Lamore, LLC, a Nevada limited liability company.

"*Valvino Indemnity Agreement*": the Indemnity Agreement, dated as of October 30, 2002, by Valvino in favor of the Administrative Agent.

"*Valvino Mortgage*": the Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of October 30, 2002, made by Valvino to the Title Insurance Company for the benefit of the Administrative Agent.

"*Valvino Water Permit Transfer*": the transfer of the Valvino Water Permits by Valvino to the Borrower at no cost, in accordance with all Requirements of Law and pursuant to all necessary consents of Governmental Authorities (including, if applicable, the Nevada Public Utilities Commission and the State of Nevada, Division of Water Resources); *provided*, that (a) the designated place of use for water available for draw under the Valvino Water Permits shall include the Real Estate upon which the water features of the Le Rêve hotel and casino are located, (b) either (i) no Points of Diversion with respect to the Water Permits and the wells associated therewith are located on the Phase II Land or (ii) Valvino shall have transferred at no cost to the Loan Parties, (x) in the case of Points of Diversion with respect to the Valvino Water Permits and DIIC Casino Water Permit and the wells associated therewith located on the Phase II Land, such easements to the Borrower as are necessary for the Borrower to access such Points of Diversion, own and operate such wells and transport such water to the water features of the Le Rêve hotel and casino and (y) in the case of Points of Diversion with respect to all other DIIC Water Permits and the wells associated therewith located on the Phase II Land, such easements to the Borrower and Wynn Resorts Holdings as are necessary for such Persons to access such Points of Diversion, own and operate such wells and transport the water drawn at such

Points of Diversion and from such wells to the Golf Course Land and (c) the Borrower and Wynn Resorts Holdings, as the case may be, shall have taken all actions required pursuant to Section 6.10 with respect to any Property acquired pursuant to this definition.

"*Valvino Water Permits*": collectively, the Permits identified as of the Closing Date as Permit No. 60164 (Cert. 15447) and Permit No. 60165 (Cert. 15448), in each case as shown in the records of the State of Nevada, Division of Water Resources, in Carson City Nevada (and any successor or replacement Permits thereto).

"*Voting Stock*": with respect to any Person as of any date, the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"*Water Entities*": Desert Inn Water and Desert Inn Improvement.

"*Water Permits*": collectively, the DIIC Water Permits and the Valvino Water Permits.

"*Water Property Mortgage*": that certain mortgage, substantially in the form of the Mortgages (with such modifications, if any, as are necessary to comply with Requirements of Law or that the Administrative Agent may reasonably request), to be made by Desert Inn Improvement in favor of the Administrative Agent for the benefit of the Secured Parties pursuant to which Desert Inn Improvement will secure, among other things, the Borrower's Obligations by granting a Lien on the Water Utility Land and the DIIC Water Permits, pursuant to and in accordance with any and all necessary approvals by or consents from the Nevada Public Utilities Commission and any other applicable Governmental Authorities.

"*Water Show Entertainment and Production Agreement*": collectively, (i) the Agreement, dated January 25, 2001, between Wynn Resorts Holdings and Calitri Services and Licensing Limited Liability Company ("*Calitri*"), (ii) upon execution thereof, that certain Production Services Agreement to be entered into between the Borrower and Productions du Dragon, S.A. ("*Dragon*") pursuant to which Dragon will, among other things, collaborate with the Borrower and assist in

designing, manufacturing and producing the sets, equipment and costumes for an aquatic live show at the Project and (iii) upon execution thereof, that certain License Agreement to be entered into between the Borrower and Calitri pursuant to which Calitri will, among other things, license to the Borrower the necessary rights to produce and present an aquatic live show at the Project.

"*Water Supply Agreement*": that certain Water Supply Agreement dated as of October 30, 2002 among Desert Inn Improvement, Wynn Resorts Holdings and the Borrower.

"*Water Utility Land*": the approximately .17 acre tract of land located on the Golf Course owned by Desert Inn Improvement, as more particularly described in Exhibit T-4 of the Disbursement Agreement; *provided*, that the Water Utility Land shall not include any improvements thereon utilized by Desert Inn Improvement as of the Closing Date for the transportation of water to non-Affiliates of the Borrower.

"*WDD Agreement*": the Wynn Design Agreement, dated as of October 30, 2002 between the Borrower and Wynn Design.

"*Weighted Average Life to Maturity*": when applied to any Indebtedness at any date, the number of years obtained by dividing:

(1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one—twelfth) that will elapse between such date and the making of such payment; by

(2) the then outstanding principal amount of such Indebtedness.

"*Wholly Owned Subsidiary*": as to any Person, any other Person all of the Capital Stock of which (other than directors' qualifying shares required by law) is owned by such Person directly and/or through other Wholly Owned Subsidiaries.

"*Withdrawal Period*": as defined in Section 10.13(b).

"*World Travel*": World Travel, LLC, a Nevada limited liability company.

"*Wynn Design*": Wynn Design & Development, LLC, a Nevada limited liability company.

"*Wynn Group Entities*": collectively, Palo and Wynn Design.

"*Wynn Home Site Land*": an approximately two-acre tract of land located on the Golf Course Land where Wynn's personal residence may, after Disposition of the Wynn Home Site Land in accordance with Section 7.5(j), be built.

"*Wynn Resorts*": Wynn Resorts, Limited, a Nevada corporation.

"*Wynn Resorts Guaranty*": the Parent Guaranty, dated as of October 30, 2002, made by Wynn Resorts in favor of the Administrative Agent.

"*Wynn Resorts Holdings*": Wynn Resorts Holdings, LLC, a Nevada limited liability company.

"*Wynn Resorts Holdings Indemnity Agreement*": the Indemnity Agreement, dated as of October 30, 2002, by Wynn Resorts Holdings in favor of the Administrative Agent.

"*Wynn Resorts Holdings Mortgage*": the Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of October 30, 2002, made by Wynn Resorts Holdings to the Title Insurance Company for the benefit of the Administrative Agent.

"Wynn Resorts Security Agreement": any agreement or other instrument executed by Wynn Resorts in favor of the Administrative Agent on behalf of the Lenders pursuant to the Wynn Resorts Guaranty.

1.2 *Other Definitional Provisions.* (a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, and any certificate or other document made or delivered pursuant hereto or thereto, accounting terms relating to the Borrower and the other Loan Parties not defined in Section 1.1 and accounting terms partly defined in Section 1.1, to the extent not defined, shall have the respective meanings given to them under GAAP.

(c) The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(e) The expressions "payment in full," "paid in full" and any other similar terms or phrases when used herein with respect to the Obligations shall mean the payment in full, in immediately available funds, of all of the Obligations.

(f) The words "including" and "includes" and words of similar import when used in this Agreement shall not be limiting and shall mean "including without limitation" or "includes without limitation", as the case may be.

(g) The words "will" and "shall" and words of similar import when used in this Agreement shall mean a command.

(h) Upon termination of the Disbursement Agreement, any defined terms used herein having meanings given to such terms in the Disbursement Agreement shall continue to have the meanings given to such terms in the Disbursement Agreement immediately prior to such termination.

(i) Unless expressly described to the contrary, references to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at the time of determination.

SECTION 2. AMOUNT AND TERMS OF COMMITMENTS

2.1 *Term Loan Commitments.* Subject to the terms and conditions hereof, and in reliance upon the representations and warranties of the Borrower herein set forth and, while in effect, the representations and warranties set forth in the Disbursement Agreement, each Term Loan Lender severally agrees to make term loans ("*Term Loans*") to the Borrower from time to time during the Term Loan Commitment Period in an aggregate principal amount not to exceed the amount of the Term Loan Commitment of such Lender. The Term Loans may from time to time be Eurodollar Loans or Base Rate Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.5 and 2.13. Term Loans borrowed and subsequently repaid or prepaid may not be reborrowed.

2.2 *Scheduled Amortization of Term Loans.* The Borrower shall make principal payments on the Term Loans on Amortization Dates in the amounts set forth below opposite the applicable Amortization Date:

| Amortization Date | Scheduled Repayment of Term Loans |
|--|---|
| Amortization Dates between and including December 31, 2005 and December 31, 2006 | \$10,000,000 on each date |
| Amortization Dates between and including March 31, 2007 and December 31, 2007 | \$12,500,000 on each date |
| Amortization Dates between and including March 31, 2008 and December 31, 2008 | \$15,000,000 on each date |
| Amortization Dates between and including March 31, 2009 and September 30, 2009 | \$30,000,000 on each date |

; provided, that the scheduled installments of principal of the Term Loans set forth above shall be reduced in connection with any voluntary or mandatory prepayments of the Term Loans in accordance with Sections 2.12 and 2.18; and provided, further that the Term Loans and all other amounts owed hereunder with respect to the Term Loans shall be paid in full no later than the Term Loan Termination Date, and the final installment payable by the Borrower in respect of the Term Loans on such date shall be in an amount sufficient to repay all amounts owing by the Borrower under this Agreement with respect to the Term Loans.

2.3 *Revolving Credit Commitments.* (a) Subject to the terms and conditions hereof, and in reliance upon the representations and warranties of the Borrower herein set forth and, while in effect, the representations and warranties set forth in the Disbursement Agreement, each Revolving Credit Lender severally agrees to make revolving credit loans ("*Revolving Credit Loans*") to the Borrower from time to time during the Revolving Credit Commitment Period (provided, that until the Total Term Loan Extensions of Credit equals the Total Term Loan Commitments, Revolving Credit Loans shall not be available to the Borrower hereunder) in an aggregate principal amount at any one time outstanding which, when added to such Lender's Revolving Credit Percentage of the sum of (i) the L/C Obligations then outstanding and (ii) the aggregate principal amount of the Swing Line Loans then outstanding, does not exceed the amount of such

Lender's Revolving Credit Commitment; *provided*, that, prior to the Debt Service Availability Date, the Total Revolving Extensions of Credit shall not exceed an amount equal to the difference between (x) the Total Revolving Credit Commitments at such time and (y) \$31,509,475 (or, during such times as the conditions set forth in Section 3.3.22 of the Disbursement Agreement have not been satisfied or waived, \$36,509,475); *provided, further*, that, during the Additional Completion Period, if any, the Total Revolving Extensions of Credit shall not exceed an amount equal to the difference between (x) the Total Revolving Credit Commitments at such time and (y) \$3,000,000 (or, during such times as the conditions set forth in Section 3.3.22 of the Disbursement Agreement have not been satisfied or waived, \$8,000,000); *provided, further*, that during such times as the conditions set forth in Section 3.3.22 of the Disbursement Agreement have not been satisfied or waived, the Total Revolving Extensions of Credit shall not exceed an amount equal to the difference between (x) the Total Revolving Credit Commitments at such time and (y) \$5,000,000. During the Revolving Credit Commitment Period the Borrower may use the Revolving Credit Commitments by borrowing, prepaying the Revolving Credit Loans in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof. The Revolving Credit Loans may from time to time be Eurodollar Loans or Base Rate Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.5 and 2.13, *provided* that no Revolving Credit Loan

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shall be made as a Eurodollar Loan after the day that is one month prior to the Scheduled Revolving Credit Termination Date.

(b) The Borrower shall repay all outstanding Revolving Credit Loans on the Revolving Credit Termination Date.

2.4 *Loan Conversion.* (a) At such times and from time to time as the aggregate principal amount of all Revolving Credit Loans then outstanding exceeds \$200,000,000, the Majority Initial Arrangers may in their sole and absolute discretion cause the conversion of then outstanding Revolving Credit Loans into Term Loans in accordance with this Section 2.4 (each such conversion of Revolving Credit Loans to Term Loans, a "*Loan Conversion*") by delivering to the Administrative Agent and the Borrower written notice thereof (a "*Notice of Loan Conversion*"). Each Notice of Loan Conversion shall specify:

(i) the principal amount of the Revolving Credit Loans then outstanding that are proposed to be converted to Term Loans (the "*Converted Revolving Loan Amount*"); and

(ii) the proposed date of such Loan Conversion (the "*Loan Conversion Date*"), which shall be no earlier than seven Business Days after the date such Notice of Loan Conversion is delivered by the Majority Initial Arrangers to the Administrative Agent and the Borrower.

(b) Upon receipt of a Notice of Loan Conversion, the Administrative Agent shall promptly deliver such Notice of Loan Conversion to each Revolving Credit Lender. On a Loan Conversion Date, (i) the outstanding Revolving Credit Loans of the Revolving Credit Lenders in an aggregate amount equal to the Converted Revolving Loan Amount specified in the related Notice of Loan Conversion shall automatically be converted to Term Loans *pro rata* according to the respective outstanding principal amounts of the Revolving Credit Loans then held by the Revolving Credit Lenders, (ii) any Revolving Credit Loans so converted shall, as of such Loan Conversion Date, be deemed to be Term Loans and no longer Revolving Credit Loans (*provided*, such Loans shall maintain the Type and, if Eurodollar Loans, the Interest Period applicable to such Loans), (iii) the Revolving Credit Lenders shall, as of such Loan Conversion Date, be deemed to be Term Loan Lenders with respect to such converted Loans, (iv) the Total Revolving Credit Commitment shall be permanently reduced by an amount equal to the Converted Revolving Loan Amount (with each Revolving Credit Lender's Revolving Credit Commitment permanently reduced by an amount equal to its Revolving Credit Loans so converted to Term Loans), (v) the Administrative Agent shall make appropriate notations in the Register pursuant to Section 2.8(d) in order to reflect the Loan Conversion on such Loan Conversion Date and (vi) upon request of any Lender, any Notes previously delivered to such Lender pursuant to Section 2.8(c) will be amended and/or replaced as appropriate in order to reflect such Loan Conversion.

(c) Notwithstanding the foregoing, the aggregate amount of Loan Conversions shall not exceed \$400,000,000; *provided*, that (i) the initial Loan Conversion shall be in a minimum amount of \$100,000,000 or a \$25,000,000 whole multiple in excess thereof and (ii) each subsequent Loan Conversion shall be in minimum amounts of \$50,000,000 or a \$25,000,000 whole multiple in excess thereof.

2.5 *Procedure for Borrowing.* (a) Prior to the Completion Date and, to the extent the proceeds of the requested borrowing are used to pay Project Costs, after the Completion Date but prior to the Final Completion Date, the Borrower may borrow under the Term Loan Commitments or the Revolving Credit Commitments during the Term Loan Commitment Period or the Revolving Credit Commitment Period, as applicable, on any Business Day; *provided*, that the Borrower shall give the Administrative Agent in accordance with and pursuant to the terms of Section 2.4 of the Disbursement Agreement such Notice of Advance Requests in the form, at the times and as required under the Disbursement Agreement. Notwithstanding any provisions of the Disbursement Agreement to the contrary, such Notice of Advance Requests and the related Advance Confirmation Notices from the

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Disbursement Agent in accordance with the provisions of Section 2.4 of the Disbursement Agreement must be received by the Administrative Agent prior to 12:00 Noon, New York City time, (a) three Business Days prior to the requested Borrowing Date, in the case of Eurodollar Loans, or (b) one Business Day prior to the requested Borrowing Date, in the case of Base Rate Loans and must specify (i) the amount and Type of Loans to be borrowed, (ii) the requested Borrowing Date and (iii) in the case of Eurodollar Loans, the length of the initial Interest Period therefor. Upon receipt of any Advance Confirmation Notice from the Disbursement Agent, the Administrative Agent shall promptly notify each Term Loan Lender and/or Revolving Credit Lender, as appropriate, thereof. Each such Lender will make the amount of its *pro rata* share of each borrowing available to the Administrative Agent at the Funding Office prior to 10:00 A.M., New York City time, on the Borrowing Date requested by the Borrower in funds immediately available to the Administrative Agent. Such borrowing will then, upon satisfaction or waiver of the conditions precedent specified in Section 5.2, be made available by the Administrative Agent, in like funds as received by the Administrative Agent from the Lenders, to the Disbursement Agent in the Collection Account no later than 12:00 Noon, New York City time, on the applicable Borrowing Date who shall then make the proceeds of such Loans available to the Borrower in accordance with and upon fulfillment of conditions set forth in the Disbursement Agreement.

(b) On or after the Completion Date (other than with respect to borrowings to pay Project Costs prior to the Final Completion Date, such borrowings to be made pursuant to Section 2.5(a)), the Borrower may borrow under the Revolving Credit Commitments during the Revolving Credit Commitment Period on any Business Day; *provided*, that the Borrower shall give the Administrative Agent irrevocable notice in a Notice of Borrowing (which Notice of Borrowing must be received by the Administrative Agent prior to 12:00 Noon, New York City time, (a) three Business Days prior to the requested Borrowing Date, in the case of Eurodollar Loans, or (b) one Business Day prior to the requested Borrowing Date, in the case of Base Rate Loans), specifying (i) the amount and Type of

Revolving Credit Loans to be borrowed, (ii) the requested Borrowing Date and (iii) in the case of Eurodollar Loans, the length of the initial Interest Period therefor. Upon receipt of any such Notice of Borrowing from the Borrower, the Administrative Agent shall promptly notify each Revolving Credit Lender thereof. Each Revolving Credit Lender will make the amount of its *pro rata* share of each borrowing available to the Administrative Agent for the account of the Borrower at the Funding Office prior to 12:00 Noon, New York City time, on the Borrowing Date requested by the Borrower in funds immediately available to the Administrative Agent. Such borrowing will then, upon satisfaction or waiver of the conditions precedent specified in Section 5.3, be made available to the Borrower by the Administrative Agent crediting a Funding Account of the Borrower on the books of the Funding Office with the aggregate of the amounts made available to the Administrative Agent by the Revolving Credit Lenders and in like funds as received by the Administrative Agent.

(c) Each borrowing under the Term Loan Commitments or the Revolving Credit Commitments shall be in an amount equal to (x) in the case of Base Rate Loans, \$5,000,000 or a whole multiple in excess thereof (or, if the then aggregate Available Term Loan Commitments or Available Revolving Credit Commitments, as applicable, are less than \$5,000,000, such lesser amount) and (y) in the case of Eurodollar Loans, \$10,000,000 or a \$1,000,000 whole multiple in excess thereof; *provided*, that the Swing Line Lender may request, on behalf of the Borrower, borrowings under the Revolving Credit Commitments which are Base Rate Loans in other amounts pursuant to Section 2.7.

(d) In the event that the proceeds of any Loans deposited into the Collection Account pursuant to subsection (a) above are not disbursed by the Disbursement Agent on the applicable Borrowing Date, the proceeds of such Loans shall be held by the Disbursement Agent and/or returned to the Administrative Agent in accordance with the provisions set forth in the Disbursement Agreement; *provided, however*, that the proceeds of such Loans shall continue to bear interest and be repayable in accordance with the provisions set forth in this Agreement. In the event that the Administrative Agent

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receives a Stop Funding Notice from the Disbursement Agent in accordance with and pursuant to the terms of the Disbursement Agreement, none of the Administrative Agent and the Lenders shall, or shall have any obligation to, advance the Loans associated with such Stop Funding Notice; *provided, however*, that the Borrower shall be obligated to make any payments due pursuant to Section 2.21 as a result thereof.

2.6 *Swing Line Commitment.* (a) Subject to the terms and conditions hereof, the Swing Line Lender agrees to make available to the Borrower a portion of the credit otherwise available to the Borrower under the Revolving Credit Commitments from time to time during the Swing Line Credit Commitment Period by making swing line loans ("*Swing Line Loans*") to the Borrower; *provided*, that (i) the aggregate principal amount of Swing Line Loans outstanding at any time shall not exceed the Swing Line Commitment then in effect (notwithstanding that the Swing Line Loans outstanding at any time, when aggregated with the Swing Line Lender's other outstanding Revolving Credit Loans hereunder, may exceed the Swing Line Commitment then in effect) and (ii) the Borrower shall not request, and the Swing Line Lender shall not make, any Swing Line Loan if, after giving effect to the making of such Swing Line Loan, the aggregate amount of the Available Revolving Credit Commitments would be less than zero. During the Swing Line Credit Commitment Period, the Borrower may use the Swing Line Commitment by borrowing, repaying and reborrowing, all in accordance with the terms and conditions hereof. Swing Line Loans shall be Base Rate Loans only.

(b) The Borrower shall repay all outstanding Swing Line Loans on the Revolving Credit Termination Date.

2.7 *Procedure for Swing Line Borrowing; Refunding of Swing Line Loans.* (a) Whenever the Borrower desires that the Swing Line Lender make Swing Line Loans it shall give the Swing Line Lender irrevocable telephonic notice confirmed promptly in writing (which telephonic notice must be received by the Swing Line Lender not later than 1:00 P.M., New York City time, on the proposed Borrowing Date), specifying (i) the amount to be borrowed and (ii) the requested Borrowing Date (which shall be a Business Day during the Swing Line Credit Commitment Period). Each borrowing under the Swing Line Commitment shall be in an amount equal to \$500,000 or a \$100,000 multiple in excess thereof. Not later than 3:00 P.M., New York City time, on the Borrowing Date specified in a notice in respect of Swing Line Loans, the Swing Line Lender shall make available to the Administrative Agent at the Funding Office an amount in immediately available funds equal to the amount of the Swing Line Loan to be made by the Swing Line Lender; *provided*, that the Swing Line Lender shall not be obligated to make any Swing Line Loans at a time when a Lender Default exists unless the Swing Line Lender has entered into arrangements satisfactory to it to eliminate the Swing Line Lender's risk with respect to the Defaulting Lender's or Lenders' participation in such Swing Line Loans. The Administrative Agent shall make the proceeds of such Swing Line Loan available to the Borrower on such Borrowing Date by depositing such proceeds in a Funding Account of the Borrower with the Administrative Agent on such Borrowing Date in immediately available funds.

(b) The Swing Line Lender, at any time and from time to time in its sole and absolute discretion may, on behalf of the Borrower (which hereby irrevocably directs the Swing Line Lender to act on its behalf), on one Business Day's notice given by the Swing Line Lender no later than 12:00 Noon, New York City time, request each Revolving Credit Lender to make, and each Revolving Credit Lender hereby agrees to make, a Revolving Credit Loan, in an amount equal to such Revolving Credit Lender's Revolving Credit Percentage of the aggregate amount of the Swing Line Loans (the "*Refunded Swing Line Loans*") outstanding on the date of such notice, to repay the Swing Line Lender. Each Revolving Credit Lender shall make the amount of such Revolving Credit Loan available to the Administrative Agent at the Funding Office in immediately available funds, not later than 10:00 A.M., New York City time, one Business Day after the date of such notice. The proceeds of such Revolving Credit Loans shall be immediately made available by the Administrative Agent to the Swing Line Lender for application by the Swing Line Lender to the repayment of the Refunded Swing Line Loans.

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The Borrower irrevocably authorizes the Swing Line Lender to charge the Borrower's accounts with the Administrative Agent (up to the amount available in each such account) in order to immediately pay the amount of such Refunded Swing Line Loans to the extent amounts received from the Revolving Credit Lenders are not sufficient to repay in full such Refunded Swing Line Loans.

(c) If prior to the time a Revolving Credit Loan would have otherwise been made pursuant to Section 2.7(b), one of the events described in Section 8(f) shall have occurred and be continuing with respect to the Borrower or if for any other reason, as determined by the Swing Line Lender in its sole discretion, Revolving Credit Loans may not be made as contemplated by Section 2.7(b), each Revolving Credit Lender shall, on the date such Revolving Credit Loan was to have been made pursuant to the notice referred to in Section 2.7(b) (the "*Refunding Date*"), purchase for cash an undivided participating interest in the then outstanding Swing Line Loans by paying to the Swing Line Lender an amount (the "*Swing Line Participation Amount*") equal to (i) such Revolving Credit Lender's Revolving Credit Percentage *times* (ii) the sum of the aggregate principal amount of Swing Line Loans then outstanding which were to have been repaid with such Revolving Credit Loans.

(d) Whenever, at any time after the Swing Line Lender has received from any Revolving Credit Lender such Lender's Swing Line Participation Amount, the Swing Line Lender receives any payment on account of the Swing Line Loans, the Swing Line Lender will distribute to such Revolving Credit Lender its Swing Line Participation Amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Credit Lender's participating interest was outstanding and funded and, in the case of principal and interest payments, to reflect such Revolving Credit Lender's *pro rata* portion of such payment if such payment is not sufficient to pay the principal of and interest on all Swing Line Loans then due); *provided, however*, that in the event that such payment received by the Swing Line Lender is required to be returned, such Revolving Credit Lender will return to the Swing Line Lender any portion thereof previously distributed to it by the Swing Line Lender.

(e) Each Revolving Credit Lender's obligation to make the Loans referred to in Section 2.7(b) and to purchase participating interests pursuant to Section 2.7(c) shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, (i) any setoff, counterclaim, recoupment, defense or other right which such Revolving Credit Lender or the Borrower may have against the Swing Line Lender, the Borrower or any other Person for any reason whatsoever; (ii) the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 5; (iii) any adverse change in the condition (financial or otherwise) of the Borrower or any other Person; (iv) any breach of this Agreement or any other Loan Document by the Borrower or any other Person (including, without limitation, any other Revolving Credit Lender); (v) any reduction or termination of the Commitments; or (vi) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing, and each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

2.8 *Repayment of Loans; Evidence of Indebtedness.* (a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of the appropriate Revolving Credit Lender or Term Loan Lender, as the case may be, (i) the then unpaid principal amount of each Revolving Credit Loan of such Revolving Credit Lender on the Revolving Credit Termination Date, (ii) the then unpaid principal amount of each Swing Line Loan of such Swing Line Lender on the Revolving Credit Termination Date, and (iii) the principal amount of each Term Loan of such Term Loan Lender in installments according to the amortization schedule set forth in Section 2.2 and the then unpaid principal amount of each Term Loan of such Term Loan Lender on the Term Loan Termination Date. The Borrower hereby further agrees to pay interest on the unpaid principal amount of the Loans from time to time outstanding from the date hereof until payment in full thereof at the rates per annum, and on the dates, set forth in Section 2.15.

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(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing indebtedness of the Borrower to such Lender resulting from each Loan of such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) The Administrative Agent, on behalf of the Borrower, shall maintain the Register pursuant to Section 10.6(d), and a subaccount therein for each Lender, in which shall be recorded (i) the amount of each Loan made hereunder and any Note evidencing such Loan, the Type thereof and each Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) both the amount of any sum received by the Administrative Agent hereunder from the Borrower and each Lender's share thereof.

(d) The entries made in the Register and the accounts of each Lender maintained pursuant to Section 2.8(b) shall, to the extent permitted by applicable law, be *prima facie* evidence of the existence and amounts of the obligations of the Borrower therein recorded; *provided, however*, that the failure of any Lender or the Administrative Agent to maintain the Register or any such account, or any error therein, shall not in any manner affect the obligation of the Borrower to repay (with applicable interest) the Loans made to such Borrower by such Lender in accordance with the terms of this Agreement.

(e) The Borrower agrees that, upon the request to the Administrative Agent by any Lender, the Borrower will execute and deliver to such Lender a promissory note of the Borrower evidencing any Term Loans, Revolving Credit Loans or Swing Line Loans, as the case may be, of such Lender, substantially in the forms of Exhibit G-1, G-2 or G-3 hereto, respectively, with appropriate insertions as to date and principal amount (such notes, respectively, "*Term Notes*", "*Revolving Credit Notes*" and "*Swing Line Notes*").

2.9 *Commitment Fees, etc.* (a) The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Credit Lender a commitment fee (the "*Revolving Commitment Fee*") for the period from and including the Closing Date to the last day of the Revolving Credit Commitment Period, computed at the Revolving Commitment Fee Rate on the average daily amount of the Available Revolving Credit Commitment of such Lender during the period for which payment is made, payable quarterly in arrears on the last day of each March, June, September and December and on the Revolving Credit Termination Date, commencing on the first of such dates to occur after the date hereof; *provided, however*, that any Revolving Commitment Fee accrued with respect to any of the Commitments of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrower so long as such Lender shall be a Defaulting Lender, except to the extent that such Revolving Commitment Fee shall otherwise have been due and payable by the Borrower prior to such time; *provided, further*, that no such Revolving Commitment Fee shall accrue on any of the Commitments of a Defaulting Lender so long as such Lender shall be a Defaulting Lender.

(b) The Borrower agrees to pay to the Administrative Agent for the account of each Term Loan Lender a commitment fee for the period from and including the Closing Date to the last day of the Term Loan Commitment Period, computed at the Term Loan Commitment Fee Rate on the average daily amount of the Available Term Loan Commitment of such Lender during the period for which payment is made, payable quarterly in arrears on the last day of each March, June, September and December and on the last day of the Term Loan Commitment Period, commencing on the first of such dates to occur after the date hereof; *provided, however*, that any such commitment fee accrued with respect to any of the Commitments of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrower so long as such Lender shall be a Defaulting Lender, except to the extent that such commitment fee shall otherwise have been due and payable by the Borrower prior to such time; *provided, further*, that no

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such commitment fee shall accrue on any of the Commitments of a Defaulting Lender so long as such Lender shall be a Defaulting Lender.

(c) The Borrower agrees to pay to the Arrangers, the Managers and the Agents the fees in the amounts and on the dates previously agreed to in writing by the Borrower, the Arrangers, the Managers and the Agents including, without limitation, pursuant to the Facility Fee Letter.

(d) The Borrower agrees to pay to the Administrative Agent the fees in the amounts and on the dates from time to time agreed to in writing by the Borrower and the Administrative Agent including, without limitation, pursuant to the Administrative Agent Fee Letter.

2.10 *Termination or Reduction of Revolving Credit Commitments.* The Borrower shall have the right, upon not less than three Business Days' notice to the Administrative Agent, to terminate the Revolving Credit Commitments or, from time to time, to reduce the amount of the Revolving Credit Commitments; *provided*, that no such termination or reduction of Revolving Credit Commitments shall be permitted if, (x) after giving effect thereto and to any prepayments of the Revolving Credit Loans and Swing Line Loans made on the effective date thereof, (i) the Total Revolving Extensions of Credit would exceed the Total Revolving Credit Commitments or (ii) if prior to the Completion Date, the Remaining Costs would exceed the Available Funds or the Required Minimum Contingency would exceed the Unallocated Contingency Balance or (y) such termination or reduction is not permitted by the Disbursement Agreement (while in effect). Any such reduction shall be in an amount equal to \$5,000,000, or a whole multiple thereof (or, if less, shall reduce the Revolving Credit Commitments to zero), and shall reduce permanently the Revolving Credit Commitments then in effect.

2.11 *Optional Prepayments.* The Borrower may at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty, upon irrevocable notice delivered to the Administrative Agent at least three Business Days prior thereto in the case of Eurodollar Loans and at least one Business Day prior thereto in the case of Base Rate Loans, which notice shall (i) designate whether the Borrower is prepaying Revolving Credit Loans and/or Term Loans and (ii) specify the date and amount of prepayment and whether the prepayment is of Eurodollar Loans or Base Rate Loans; *provided*, that if a Eurodollar Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.21. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with (except in the case of Revolving Credit Loans (unless all Revolving Credit Loans are being repaid and the Revolving Credit Commitments terminated) that are Base Rate Loans and Swing Line Loans) accrued interest to such date on the amount prepaid. Partial prepayments of Term Loans and Revolving Credit Loans shall be in an aggregate principal amount of \$5,000,000 or a whole multiple in excess thereof. Partial prepayments of Swing Line Loans shall be in an aggregate principal amount of \$100,000 or a whole multiple in excess thereof.

2.12 *Mandatory Prepayments and Commitment Reductions.* (a) If any Indebtedness shall be incurred by the Borrower or any of the other Loan Parties (excluding any Indebtedness incurred in accordance with Section 7.2 (other than with respect to subsection (i) thereof)), an amount equal to 100% of the Net Cash Proceeds thereof shall be applied on the date of such incurrence toward the prepayment of the Term Loans and the reduction of the Revolving Credit Commitments as set forth in Section 2.12(g).

(b) With respect to the Net Cash Proceeds from any Asset Sale as to which the Borrower or any other Loan Party making such Asset Sale has not delivered a Reinvestment Notice within the period required therefor such Net Cash Proceeds (or portion thereof not subject to such a Reinvestment Notice) shall be applied, within one Business Day of the expiration of the aforesaid required period for delivery of a Reinvestment Notice with respect to such Asset Sale, on such date toward the prepayment of the Term Loans and the reduction of the Revolving Credit Commitments as set forth in

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Section 2.12(g); *provided*, that, notwithstanding the foregoing, (i) the aggregate Net Cash Proceeds of Asset Sales that may be excluded from the foregoing prepayment requirement pursuant to a Reinvestment Notice shall not exceed \$5,000,000 in any Fiscal Year and (ii) on each Reinvestment Prepayment Date, an amount equal to the Reinvestment Prepayment Amount with respect to the relevant Reinvestment Event shall be applied toward the prepayment of the Term Loans and the reduction of the Revolving Credit Commitments as set forth in Section 2.12(g).

(c) No later than (i) the Business Day following the date on which funds, whether representing the proceeds of Loans or otherwise, are returned or distributed to the Administrative Agent on behalf of Lenders under the Disbursement Agreement (whether pursuant to Section 2.10 thereof or otherwise), (ii) the Business Day following the date on which Loss Proceeds are required to be applied to the prepayment of Loans under Section 5.21 of the Disbursement Agreement, (iii) the Business Day following the date on which Insurance Proceeds or Eminent Domain Proceeds are required to be applied to the prepayment of Loans pursuant to Section 2.24(f), (iv) the Business Day following the date on which any Loan Party receives Liquidated Damages (*provided*, that to the extent such Liquidated Damages are paid pursuant to any obligation, default or breach, the results of which can be remedied through the expenditure of money, and the applicable Loan Party determines in its reasonable judgment to undertake such remedy, the Liquidated Damages subject to this subsection (iv) shall be net of reasonable amounts that such Loan Party anticipates to incur in connection with such remedy (such amounts, the "*Reinvested Amounts*"); *provided, further*, that in the event such Loan Party has not expended, any Reinvested Amounts in furtherance of such remedy by the date that is six months after a Loan Party initially received the relevant Liquidated Damages or, in the case of any Reinvested Amounts to be expended in furtherance of such remedy pursuant to a contract entered into during such six-month period, such amounts have not been expended by the date that is twelve months after a Loan Party initially received the relevant Liquidated Damages, such non-expended amounts shall be applied on the second Business Day following such sixth-month or twelve-month, as the case may be, anniversary date to the prepayment of the Term Loans and the reduction of the Revolving Credit Commitments as set forth in Section 2.12(g)(ii)), (v) the Business Day following the date on which amounts under Sections 2.9(e) and 2.11 of the Disbursement Agreement are required to be applied to the prepayment of Loans or (vi) the Business Day following the date on which Insurance Proceeds or Eminent Domain Proceeds are required to be applied to the prepayment of Loans pursuant to Section 2.24(a) or 2.24(h), the Borrower shall prepay and the Administrative Agent shall apply such funds toward the prepayment of the Term Loans and the reduction of the Revolving Credit Commitments (or with respect to subsections (c)(i), (c)(iii) and (c)(v) above, prepayment of the Revolving Credit Loans (without any permanent reduction of Revolving Credit Commitments)), in each case as set forth in Section 2.12(g).

(d) If, for any Fiscal Year commencing with the Fiscal Year in which the Completion Date occurs, there shall be Excess Cash Flow, the Borrower shall, and shall cause the applicable Loan Parties to, on the relevant Excess Cash Flow Application Date, apply the ECF Percentage of such Excess Cash Flow toward the prepayment of the Term Loans and the reduction of the Revolving Credit Commitments as set forth in Section 2.12(g). Each such prepayment and commitment reduction shall be made on a date (an "*Excess Cash Flow Application Date*") no later than five Business Days after the earlier of (i) the date on which the financial statements of the Loan Parties referred to in Section 6.1(a), for the Fiscal Year with respect to which such prepayment is made, are required to be delivered to the Lenders and (ii) the date such financial statements are actually delivered. Notwithstanding the foregoing, the requirements of this subsection (d) shall be terminated and no longer be applicable if for any Fiscal Year the Consolidated Leverage Ratio of the Borrower as of the last day of such Fiscal Year is not greater than 2.5 to 1.0.

(e) If, on any date after Loans have been made hereunder, the Borrower or any other Loan Party shall receive any Extraordinary Deposit Receipts, the Borrower or such Loan Party shall apply, on such

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date, the amount of such Extraordinary Deposit Receipts toward the prepayment of Revolving Credit Loans (without any permanent reduction of the Revolving Credit Commitments) and the Term Loans as set forth in Section 2.12(g).

(f) If on the last day of any period of four full consecutive fiscal quarters of the Borrower ending on a Quarterly Date the Consolidated EBITDA of the Borrower for such four full consecutive fiscal quarter period was equal to or greater than \$275,000,000, the Borrower shall apply any amounts on deposit in the Project Liquidity Reserve Account on the Liquidity Reserve Payment Date toward the prepayment of the Revolving Credit Loans (without any permanent reduction of Revolving Credit Commitments) and the Term Loans as set forth in Section 2.12(g).

(g) Subject to Section 2.18, amounts to be applied in connection with prepayments and/or Commitment reductions made pursuant to this Section 2.12 or Section 7.2(i) shall be applied (i) in the case of Sections 2.12(a), 2.12(b) or 7.2(i), *first*, to the prepayment of Term Loans and the permanent reduction of Revolving Credit Commitments pro rata based on the Total Revolving Credit Exposure and the Total Term Loan Exposure, and *second*, to the Borrower or such other Person as shall be lawfully entitled thereto, (ii) in the case of Sections 2.12(c)(ii), 2.12(c)(iv), 2.12(c)(vi) and 2.12(d), *first*, to the prepayment of the Term Loans, *second*, to reduce permanently the Revolving Credit Commitments and, *third*, to the Borrower or such other Person as shall be lawfully entitled thereto and (iii) in the case of Sections 2.12(c)(i), 2.12(c)(iii), 2.12(c)(v), 2.12(e) and 2.12(f), *first*, to the prepayment of Revolving Credit Loans (without any permanent reduction of Revolving Credit Commitments), *second*, to the prepayment of Term Loans, and *third*, to the Borrower or such other Person as shall be lawfully entitled thereto (*provided*, that in the case of subsections (i) and (ii) above, prior to the Completion Date, no such termination or reduction of Revolving Credit Commitments shall be permitted if, after giving effect thereto and to any prepayments of the Revolving Credit Loans made on the effective date thereof, the Remaining Costs shall exceed the Available Funds or the Required Minimum Contingency shall exceed the Unallocated Contingency Balance; *provided, further*, that, in such event, amounts allocable to the termination or reduction of Revolving Credit Commitments that are not so applied due to the first proviso hereof shall nonetheless be applied to prepay Revolving Credit Loans (without any permanent reduction of Revolving Credit Commitments)). Any reduction of the Revolving Credit Commitments in accordance with the foregoing shall be accompanied by prepayment of the Revolving Credit Loans and/or Swing Line Loans to the extent, if any, that the Total Revolving Extensions of Credit exceed the amount of the Total Revolving Credit Commitments as so reduced, *provided* that if the aggregate principal amount of Revolving Credit Loans and Swing Line Loans then outstanding is less than the amount of the Total Revolving Credit Commitments as so reduced (because L/C Obligations constitute a portion thereof), the Borrower shall, to the extent of the balance of such excess, replace outstanding Letters of Credit and/or deposit an amount in immediately available funds in a cash collateral account established with the Administrative Agent for the benefit of the Secured Parties on terms and conditions satisfactory to the Administrative Agent (and the Borrower hereby grants to the Administrative Agent, for the ratable benefit of the Secured Parties, a continuing first priority security interest (subject to no other Liens other than Liens permitted pursuant to Section 7.3(k) in all amounts at any time on deposit in such cash collateral account to secure all L/C Obligations from time to time outstanding and all other Obligations). If at any time the Administrative Agent determines that any funds held in such cash collateral account are subject to any right or claim of any Person other than the Administrative Agent, the Secured Parties and as otherwise permitted pursuant to Section 7.3(k) or that the total amount of such funds is less than the amount of such excess, the Borrower shall, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited and held in such cash collateral account, an amount equal to the excess of (a) the amount of such excess over (b) the total amount of funds, if any, then held in such cash collateral account that the Administrative Agent determines to be free and clear of any such right and claim. The application of any prepayment pursuant to Section 2.11 and this Section 2.12 shall be made, *first*, to Base Rate Loans and, *second*, to

Eurodollar Loans. Each prepayment of the Loans under Section 2.11 and this Section 2.12 (except in the case of Revolving Credit Loans (unless the Revolving Credit Loans are being repaid in full and the Revolving Credit Commitments terminated) that are Base Rate Loans and Swing Line Loans) shall be accompanied by accrued interest to the date of such prepayment to the applicable Lender on the amount prepaid.

2.13 *Conversion and Continuation Options.* (a) The Borrower may elect from time to time to convert Eurodollar Loans to Base Rate Loans by giving the Administrative Agent at least two Business Days' prior irrevocable notice of such election, *provided* that any such conversion of Eurodollar Loans may only be made on the last day of an Interest Period with respect thereto. Other than with respect to Swing Line Loans which shall at all times be Base Rate Loans, the Borrower may elect from time to time to convert Base Rate Loans to Eurodollar Loans by giving the Administrative Agent at least three Business Days' prior irrevocable notice of such election (which notice shall specify the length of the initial Interest Period therefor), *provided* that no Base Rate Loan under a particular Facility may be converted into a Eurodollar Loan (i) when any Event of Default has occurred and is continuing and the Administrative Agent or the Required Facility Lenders in respect of such Facility have determined in its or their sole discretion not to permit such conversions or (ii) after the date that is one month prior to the final scheduled termination or maturity date of such Facility. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof.

(b) Any Eurodollar Loan may be continued as such upon the expiration of the then current Interest Period with respect thereto by the Borrower giving irrevocable notice to the Administrative Agent, in accordance with the applicable provisions of the term "Interest Period" set forth in Section 1.1, of the length of the next Interest Period to be applicable to such Loans, *provided* that no Eurodollar Loan under a particular Facility may be continued as such (i) when any Event of Default has occurred and is continuing and the Administrative Agent has or the Required Facility Lenders in respect of such Facility have determined in its or their sole discretion not to permit such continuations or (ii) after the date that is one month prior to the final scheduled termination or maturity date of such Facility, and *provided, further*, that if the Borrower shall fail to give any required notice as described above in this paragraph or if such continuation is not permitted pursuant to the preceding proviso such Loans shall be automatically converted to Base Rate Loans on the last day of such then expiring Interest Period. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof.

2.14 *Minimum Amounts and Maximum Number of Eurodollar Tranches.* Notwithstanding anything to the contrary in this Agreement, all borrowings, conversions, continuations and optional prepayments of Eurodollar Loans hereunder and all selections of Interest Periods hereunder shall be in such amounts and be made pursuant to such elections so that, (a) after giving effect thereto, the aggregate principal amount of the Eurodollar Loans comprising each Eurodollar Tranche shall be equal to \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof and (b) no more than ten Eurodollar Tranches shall be outstanding at any one time.

2.15 *Interest Rates and Payment Dates.* (a) Each Eurodollar Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to the Eurodollar Rate determined for such day plus the Applicable Margin.

(b) Each Base Rate Loan shall bear interest at a rate per annum equal to the Base Rate plus the Applicable Margin.

(c) (i) If all or a portion of the principal amount of any Loan or Reimbursement Obligation shall not be paid when due (whether at the stated maturity, by acceleration or otherwise) or an Event of Default has otherwise occurred and is continuing, all outstanding Loans and Reimbursement Obligations (whether or not overdue) shall bear interest at a rate per annum that is equal to (x) in the case of the Loans, the rate that would otherwise be applicable thereto pursuant to the foregoing provisions of this Section *plus* 2.0% or (y) in the case of Reimbursement Obligations, the rate applicable to Base Rate Loans under the Revolving Credit Facility *plus* 2.0%, and (ii) if all or a portion of any interest payable on any Loan or Reimbursement Obligation or any commitment fee or other amount payable hereunder (in accordance with Section 2.9 or otherwise) shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate per annum equal to the rate then applicable to Base Rate Loans under the relevant Facility *plus* 2.0% (or, in the case of any such other amounts that do not relate to a particular Facility, the rate then applicable to Base Rate Loans under the Revolving Credit Facility *plus* 2.0%), in each case, with respect to subsections (i) and (ii) above, from the date of such non-payment until such amount is paid in full (after as well as before judgment) or so long as such Event of Default is continuing.

(d) Interest shall be payable in arrears on each Interest Payment Date, *provided* that interest accruing pursuant to paragraph (c) of this Section shall be payable from time to time on demand.

2.16 *Computation of Interest and Fees.* (a) Interest, fees and commissions payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed, except that, with respect to Base Rate Loans the rate of interest on which is calculated on the basis of the Prime Rate, the interest thereon shall be calculated on the basis of a 365-day year for the actual days elapsed. The Administrative Agent shall as soon as practicable notify the Borrower and the relevant Lenders of each determination of a Eurodollar Rate. Any change in the interest rate on a Loan resulting from a change in the Base Rate or the Eurocurrency Reserve Requirements shall become effective as of the opening of business on the day on which such change becomes effective. The Administrative Agent shall as soon as practicable notify the Borrower and the relevant Lenders of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error. The Administrative Agent shall, at the request of the Borrower, deliver to the Borrower a statement showing the quotations, if any, used by the Administrative Agent in determining any interest rate pursuant to Section 2.15(a).

2.17 *Inability to Determine Interest Rate.* If prior to the first day of any Interest Period:

(a) the Administrative Agent shall have determined (which determination shall be conclusive and binding upon the Borrower) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such Interest Period, or

(b) the Administrative Agent shall have received notice from the Applicable Facility Lenders in respect of the relevant Facility that the Eurodollar Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to such Lenders (as conclusively certified by such Lenders) of making or maintaining their affected Loans during such Interest Period,

the Administrative Agent shall give telecopy or telephonic notice thereof to the Borrower and the relevant Lenders as soon as practicable thereafter. If such notice is given (x) any Eurodollar Loans under the relevant Facility requested to be made on the first day of such Interest Period shall be made as Base Rate Loans, (y) any Loans under the relevant Facility that were to have been converted on the first day of such Interest Period to Eurodollar Loans shall be continued as Base Rate Loans and (z) any outstanding Eurodollar Loans under the relevant Facility shall be converted, on the last day of the then current Interest Period with respect thereto, to Base Rate Loans. Until such notice has been

withdrawn by the Administrative Agent, no further Eurodollar Loans under the relevant Facility shall be made or continued as such, nor shall the Borrower have the right to convert Loans under the relevant Facility to Eurodollar Loans.

2.18 *Pro Rata Treatment and Payments.* (a) Each borrowing by the Borrower from the Lenders hereunder, each payment by the Borrower on account of any commitment fee and any reduction of the Commitments of the Lenders shall be made *pro rata* according to the respective Term Loan Percentages or Revolving Credit Percentages, as the case may be, of the relevant Lenders. Subject to Section 2.18(c), each payment (other than prepayments) in respect of principal or interest in respect of the Loans, and each payment in respect of fees or expenses payable hereunder shall be applied to the amounts of such obligations owing to the Lenders *pro rata* according to the respective amounts then due and owing to the Lenders. The application of any mandatory prepayment pursuant to this Section 2.18 shall be made, first, to Base Rate Loans and, *second*, to Eurodollar Loans.

(b) Each payment (including each prepayment) of Term Loans shall be allocated among the Term Loan Lenders holding such Term Loans *pro rata* based on the principal amount of such Term Loans held by such Term Loan Lenders, and shall be applied to the installments of such Term Loans (provided that the final payment of Term Loans on the Term Loan Termination Date shall be treated as an "installment" for purposes of this subsection (b)) (i) *pro rata* based on the remaining outstanding principal amount of such installments in the case of mandatory prepayments required pursuant to Section 2.12(e) and (ii) in the inverse order of the scheduled maturities of such installments in the case of all other mandatory prepayments. Amounts prepaid on account of the Term Loans may not be reborrowed.

(c) Each payment (including each prepayment) by the Borrower on account of principal of and interest on the Revolving Credit Loans shall be made *pro rata* according to the respective outstanding principal amounts of the Revolving Credit Loans then held by the Revolving Credit Lenders. Each payment in respect of Reimbursement Obligations in connection with any Letter of Credit shall be made to the Issuing Lender.

(d) All payments (including prepayments) to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made without setoff or counterclaim and shall be made prior to 12:00 Noon, New York City time, on the due date thereof to the Administrative Agent, for the account of the Lenders, at the Payment Office, in Dollars and in immediately available funds. The Administrative Agent shall distribute such payments to the Lenders promptly upon receipt in like funds as received. If any payment hereunder (other than payments on the Eurodollar Loans) becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day. If any payment on a Eurodollar Loan becomes due and payable

on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any extension of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate during such extension.

(e) Unless the Administrative Agent shall have been notified in writing by any Lender prior to a borrowing that such Lender will not make the amount that would constitute its share of such borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender is making such amount available to the Administrative Agent, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower a corresponding amount. If such amount is not made available to the Administrative Agent by the required time on the Borrowing Date therefor, such Lender shall pay to the Administrative Agent, on demand, such amount with interest thereon at a rate equal to the daily average Federal Funds Effective Rate for the period until such Lender makes such amount immediately available to the Administrative Agent. A certificate of the

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Administrative Agent submitted to any Lender with respect to any amounts owing under this paragraph shall be conclusive in the absence of manifest error. If such Lender's share of such borrowing is not made available to the Administrative Agent by such Lender within three Business Days of such Borrowing Date, the Administrative Agent shall also be entitled to recover such amount with interest thereon at the rate per annum applicable to Base Rate Loans under the relevant Facility, on demand, from the Borrower.

(f) Unless the Administrative Agent shall have been notified in writing by the Borrower prior to the date of any payment being made hereunder that the Borrower will not make such payment to the Administrative Agent, the Administrative Agent may assume that the Borrower is making such payment, and the Administrative Agent may, but shall not be required to, in reliance upon such assumption, make available to the Lenders their respective *pro rata* shares of a corresponding amount. If such payment is not made to the Administrative Agent by the Borrower within three Business Days of such required date, the Administrative Agent shall be entitled to recover, on demand, from each Lender to which any amount which was made available pursuant to the preceding sentence, such amount with interest thereon at the rate per annum equal to the daily average Federal Funds Effective Rate. Nothing herein shall be deemed to limit the rights of the Administrative Agent or any Lender against the Borrower.

2.19 *Requirements of Law.* (a) If the adoption of or any change in any Requirement of Law or in the interpretation or application thereof or compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority made subsequent to the date hereof:

(i) shall subject any Lender to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit or any Eurodollar Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Non-Excluded Taxes covered by Section 2.20 and changes in the rate of tax on the overall net income of such Lender);

(ii) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of such Lender that is not otherwise included in the determination of the Eurodollar Rate hereunder; or

(iii) shall impose on such Lender any other condition;

and the result of any of the foregoing is to increase the cost to such Lender, by an amount which such Lender deems to be material, of making, converting into, continuing or maintaining Eurodollar Loans or issuing or participating in Letters of Credit, or to reduce any amount receivable hereunder in respect thereof, then, in any such case, the Borrower shall promptly pay such Lender, upon its demand, any additional amounts necessary to compensate such Lender on an after-tax basis for such increased cost or reduced amount receivable. If any Lender becomes entitled to claim any additional amounts pursuant to this Section, it shall promptly notify the Borrower in writing (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled, and setting forth in such notice, in reasonable detail, the basis and calculation of such amounts.

(b) If any Lender shall have determined that the adoption of or any change in any Requirement of Law regarding capital adequacy or in the interpretation or application thereof or compliance by such Lender or any corporation controlling such Lender with any request or directive regarding capital adequacy (whether or not having the force of law) from any Governmental Authority made subsequent to the date hereof shall have the effect of reducing the rate of return on such Lender's or such corporation's capital as a consequence of its obligations hereunder or under or in respect of any Letter of Credit to a level below that which such Lender or such corporation could have achieved but for such

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adoption, change or compliance (taking into consideration such Lender's or such corporation's policies with respect to capital adequacy) by an amount deemed by such Lender to be material, then from time to time, after submission by such Lender to the Borrower (with a copy to the Administrative Agent) of a written request therefor (which request shall set forth, in reasonable detail, the basis and calculation of the additional amounts sought), the Borrower shall pay to such Lender such additional amount or amounts as set forth in the aforesaid notice; *provided*, that the Borrower shall not be required to compensate a Lender pursuant to this subsection (b) for any amounts incurred more than six months prior to the date on which such Lender notified the Borrower of such Lender's intention to claim compensation therefor; *provided, further*, that, if the circumstances giving rise to such claim have a retroactive effect, then such six-month period shall be extended to include the period of such retroactive effect.

(c) A certificate as to any additional amounts payable pursuant to this Section submitted by any Lender to the Borrower (with a copy to the Administrative Agent) and setting forth, in reasonable detail, the basis and calculation of such amounts shall be conclusive in the absence of manifest error. The obligations of the Borrower pursuant to this Section shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

2.20 *Taxes.* (a) All payments made by the Borrower or any Guarantor under this Agreement or any other Loan Document shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, excluding net income taxes and franchise taxes (imposed in lieu of net income taxes) imposed on any Arranger, any Agent, any Manager or any Lender as a result of a present or former connection between

such Arranger, such Agent, such Manager or such Lender and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from such Arranger's, such Agent's, such Manager's or such Lender's having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or any other Loan Document). If any such non-excluded taxes, levies, imposts, duties, charges, fees, deductions or withholdings ("*Non-Excluded Taxes*") are required to be withheld from any amounts payable to any Arranger, any Agent, any Manager or any Lender hereunder, the amounts so payable to such Arranger, such Agent, such Manager or such Lender shall be increased to the extent necessary to yield to such Arranger, such Agent, such Manager or such Lender (after payment of all Non-Excluded Taxes) interest or any such other amounts that would have been received hereunder or under any other Loan Document had such withholding not been required; *provided, however*, that the Borrower or a Guarantor shall not be required to increase any such amounts payable to any Arranger, any Agent, any Manager or any Lender with respect to any Non-Excluded Taxes (i) that are attributable to such Arranger's, such Agent's, such Manager's or such Lender's failure to comply with the requirements of subsection (f) or (g) of this Section 2.20, or (ii) that are United States withholding taxes imposed on amounts payable to such Arranger, such Agent, such Manager or such Lender at the time such Arranger, such Agent, such Manager or such Lender becomes a party to this Agreement, except to the extent that such Arranger's, such Agent's, such Manager's or such Lender's assignor (if any) was entitled, at the time of assignment, to receive additional amounts from the Borrower or a Guarantor with respect to such Non-Excluded Taxes pursuant to this Section 2.20(a). The Borrower or the applicable Guarantor shall make any such required withholding and pay the full amount withheld to the relevant tax authority or other Governmental Authority in accordance with applicable Requirements of Law.

(b) If any Arranger, Agent, Manager or Lender, as applicable, receives a refund of a tax for which a payment has been made by the Borrower or any Guarantor pursuant to this Section 2.20, which refund in the good faith judgment of such Arranger, Agent, Manager or Lender, as the case may be, is attributable to such payment made by the Borrower or such Guarantor, then such Arranger,

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Agent, Manager or Lender, as the case may be, shall reimburse the Borrower or such Guarantor for such amount as such Arranger, Agent, Manager or Lender, as the case may be, determines in good faith to be the proportion of the refund as will leave it, after such reimbursement, in the same position it would have been in if the payment of such tax and any payment by the Borrower or such Guarantor under this Section 2.20 had not been made. Subject to the first sentence of this Section 2.20(b), upon the reasonable request of the Borrower or a Guarantor (and at the expense of such Persons), the Lender or the Administrative Agent, as applicable, shall at its sole discretion, exercised in good faith, use reasonable efforts to cooperate with the Borrower or a Guarantor with a view to obtaining a refund of any Non-Excluded Taxes with respect to which the Borrower or a Guarantor has paid any amounts pursuant to Section 2.20 and which the Borrower or a Guarantor, on advice of counsel, reasonably believes were not correctly or legally asserted by the relevant Governmental Authority.

(c) Subject to subsection (f) below, the Borrower shall indemnify each Arranger, each Agent, each Manager and any Lender for the full amount of Non-Excluded Taxes to the extent payable but not paid by the Borrower or any Guarantor pursuant to Section 2.20(a) and paid by such Arranger, Agent, Manager or Lender or any of their respective Affiliates (including, without limitation, any Non-Excluded Taxes imposed by any Governmental Authority on amounts payable under Section 2.20(a) or this Section 2.20(c) and any penalties, additions to tax interest and related expenses attributable to such Non-Excluded Taxes). Payment under this indemnification shall be made within ten (10) Business Days from the date any Arranger, any Agent, any Manager or any Lender or any of their respective Affiliates makes written demand therefor, which demand shall set forth in reasonable detail the basis and calculation of the amounts demanded. Any Lender (or Transferee) claiming any indemnity payment or additional amounts payable pursuant to Section 2.20(a) shall use reasonable efforts (consistent with legal and regulatory restrictions) to file any certificate or document reasonably requested in writing by the Borrower or a Guarantor if the making of such a filing would avoid the need for or reduce the amount of any such indemnity payment or additional amounts that may thereafter accrue.

(d) Whenever any Non-Excluded Taxes are payable by the Borrower or a Guarantor, as promptly as possible thereafter the Borrower or such Guarantor shall send to the Administrative Agent for the account of the relevant Arranger, Agent, Manager or Lender, as the case may be, a certified copy of an original official receipt received by the Borrower or such Guarantor showing payment thereof.

(e) The agreements in this Section 2.20 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(f) Each Lender (or Transferee) that is not a U.S. Person (as defined in Section 7701(a)(30) of the Code) (a "*Non-U.S. Lender*") shall deliver to the Borrower and the Administrative Agent (and, in the case of a Participant, to the Lender from which the related participation shall have been purchased) two duly completed copies of either U.S. Internal Revenue Service Form W-8BEN or Form W-8ECI, or, in the case of a Non-U.S. Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest," a Form W-8BEN and a statement substantially in the form of Exhibit I hereto to the effect that such Non-U.S. Lender is eligible for a complete exemption from withholding of U.S. taxes under Section 871(h) or 881(c) of the Code, or any subsequent versions of any of the foregoing or successors thereto, properly completed and duly executed by such Non-U.S. Lender claiming complete exemption from, or a reduced rate of, U.S. federal withholding tax on all payments by the Borrower or any Guarantor under this Agreement and the other Loan Documents. Such forms shall be delivered by each Non-U.S. Lender on or before the date it becomes a party to this Agreement (or, in the case of any Participant, on or before the date such Participant purchases the related participation) and on or before the date of the first payment to it following the date, if any, such Non-U.S. Lender changes its applicable lending office pursuant to Section 2.23 hereof. In addition, each Non-U.S. Lender shall deliver such forms promptly upon the obsolescence or invalidity of any form previously delivered by

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such Non-U.S. Lender. Each Non-U.S. Lender shall promptly notify the Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose). If a Non-U.S. Lender is unable to deliver any form pursuant to this Section 2.20(f), such Non-U.S. Lender shall be entitled to neither relief from withholding nor indemnity hereunder with respect to Non-Excluded Taxes for the period that would have been covered by such form, unless (i) such Non-U.S. Lender's inability to deliver such form resulted from a change in law after the date on which such Lender became a Lender hereunder or as a result of a change in the circumstances of the Borrower or any Guarantor or the use of proceeds of such Non-U.S. Lender's loans or (ii) such Non-U.S. Lender's assignor (if any) was entitled, at the time of assignment, to the indemnity afforded hereunder. Notwithstanding any other provision of this paragraph, a Non-U.S. Lender shall not be required to deliver any form pursuant to this paragraph that such Non-U.S. Lender is not legally able to deliver.

(g) Each Arranger, Agent, Manager and Lender that is entitled to an exemption from non-U.S. withholding taxes under the law of the jurisdiction in which the Borrower or a Guarantor is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement or any other Loan

Document shall deliver to the Borrower and the relevant Guarantor(s), as applicable (with a copy to the Administrative Agent), at the time or times prescribed by applicable Requirements of Law or reasonably requested by the Borrower or such Guarantor(s), such properly completed and executed documentation prescribed by applicable Requirements of Law as will permit such payments to be made without withholding; *provided*, that such Arranger, Agent, Manager or Lender is legally entitled to complete, execute and deliver such documentation and in such Person's judgment such completion, execution or submission would not materially prejudice the legal position of such Person.

(h) The Borrower and each Guarantor shall pay all Non-Excluded Taxes to the relevant Governmental Authority in accordance with applicable Requirements of Law.

2.21 *Indemnity.* The Borrower agrees to indemnify each Lender and to hold each Lender harmless from any loss or expense that such Lender may sustain or incur as a consequence of (a) default by the Borrower in making a borrowing of, conversion into or continuation of Eurodollar Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement (whether as a result of a Stop Funding Notice or otherwise), (b) default by the Borrower in making any prepayment after the Borrower has given a notice thereof in accordance with the provisions of this Agreement or (c) the making of a prepayment or conversion of Eurodollar Loans on a day that is not the last day of an Interest Period with respect thereto. Such indemnification may include an amount equal to the excess, if any, of (i) the amount of interest that would have accrued on the amount so prepaid, or not so borrowed, converted or continued, for the period from the date of such prepayment or of such failure to borrow, convert or continue to the last day of such Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Loans provided for herein (excluding, however, the Applicable Margin included therein, if any) *over* (ii) the amount of interest (as reasonably determined by such Lender) that would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank eurodollar market. A certificate as to any amounts payable pursuant to this Section submitted to the Borrower by any Lender shall be conclusive in the absence of manifest error. This covenant shall survive the termination of this Agreement and the payment of the Loans and Letters of Credit and all other amounts payable hereunder.

2.22 *Illegality.* Notwithstanding any other provision herein, if the adoption of or any change in any Requirement of Law or in the interpretation or application thereof shall make it unlawful for any Lender to make or maintain Eurodollar Loans as contemplated by this Agreement, then (a) the commitment of such Lender hereunder to make Eurodollar Loans, continue Eurodollar Loans as such

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and convert Base Rate Loans to Eurodollar Loans shall forthwith be canceled and (b) such Lender's Loans then outstanding as Eurodollar Loans, if any, shall be converted automatically to Base Rate Loans on the respective last days of the then current Interest Periods with respect to such Loans or within such earlier period as required by law. If any such conversion of a Eurodollar Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, the Borrower shall pay to such Lender such amounts, if any, as may be required pursuant to Section 2.21.

2.23 *Change of Lending Office.* Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 2.19, 2.20 or 2.22 with respect to such Lender, it will, if requested by the Borrower or a Guarantor, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office for any Loans affected by such event with the object of avoiding the consequences of such event; *provided*, that such designation is made on terms that, in the sole judgment of such Lender, cause such Lender and its lending office(s) to suffer no economic, legal or regulatory disadvantage, and *provided, further*, that nothing in this Section shall affect or postpone any of the obligations or rights of any Borrower or Lender pursuant to Section 2.19, 2.20 or 2.22.

2.24 *Insurance Proceeds and Eminent Domain Proceeds.* (a) This Section 2.24 shall apply to all Insurance Proceeds and all Eminent Domain Proceeds received by any Loan Party after the Final Completion Date. Any such Insurance Proceeds or Eminent Domain Proceeds (other than those described in subsection (b) below and those that the Administrative Agent is required to deliver to the FF&E Agent pursuant to the FF&E Intercreditor Agreement) shall be applied to the prepayment of the Obligations of the Borrower in accordance with Sections 2.12 and 2.18, unless, subject to Section 2.24(h) in the case of Eminent Domain Proceeds with respect to the Phase II Land, each of the following conditions are satisfied or waived by the Majority Initial Arrangers (and the Required Lenders, as applicable) as required pursuant to Section 2.24(c) or 2.24(d), within 30 Business Days (or, in the case of Insurance Proceeds or Eminent Domain Proceeds described in Section 2.24(d), 60 Business Days) after any Loan Party's receipt of such Insurance Proceeds or Eminent Domain Proceeds, in which event such amounts shall be applied to the repair or restoration of the Project in accordance with the terms of such Sections:

(i) such damage or destruction or Event of Eminent Domain does not constitute the destruction of all or substantially all of the man-made portion of the Project;

(ii) neither a Default nor an Event of Default has occurred and is continuing (other than a Default or an Event of Default resulting solely from such damage or destruction or Event of Eminent Domain) and after giving effect to any proposed repair and restoration, no Default or Event of Default will result from such damage or destruction or proposed repair and restoration or Event of Eminent Domain;

(iii) the Borrower and the Construction Consultant certify, and the Majority Initial Arrangers (with, if applicable, the consent of the Required Lenders) determine in their reasonable judgment, that repair or restoration of the Project to a condition substantially similar to the condition of the Project immediately prior to the event or events to which the relevant Insurance Proceeds or Eminent Domain Proceeds, as the case may be relate, is technically and economically feasible within a twelve-month period and that a sufficient amount of funds is or will be available to the relevant Loan Party to make such repairs and restorations (subject at all times to Section 7.7);

(iv) the Borrower delivers to the Administrative Agent a plan describing in reasonable detail the nature of the repairs or restoration to be effected and the anticipated costs and schedule associated therewith (the "*Repair Plan*"), in form and substance reasonably satisfactory to the Majority Initial Arrangers (and, if applicable, the Required Lenders);

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(v) the Borrower certifies, and the Majority Initial Arrangers (with, if applicable, the consent of the Required Lenders) determine in their reasonable judgment, that a sufficient amount of funds is or will be available to the Borrower to make all payments on Indebtedness which will become due during and following the repair period and, in any event, to maintain compliance with the covenants set forth in Section 7.1 during such repair period;

(vi) no Permit is necessary to proceed with the repair and restoration of the Project and no material amendment to the Project Documents, or, except with the consent of the Required Lenders, this Agreement or any of the Loan Document, and no other instrument is necessary for the purpose of effecting the repairs or restoration of the Project or subjecting the repairs or restoration to the Liens of the applicable Security Documents and maintaining the priority of such Liens or, if any of the above is necessary, the Borrower and/or the appropriate Loan Party will be able to obtain the same as and when required;

(vii) the Majority Initial Arrangers shall receive such additional title insurance, title insurance endorsements, mechanic's lien waivers, certificates, opinions or other matters as they may reasonably request (or, if applicable, as the Required Lenders may request) as necessary or appropriate in connection with such repairs or restoration of the Project or to preserve or protect the Lenders' interests hereunder and in the applicable Collateral; and

(viii) the proposed repair or restoration is permitted by each of the other Financing Agreements.

(b) If there shall occur any damage, destruction or Event of Eminent Domain of or with respect to the Project with respect to which Insurance Proceeds and/or Eminent Domain Proceeds received by the relevant Loan Party(ies) for any single loss or series of related losses not in excess of \$15,000,000 are payable, such Insurance Proceeds and/or Eminent Domain Proceeds shall be held by the Administrative Agent in a Funding Account and released by the Administrative Agent to the relevant Loan Party(ies) in amounts from time to time necessary to make payments for work undertaken towards repair, restoration or reconstruction necessitated by such event(s), upon presentation of documentation reasonably satisfactory to the Administrative Agent supporting such requested payments.

(c) Provided that the conditions set forth in subsection (a) above have been waived by the Majority Initial Arrangers, or have been acknowledged by such Persons as having been satisfied, which acknowledgement shall not be unreasonably withheld, delayed or conditioned, if there shall occur any damage, destruction or Event of Eminent Domain of or with respect to the Project with respect to which Insurance Proceeds and/or Eminent Domain Proceeds received by the relevant Loan Party(ies) for any single loss or series of related losses in excess of \$15,000,000, but not in excess of \$30,000,000, are payable, such Insurance Proceeds and/or Eminent Domain Proceeds received by relevant Loan Party(ies) shall be held by the Administrative Agent in a Funding Account and released by the Administrative Agent to relevant Loan Party(ies) in accordance with subsection (e) below.

(d) Provided that the conditions set forth in subsection (a) above have been waived by the Majority Initial Arrangers and the Required Lenders, or have been acknowledged by such Persons as having been satisfied, which acknowledgement shall not be unreasonably withheld, delayed or conditioned, if there shall occur any damage, destruction or Event of Eminent Domain of or with respect to the Project with respect to which Insurance Proceeds and/or Eminent Domain Proceeds received by the relevant Loan Party(ies) for any single loss or series of related losses in excess of \$30,000,000 are payable, such Insurance Proceeds and/or Eminent Domain Proceeds shall be held by the Administrative Agent in a Funding Account and released by the Administrative Agent to the relevant Loan Party(ies) in accordance with subsection (e) below.

(e) Except as provided in Section 2.24(b), amounts which are to be applied to repair or restoration of the Project pursuant to this Section 2.24 shall be disbursed by the Administrative Agent

from the applicable Funding Account in accordance with the procedures set forth in this Section 2.24(e). From time to time the Administrative Agent's authorization of release of Insurance Proceeds and/or Eminent Domain Proceeds for application toward such repairs or restoration shall be conditioned upon the relevant Loan Party's delivery to the Administrative Agent of (i) a certificate from the Borrower (I) describing in reasonable detail the nature of the repairs or restoration to be effected with such release and certifying that such repairs or restoration are materially consistent with, and shall be undertaken in accordance with, the Repair Plan, (II) stating the cost of such repairs or restoration, which shall be no less than the amount of Insurance Proceeds and/or Eminent Domain Proceeds requested in such release, and that such requested release amount will be applied to the cost thereof, (III) stating that the aggregate amount requested in respect of such repairs or restoration (when added to any other Insurance Proceeds and/or Eminent Domain Proceeds received by the relevant Loan Party(ies) or funds otherwise made available to the Project in respect of such damage or destruction or Event of Eminent Domain) does not exceed the cost of such repairs or restoration and that a sufficient amount of funds is or will be available to the relevant Loan Party(ies) to complete such repair or restoration, and (IV) stating that neither a Default nor an Event of Default has occurred and is continuing other than a Default or an Event of Default resulting solely from such damage, destruction or Event of Eminent Domain (*provided*, that in any event no Default or Event of Default under Sections 7.1 or 8(a) shall have occurred and be continuing), (ii) such documents, certificates and information of the type described in Section 2.24(a)(vii) as the Majority Initial Arrangers may reasonably request and (iii) in the event such repairs or restorations relate to damage, destruction or Event of Eminent Domain of the type described in Section 2.24(d), all other documents, certificates and information with respect to such Insurance Proceeds, Eminent Domain Proceeds, repair and/or restoration as the Majority Initial Arrangers may reasonably request as necessary or appropriate in connection with such repairs or restoration of the Project or to preserve or protect the Lenders' interests hereunder and in the applicable Collateral.

(f) If, after Insurance Proceeds and/or Eminent Domain Proceeds have been applied to the repair or restoration of the Project as provided in this Section 2.24, any excess Insurance Proceeds and/or Eminent Domain Proceeds shall be applied to the prepayment of the Obligations of the Borrower in accordance with Section 2.12.

(g) If an Event of Default shall have occurred and be continuing (other than a Default or an Event of Default resulting solely from the damage or destruction or Event of Eminent Domain giving rise to the receipt of such Insurance Proceeds or Eminent Domain Proceeds (but in any event including any Default or Event of Default under Sections 7.1 or 8(a))), then any provisions of this Section 2.24 to the contrary notwithstanding, any Insurance Proceeds or Eminent Domain Proceeds may be applied by the Administrative Agent (i) to curing such Event of Default, and any Insurance Proceeds or Eminent Domain Proceeds remaining thereafter shall be applied as provided in this Section 2.24 or (ii) if such Event of Default cannot be cured, toward payment of all other Obligations of the Borrower, in connection with exercise of the Lenders' remedies pursuant to Section 8.

(h) Notwithstanding anything to the contrary contained in this Section 2.24, all Eminent Domain Proceeds received by any Loan Party with respect to the Phase II Land (including, without limitation, the Phase II Land Building) shall be applied to the prepayment of Obligations of the Borrower in accordance with Sections 2.12 and 2.18.

3.1 *L/C Commitment.* (a) Subject to the terms and conditions hereof, the Issuing Lender, in reliance on the agreements of the other Revolving Credit Lenders set forth in Section 3.4(a), agrees to issue standby and, if agreed to by the applicable Issuing Lender, commercial letters of credit ("*Letters of Credit*") for the account of the Borrower on any Business Day during the Letter of Credit Commitment Period (*provided*, that until the Total Term Loan Extensions of Credit equals the Total

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Term Loan Commitments, Letters of Credit shall not be available to the Borrower hereunder) in such form as may be approved from time to time by the Issuing Lender; *provided*, that the Issuing Lender shall have no obligation to issue any Letter of Credit if, after giving effect to such issuance, (i) the L/C Obligations would exceed the L/C Commitment, (ii) the aggregate amount of the Available Revolving Credit Commitments would be less than zero, (iii) if such issuance is prior to the Debt Service Availability Date, the Total Revolving Extensions of Credit would exceed an amount equal to the difference between (x) the Total Revolving Credit Commitments at such time and (y) \$31,509,475 (or, during such times as the conditions set forth in Section 3.3.22 of the Disbursement Agreement have not been satisfied or waived, \$36,509,475), (iv) if such issuance is during the Additional Completion Period, the Total Revolving Extensions of Credit would exceed an amount equal to the difference between (x) the Total Revolving Credit Commitments at such time and (y) \$3,000,000 (or, during such times as the conditions set forth in Section 3.3.22 of the Disbursement Agreement have not been satisfied or waived, \$8,000,000) or (v) if such issuance is during such times as the conditions set forth in Section 3.3.22 of the Disbursement Agreement have not been satisfied or waived, the Total Revolving Extensions of Credit would exceed an amount equal to the difference between (x) the Total Revolving Credit Commitments at such time and (y) \$5,000,000. Each Letter of Credit shall (i) be denominated in Dollars and (ii) expire no later than the earlier of (x) the date which is one year after the date of issuance and (y) the date which is five Business Days prior to the Scheduled Revolving Credit Termination Date, *provided* that any Letter of Credit may provide for the extension of the expiry date thereof for additional one-year periods (which shall in no event extend beyond the date referred to in subsection (y) above).

(b) The Issuing Lender shall not at any time be obligated to issue any Letter of Credit hereunder if such issuance would conflict with, or cause the Issuing Lender or any L/C Participant to exceed any limits imposed by, any applicable Requirement of Law.

3.2 *Procedure for Issuance of Letters of Credit.* (a) Prior to the Completion Date, and, to the extent the Letter of Credit is being utilized in furtherance of the payment or support for Project Costs, after the Completion Date but prior to the Final Completion Date, the Borrower may request that the Issuing Lender issue a Letter of Credit by delivering to the Issuing Lender and the Disbursement Agent, in each case in accordance with and pursuant to the terms of Section 2.4 of the Disbursement Agreement such Notice of Advance Requests in the form, at the times and as required under the Disbursement Agreement. Notwithstanding any provisions of the Disbursement Agreement to the contrary, such Notice of Advance Requests and the related Advance Confirmation Notices from the Disbursement Agent in accordance with the provisions of Section 2.4 of the Disbursement Agreement must be received by the Issuing Lender at least 3 Business Days (or such shorter period agreed to by the Issuing Lender) prior to the proposed date of issuance (in addition to such other documents, certificates, documents and papers as the Issuing Lender may request) and must contain all the information relevant to the proposed Letter of Credit issuance as set forth in a Letter of Credit Request.

(b) On or after the Completion Date, the Borrower may request that the Issuing Lender issue a Letter of Credit by delivering to the Issuing Lender and the Administrative Agent, at least 3 Business Days (or such shorter period agreed to by the Issuing Lender) prior to the proposed date of issuance (such proposed date to be a Business Day), a Letter of Credit Request accompanied by such other documents, certificates, documents and papers as the Issuing Lender may request. Letter of Credit Requests may be delivered by facsimile transmission.

Promptly after the issuance or amendment of a Letter of Credit (in any event upon satisfaction or waiver of the conditions precedent set forth in Section 5.2 or 5.3, as the case may be), the Issuing Lender shall notify the Borrower and the Administrative Agent, in writing, of such issuance or amendment and such notice shall be accompanied by a copy of such issuance or amendment. Upon receipt of such notice, the Administrative Agent shall promptly notify the Revolving Credit Lenders, in

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writing of such issuance or amendment and if so requested by any such Lender the Administrative Agent shall furnish such Lender with a copy of such issuance or amendment. Notwithstanding the foregoing, the Issuing Lender shall not be obligated to make any Letters of Credit available to the Borrower at a time when a Lender Default exists unless the Issuing Lender has entered into arrangements satisfactory to it to eliminate the Issuing Lender's risk with respect to the Defaulting Lender's or Lenders' participation in such Letters of Credit.

3.3 *Fees and Other Charges.* (a) The Borrower shall pay a fee on the aggregate drawable amount of each outstanding Letter of Credit at a per annum rate equal to the Applicable Margin then in effect with respect to Eurodollar Loans under the Revolving Credit Facility, shared ratably among the Revolving Credit Lenders and payable quarterly in arrears on each L/C Fee Payment Date after the issuance date of such Letter of Credit; *provided, however*, that any such fee accrued with respect to any Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrower so long as such Lender shall be a Defaulting Lender except to the extent that such fee shall otherwise have been due and payable by such Borrower prior to such time; and provided further that no such fee shall accrue for the benefit of a Defaulting Lender so long as such Lender shall be a Defaulting Lender. In addition, the Borrower shall pay to the Issuing Lender for its own account a fronting fee equal to $\frac{1}{4}$ of 1% per annum on the aggregate drawable amount of each outstanding Letter of Credit (but in any event not less than \$500.00 per annum per Letter of Credit), payable quarterly in arrears on each L/C Fee Payment Date after the issuance date of such Letter of Credit.

(b) In addition to the foregoing fees, the Borrower shall pay or reimburse the Issuing Lender for such normal and customary costs and expenses as are incurred or charged by the Issuing Lender in issuing, negotiating, effecting payment under, amending or otherwise administering any Letter of Credit.

3.4 *L/C Participations.* (a) The Issuing Lender irrevocably agrees to grant and hereby grants to each L/C Participant, and, to induce the Issuing Lender to issue Letters of Credit hereunder, each L/C Participant irrevocably agrees to accept and purchase and hereby accepts and purchases from the Issuing Lender, on the terms and conditions hereinafter stated, for such L/C Participant's own account and risk an undivided interest equal to such L/C Participant's Revolving Credit Percentage in the Issuing Lender's obligations and rights under each Letter of Credit issued hereunder and the amount of each draft paid by the Issuing Lender thereunder. Each L/C Participant unconditionally and irrevocably agrees with the Issuing Lender that, if a draft is paid under any Letter of Credit for which the Issuing Lender is not reimbursed in full by the Borrower in accordance with the terms of this Agreement, such L/C Participant shall pay to the Issuing Lender,

regardless of the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 5, upon demand, at the Issuing Lender's address for notices specified herein an amount equal to such L/C Participant's Revolving Credit Percentage of the amount of such draft, or any part thereof, that is not so reimbursed. Each L/C Participant acknowledges and agrees that its obligation to acquire participations and make payments pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit, the occurrence and continuance of a Default or Event of Default, the reduction or termination of the Commitments, any adverse change in the condition (financial or otherwise) of the Borrower or any other Person or any breach of this Agreement or any other Loan Document by the Borrower or any other Person (including, without limitation, any other Revolving Credit Lender), and each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(b) If any amount required to be paid by any L/C Participant to the Issuing Lender pursuant to Section 3.4(a) in respect of any unreimbursed portion of any payment made by the Issuing Lender under any Letter of Credit is paid to the Issuing Lender within three Business Days after the date such

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payment is due, such L/C Participant shall pay to the Issuing Lender on demand an amount equal to the product of (i) such amount, times (ii) the daily average Federal Funds Effective Rate during the period from and including the date such payment is required to the date on which such payment is immediately available to the Issuing Lender, times (iii) a fraction the numerator of which is the number of days that elapse during such period and the denominator of which is 360. If any such amount required to be paid by any L/C Participant pursuant to Section 3.4(a) is not made available to the Issuing Lender by such L/C Participant within three Business Days after the date such payment is due, the Issuing Lender shall be entitled to recover from such L/C Participant, on demand, such amount with interest thereon calculated from such due date at the rate per annum applicable to Base Rate Loans under the Revolving Credit Facility. A certificate of the Issuing Lender submitted to any L/C Participant with respect to any amounts owing under this Section shall be conclusive in the absence of manifest error.

(c) Whenever, at any time after the Issuing Lender has made payment under any Letter of Credit and has received from any L/C Participant its *pro rata* share of such payment in accordance with Section 3.4(a), the Issuing Lender receives any payment related to such Letter of Credit (whether directly from the Borrower or otherwise, including proceeds of collateral applied thereto by the Issuing Lender), or any payment of interest on account thereof, the Issuing Lender will distribute to such L/C Participant its *pro rata* share thereof; *provided, however*, that in the event that any such payment received by the Issuing Lender shall be required to be returned by the Issuing Lender, such L/C Participant shall return to the Issuing Lender the portion thereof previously distributed by the Issuing Lender to it.

3.5 Reimbursement Obligation of the Borrower. The Borrower agrees to reimburse the Issuing Lender on each date on which the Issuing Lender notifies the Borrower and the Administrative Agent of the date and amount of a draft presented under any Letter of Credit and paid by the Issuing Lender for the amount of (a) such draft so paid and (b) any taxes, fees, charges or other costs or expenses incurred by the Issuing Lender in connection with such payment (the amounts described in the foregoing subsections (a) and (b) in respect of any drawing, collectively, the "*Payment Amount*"). Each such payment shall be made to the Administrative Agent at the Payment Office, for the account of the Issuing Lender, in Dollars and in immediately available funds. The Administrative Agent shall distribute such payments to the Issuing Lender promptly upon receipt at its address for notices specified herein in like funds as received. Interest shall be payable on each Payment Amount from the date of the applicable drawing until payment in full at the rate set forth in (i) until the second Business Day following the date of the applicable drawing, Section 2.15(b) and (ii) thereafter, Section 2.15(c). Each drawing under any Letter of Credit shall (unless an event of the type described in subsection (i) or (ii) of Section 8(f) shall have occurred and be continuing with respect to the Borrower, in which case the procedures specified in Section 3.4 for funding by L/C Participants shall apply) constitute a request by the Borrower to the Administrative Agent for a borrowing pursuant to Section 2.5 of Base Rate Loans (or, at the option of the Administrative Agent and the Swing Line Lender in their sole discretion, a borrowing pursuant to Section 2.7 of Swing Line Loans) in the amount of such drawing. The Borrowing Date with respect to such borrowing shall be the first date on which a borrowing of Revolving Credit Loans (or, if applicable, Swing Line Loans) could be made, pursuant to Section 2.5 (or, if applicable, Section 2.7), if the Administrative Agent had received a notice of such borrowing at the time of such drawing under such Letter of Credit.

3.6 Obligations Absolute. The Borrower's obligations under this Section 3 shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment that the Borrower may have or have had against the Issuing Lender, any beneficiary of a Letter of Credit or any other Person. The Borrower also agrees with the Issuing Lender that the Issuing Lender shall not be responsible for, and the Borrower's Reimbursement Obligations under Section 3.5 shall not be affected by, among other things, the validity or genuineness of documents or of

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any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among the Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of the Borrower against any beneficiary of such Letter of Credit or any such transferee. The Issuing Lender shall not be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit. The Borrower agrees that any action taken or omitted by the Issuing Lender under or in connection with any Letter of Credit or the related drafts or documents, if done in accordance with the standards or care specified in the UCC of the State of New York, shall be binding on the Borrower and shall not result in any liability of the Issuing Lender to the Borrower.

3.7 Letter of Credit Payments. If any draft or other form of demand shall be presented for payment under any Letter of Credit, the Issuing Lender shall promptly notify the Borrower of the date and amount thereof. The responsibility of the Issuing Lender to the Borrower in connection with any draft presented for payment under any Letter of Credit shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment are substantially in conformity with such Letter of Credit.

SECTION 4. REPRESENTATIONS AND WARRANTIES

To induce the Arrangers, the Agents, the Managers and the Lenders to enter into this Agreement and to make the Loans and issue or participate in the Letters of Credit, the Borrower hereby represents and warrants to each Arranger, each Agent, each Manager and each Lender that, on the Closing Date (except with respect to Sections 4.25(h), 4.26, 4.27 and 4.28), on each Borrowing Date for Revolving Loans on or after the Completion Date and on the date of issuance or amendment of each Letter of Credit on or after the Completion Date, the following statements are true, correct and complete, it being understood that such representations and warranties are being made solely as of the Closing Date and as a condition to the making of Revolving Loans on or after the Completion Date,

the making of Swing Line Loans and the issuance or amendment of Letters of Credit on or after the Completion Date and shall not be made or be a condition to the funding of any Loans or the issuance or amendment of any Letters of Credit prior to the Completion Date:

4.1 *Financial Condition.*

The restated audited consolidated and consolidating balance sheets of Valvino and its consolidated Subsidiaries as at December 31, 2000 and December 31, 2001, and the related consolidated and consolidating statements of income and of cash flows for the Fiscal Years ended on such dates, reported on by and accompanied by an unqualified report from Deloitte & Touche LLP, present fairly in all material respects the consolidated and consolidating financial condition of Valvino and its consolidated Subsidiaries as at such date, and the consolidated and consolidating results of its operations and its consolidated and consolidating cash flows for the respective Fiscal Years then ended. The unaudited consolidated and consolidating balance sheets of Valvino and its consolidated Subsidiaries as at June 30, 2002, and the related unaudited consolidated and consolidating statements of income and cash flows for the 6-month period ended on such date, present fairly in all material respects the consolidated and consolidating financial condition of Valvino and its consolidated Subsidiaries as at such date, and the consolidated and consolidating results of its operations and its consolidated and consolidating cash flows for the 6-month period then ended (subject to normal year-end audit adjustments). All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved (except as approved by the aforementioned firm of accountants and disclosed therein). Valvino and its Subsidiaries do not have any material Guarantee Obligations, contingent liabilities and liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including, without

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limitation, any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are not reflected in the most recent financial statements referred to in this paragraph. During the period from January 1, 2002 to and including the Closing Date there has been no Disposition by Valvino or any of its Subsidiaries of any material part of its business or Property.

4.2 *No Change.* Since December 31, 2001, there have been no developments or events that, individually or collectively, have had or could reasonably be expected to have a Material Adverse Effect.

4.3 *Corporate/LLC Existence; Compliance with Law.* Each of the Loan Parties and the Completion Guarantor (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has the corporate or limited liability company power and authority, and the legal right, to own and operate its Property, to lease the Property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation or limited liability company and in good standing under the laws of each jurisdiction where its ownership, lease or operation of Property or the conduct of its business requires such qualification, except to the extent the failure to be so qualified or in good standing could not reasonably be expected to have a Material Adverse Effect and (d) is in compliance with all Requirements of Law except to the extent that the failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.4 *Corporate Power; Authorization; Enforceable Obligations.* Each Loan Party and the Completion Guarantor has the corporate or limited liability company power, as the case may be, and authority, and the legal right, to make, deliver and perform the Loan Documents and the other Operative Documents to which it is a party and to carry out the transactions contemplated thereby and, in the case of the Borrower, to borrow hereunder. Each Loan Party and the Completion Guarantor has taken all necessary corporate or limited liability company action, as the case may be, to authorize the execution, delivery and performance of the Loan Documents and the other Operative Documents to which it is a party and, in the case of the Borrower and Capital Corp., to authorize the borrowings and issuances of Indebtedness on the terms and conditions of this Agreement and the other Operative Documents. No consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any Person (other than a Loan Party) is required in connection with the borrowings hereunder or with the execution, delivery, performance, validity or enforceability of this Agreement, any of the Loan Documents or any of the other Operative Documents, except (i) consents, authorizations, filings and notices described in *Schedule 4.4*, which consents, authorizations, filings and notices have, unless otherwise indicated on *Schedule 4.4*, been obtained or made and are in full force and effect and (ii) the filings and actions referred to in Section 4.19. Each Loan Document and other Operative Document has been duly executed and delivered on behalf of the Completion Guarantor and each Loan Party party thereto. This Agreement constitutes, and each other Loan Document, Project Document and Operative Document upon execution will constitute, a legal, valid and binding obligation of the Completion Guarantor and each Loan Party party thereto, enforceable against the Completion Guarantor and each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

4.5 *No Legal Bar.* The execution, delivery and performance of this Agreement, the other Loan Documents and the other Operative Documents, the issuance of Letters of Credit, the borrowings hereunder and the use of the proceeds thereof will not violate any Requirement of Law or any Contractual Obligation of the Completion Guarantor or any Loan Party and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any Requirement of Law or any such Contractual Obligation (other than the Liens created by the Security Documents and the Other Security Documents). No Requirement of Law or

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Contractual Obligation applicable to the Completion Guarantor or any Loan Party could, individually or collectively, reasonably be expected to have a Material Adverse Effect.

4.6 *No Material Litigation.* No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Borrower, threatened by or against the Completion Guarantor or any Loan Party or against any of their respective properties or revenues (a) with respect to any of the Financing Agreements or any of the transactions contemplated hereby or thereby, or (b) that, individually or collectively, could reasonably be expected to have a Material Adverse Effect.

4.7 *No Default.* Neither the Completion Guarantor nor any Loan Party is in default under or with respect to any of its Contractual Obligations in any respect that, individually or collectively, could reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing.

4.8 *Ownership of Property; Liens.* Each of the Loan Parties is the sole owner of, legally and beneficially, and has good, marketable and insurable title to, or has a valid leasehold interest in, all its Real Estate, and good title to, or a valid leasehold interest in, all its other Property, and none of such Property is subject to any claims, liabilities, obligations, charges or restrictions of any kind, nature or description (other than claims, liabilities, obligations, charges or restrictions that individually or in the aggregate could not reasonably be expected to materially interfere with the business or assets of any Loan Party), or to any Lien except for Permitted Liens. None of the Pledged Stock is subject to any Lien except for Permitted Liens.

4.9 *Intellectual Property.* (a) Each Loan Party owns, or is licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted. No claim has been asserted or is pending by any Person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does the Borrower know of any valid basis for any such claim, except (i) with respect to the Intellectual Property related to or otherwise associated with the Loan Parties' use of the "Le Reve" name, such claims that, if determined adversely to a Loan Party, could not reasonably be expected to have a material adverse effect on such Loan Party's ability to use the "Le Reve" name in its Permitted Business as currently used or contemplated to be used and (ii) with respect to all other Intellectual Property, as could not, individually or collectively, reasonably be expected to have a Material Adverse Effect. The use by each Loan Party of the Intellectual Property related to or otherwise associated with such Loan Party's use of the "Le Reve" name does not infringe on the rights of any Person, which infringement could reasonably be expected to have a material adverse effect on such Loan Party's ability to use the "Le Reve" name in its Permitted Business as currently used or contemplated to be used. The use by each Loan Party of Intellectual Property other than Intellectual Property related to or otherwise associated with such Loan Party's use of the "Le Reve" name, does not infringe on the rights of any Person, which infringement, individually or collectively, could reasonably be expected to have a Material Adverse Effect.

(b) As of the Closing Date, *Schedule 4.9(b)* (i) identifies each of the trademarks, service marks and trade name applications and registrations currently registered by, made by or otherwise held, directly or indirectly, by each of the Loan Parties (including, without limitation, any Intellectual Property related to or otherwise associated with the Loan Parties' use of the "Le Reve" name) and identifies which such Person registered, made or otherwise holds such Intellectual Property, and (ii) specifies as to each, the jurisdiction in which such Intellectual Property has been issued or registered (or, if applicable, in which an application for such issuance or registration has been filed), including the respective registration or application numbers and applicable dates of registration or application and expiration.

(c) As of the Closing Date, *Schedule 4.9(c)* (i) identifies each of the material patents and patent applications currently owned by, made by or otherwise held, directly or indirectly, by each of the Loan

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Parties and identifies which such Person owns, made or otherwise holds such Intellectual Property, and (ii) specifies as to each, the jurisdiction in which such Intellectual Property has been issued or registered (or, if applicable, in which an application for such issuance or registration has been filed), including the respective patent or application numbers and applicable dates of issuance or application and expiration.

(d) As of the Closing Date, *Schedule 4.9(d)* (i) identifies each of the material copyrights and copyright applications and registrations currently registered by, made by or otherwise held, directly or indirectly, by each of the Loan Parties and identifies which such Person registered, made or otherwise holds such Intellectual Property, and (ii) specifies as to each, the jurisdiction in which such Intellectual Property has been issued or registered (or, if applicable, in which an application for such issuance or registration has been filed), including the respective registration or application numbers and applicable dates of registration or application and expiration.

(e) As of the Closing Date, *Schedule 4.9(e)* (i) identifies, each of the material trade secrets currently owned by, claimed by, or otherwise held, directly or indirectly, by each of the Loan Parties and identifies which such Person owns, claims or otherwise holds such Intellectual Property, and (ii) specifies as to each, the jurisdiction in which such Intellectual Property exists.

(f) As of the Closing Date, *Schedule 4.9(f)* identifies all licenses, sublicenses and other agreements relating to Intellectual Property to which any of the Loan Parties is a party that are material to the conduct of such Loan Party's Permitted Business and pursuant to which (i) any of the Loan Parties is a licensor or sub-licensor or the equivalent or (ii) any other Person is authorized to use any Intellectual Property as a licensee, sub-licensee or the equivalent.

4.10 *Taxes.* (a) Each of the Completion Guarantor and the Loan Parties has filed, or caused to be filed, all tax and informational returns that are required to have been filed by it in any jurisdiction, and all such tax and informational returns are correct and complete in all material respects. Each of the Completion Guarantor and the Loan Parties has paid all taxes shown to be due and payable on such returns and all other taxes and assessments payable by it, to the extent the same have become due and payable (other than (x) those taxes that it is contesting in good faith and by appropriate proceedings, and (y) taxes that are not yet due, with respect to each of which it has established reserves that are adequate for the payment thereof and as are required by GAAP).

(b) Neither the Completion Guarantor nor any of the Loan Parties has incurred any material tax liability in connection with the Project or the other transactions contemplated by the Operative Documents which has not been disclosed in writing to the Administrative Agent (including as disclosed in the financial statements delivered to the Lenders hereunder).

(c) There are no Liens for Taxes on any of the Properties of the Completion Guarantor or any of the Loan Parties other than Liens permitted pursuant to Section 7.3(a).

4.11 *Federal Regulations.* No part of the proceeds of the Loans or Letters of Credit will be used for purchasing or carrying any "margin stock" (within the meaning of Regulation U) or for the purpose of purchasing, carrying or trading in any securities under such circumstances as to involve the Borrower in a violation of Regulation X or to involve any broker or dealer in a violation of Regulation T. No indebtedness being reduced or retired out of the proceeds of the Loans or Letters of Credit was or will be incurred for the purpose of purchasing or carrying any "margin stock" (within the meaning of Regulation U). Following application of the proceeds of the Loans and Letters of Credit, "margin stock" (within the meaning of Regulation U) does not constitute more than 25% of the value of the assets of the Borrower and its Subsidiaries. None of the transactions contemplated by this Agreement (including, without limitation, the direct and indirect use of proceeds of the Loans and Letters of Credit) will violate or result in a violation of Regulation T, Regulation U or Regulation X. If requested by any Lender or the Administrative Agent, the Borrower will furnish to the Administrative Agent and

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each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1 referred to in Regulation U.

4.12 *Labor Matters.* There are no strikes, stoppages, slowdowns or other labor disputes against any of the Loan Parties pending or, to the knowledge of the Borrower, threatened that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect. Hours worked by and payment made to employees of the Loan Parties have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect. All payments due from any of the Loan Parties on account of employee health and welfare insurance that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect if not paid have been paid or accrued as a liability on the books of the relevant Loan Party.

4.13 *ERISA.* Neither a Reportable Event nor an "accumulated funding deficiency" (within the meaning of Section 412 of the Code or Section 302 of ERISA) has occurred during the five-year period prior to the date on which this representation is made or deemed made with respect to any Plan, and each Plan has complied in all material respects with all applicable provisions of ERISA and the Code. No termination of a Single Employer Plan has occurred, and no Lien in favor of the PBGC or a Plan has arisen, during such five-year period. The actuarial present value of all benefit liabilities under each Single Employer Plan (based on those assumptions that would be used to determine whether each such Single Employer Plan could be terminated in a standard termination under Section 4041(b) of ERISA) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Plan allocable to such accrued benefits by a material amount. Neither the Borrower, any other Loan Party nor any Commonly Controlled Entity has had a complete or partial withdrawal from any Multiemployer Plan that has resulted or could reasonably be expected to result in a material liability under ERISA, and neither the Borrower, any other Loan Party nor any Commonly Controlled Entity would become subject to any material liability under ERISA if any such Person were to withdraw completely from all Multiemployer Plans as of the most recent valuation date for which each such Multiemployer Plan has furnished data regarding potential withdrawal liability to the applicable Loan Party. As of the Closing Date, no such Multiemployer Plan is in Reorganization or Insolvent.

4.14 *Investment Company Act; Other Regulations.* Neither the Completion Guarantor nor any Loan Party is an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended. Neither the Completion Guarantor nor any Loan Party is subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, or the Interstate Commerce Act or registration under the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness other than the Nevada Gaming Laws or which may otherwise render all or any portion of the Obligations unenforceable. Incurrence of the Obligations by the Completion Guarantor and the Loan Parties under the Loan Documents complies with all applicable provisions of the Nevada Gaming Laws, subject to any informational filings or reports required by Nevada Gaming Commission Regulation Section 8.130 and subject to the receipt of requisite approvals from the Nevada Gaming Authorities relating to the pledges of Capital Stock of the Loan Parties that are licensed or registered by the Nevada Gaming Authorities, which approvals shall be sought diligently and in good faith by the Borrower prior to the Opening Date, when the gaming license with respect to the Project is applied for by the Borrower.

4.15 *Subsidiaries.* (a) The Persons listed on *Schedule 4.15* constitute all the Subsidiaries of Valvino as of the Closing Date. *Schedule 4.15* sets forth as of the Closing Date, the name and jurisdiction of formation of each Subsidiary of Valvino and, as to each such Subsidiary, the percentage and number of each class of Capital Stock owned by its requisite parent entity. Each such Subsidiary is

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a Wholly Owned Subsidiary of Valvino and, if such Subsidiary's direct parent entity is other than Valvino, its direct parent entity.

(b) There are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors' qualifying shares) of any nature relating to any Capital Stock of any Subsidiary of Valvino. None of the Subsidiaries of Valvino have issued, or authorized the issuance of, any Disqualified Stock.

(c) Neither Valvino nor any of its Subsidiaries are engaged in any businesses other than the Permitted Businesses. As of the Closing Date, other than, (i) in the case of Las Vegas Jet and World Travel, the Aircraft and Collateral related to the operation and maintenance of the Aircraft, (ii) in the case of Palo, the Palo Home Site Land, (iii) in the case of Wynn Design, Property reasonably related to architectural, engineering, design and project management activities and (iv) in the case of Desert Inn Improvement, the DIIC Water Permits and the Water Utility Land, none of the Water Companies or the Wynn Group Entities owns any material Property other than the Capital Stock of its Subsidiaries (if any).

4.16 *Use of Proceeds; Letters of Credit.* (a) The proceeds of the extensions of credit under this Agreement made prior to the Completion Date and amounts released from the Project Liquidity Reserve Account prior to the Completion Date shall be applied toward Project Costs in accordance with the Disbursement Agreement;

(b) The proceeds of the Revolving Credit Loans made after the Completion Date, the proceeds of the Swing Line Loans and the Letters of Credit shall be used for general business purposes of the Borrower and, to the extent otherwise permitted under the Loan Documents, the other Loan Parties; *provided*, that such general business purposes are in furtherance of, or associated with, the Permitted Business of such Persons; *provided, further*, that to the extent proceeds of extensions of credit made after the Completion Date but prior to the Final Completion Date are to be applied to Project Costs, such proceeds shall be applied to Project Costs in accordance with the Disbursement Agreement.

4.17 *Environmental Matters.* (a) To the knowledge of the Borrower, the Loan Parties: (i) are, and within the period of all applicable statutes of limitation have been, in material compliance with all applicable Environmental Laws; and (ii) reasonably believe that material compliance with all applicable Environmental Laws that is or is expected to become applicable to any of them will be timely attained and maintained.

(b) To the knowledge of the Borrower, Hazardous Substances are not present at, on, under, in, or about any real property now or formerly owned, leased or operated by any of the Loan Parties, or at any other location (including, without limitation, any location to which Hazardous Substances have been sent for re-use or recycling or for treatment, storage, or disposal) which could, individually or collectively, reasonably be expected to (i) give rise to liability of any of the Loan Parties under any applicable Environmental Law or otherwise result in costs to any of the Loan Parties that could reasonably be expected to have a Material Adverse Effect, or (ii) materially interfere with any of the Loan Parties' continued operations, or (iii) materially impair the fair saleable value of any real property owned or leased by any of the Loan Parties.

(c) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, there is no judicial, administrative, or arbitral proceeding (including any notice of violation or alleged violation) under or relating to any Environmental Law (including, without limitation, any

Environmental Claims) to which any of the Loan Parties is, or to the knowledge of the Borrower will be, named as a party that is pending or, to the knowledge of the Borrower, threatened.

(d) No Loan Party has received any written request for information, or been notified that it is a potentially responsible party, under or relating to the federal Comprehensive Environmental Response, Compensation, and Liability Act or any similar Environmental Law.

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(e) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, no Loan Party has entered into or agreed to any consent decree, order, or settlement or other agreement, or is subject to any judgment, decree, or order or other agreement, in any judicial, administrative, arbitral, or other forum for dispute resolution, relating to compliance with or liability under any Environmental Law or Environmental Claim.

(f) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, no Loan Party has assumed or retained, by contract or operation of law, any liabilities of any kind, fixed or contingent, known or unknown, under any Environmental Law or with respect to any Hazardous Substances.

(g) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) Hazardous Materials Activities are not presently occurring, and have not previously occurred, at, on, under, in, or about any Real Estate now or formerly owned, leased or operated by any of the Loan Parties, and (ii) none of the Loan Parties have ever engaged in any Hazardous Materials Activities at any location.

4.18 *Accuracy of Information, etc.* No statement or information contained in this Agreement, any other Loan Document, the Confidential Information Memorandum or any other document, certificate or statement furnished to the Arrangers, the Agents, the Managers or the Lenders or any of them, by or on behalf of the Completion Guarantor or any Loan Party for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, contained as of the date such statement, information, document or certificate was so furnished (or, in the case of the Confidential Information Memorandum, as of the date of this Agreement), any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements contained herein or therein not misleading. The projections and *pro forma* financial information contained in the materials referenced above (including, without limitation, the Projections) are based upon good faith estimates and assumptions believed by management of the Borrower to be reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount. There are no facts known to the Completion Guarantor or any Loan Party that could, individually or collectively, reasonably be expected to have a Material Adverse Effect that has not been expressly disclosed herein, in the other Loan Documents, in the Confidential Information Memorandum or in any other documents, certificates and written statements furnished to the Arrangers, the Agents, the Managers and the Lenders for use in connection with the transactions contemplated hereby and by the other Loan Documents.

4.19 *Security Documents.* (a) The Guarantee and Collateral Agreement is effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid, binding and enforceable security interest in the Collateral described therein and proceeds and products thereof. In the case of the Pledged Stock, when any stock or membership certificates representing such Pledged Stock are delivered to the Administrative Agent with a corresponding endorsement, and in the case of the other Collateral described in the Guarantee and Collateral Agreement (other than Intellectual Property Collateral arising under foreign laws which have not been identified by the Loan Parties as material to their Permitted Businesses and have not been set forth on Schedule 6 of the Guarantee and Collateral Agreement), when financing statements in appropriate form are filed in the offices specified on *Schedule 4.19(a)-1* and such other filings and actions as are specified on Schedule 3 to the Guarantee and Collateral Agreement are made and taken, the Guarantee and Collateral Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and the proceeds and products thereof, as security for the Obligations, in each case subject only to Permitted Liens and prior and superior in right to any other Lien (except

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Senior Permitted Liens). *Schedule 4.19(a)-2* lists as of the Closing Date each UCC Financing Statement that names any Loan Party as debtor and will remain on file after the Closing Date.

(b) Each of the Mortgages is effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid, binding and enforceable Lien on, and security interest in, the Mortgaged Properties described therein and proceeds and products thereof, and when the Mortgages are filed in the offices specified on *Schedule 4.19(b)*, each such Mortgage shall constitute a fully perfected Lien on, and security interest in, all of the Mortgaged Properties and the proceeds and products thereof, as security for the Obligations, in each case subject only to Permitted Liens and prior and superior in right to any other Lien (except Senior Permitted Liens).

(c) The Intellectual Property Security Agreements are effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Intellectual Property Collateral described therein and proceeds and products thereof. With respect to domestic Intellectual Property Collateral, upon the filing of (i) the Intellectual Property Security Agreements in the appropriate indexes of the United States Patent and Trademark Office relative to patents and trademarks (within three (3) months after the Closing Date), and the United States Copyright Office relative to copyrights (within thirty (30) days after the Closing Date), together with provision for payment of all requisite fees, and (ii) financing statements in appropriate form for filing in the offices specified on *Schedule 4.19(c)* (which financing statements have been duly completed and executed and filed in accordance with applicable Requirements of Law) the Intellectual Property Security Agreements shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Intellectual Property Collateral and the proceeds and products thereof, as security for the Obligations, in each case subject only to Permitted Liens and prior and superior in right to any other Lien (except Senior Permitted Liens).

(d) The Control Agreements are effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Accounts described therein and proceeds and products thereof. Upon the execution of the Control Agreements, the Control Agreements shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the Loan Parties in the Accounts and the proceeds and products thereof, as security for the Obligations, in each case subject only to Permitted Liens and prior and superior in right to any other Lien (except Senior Permitted Liens).

4.20 *Solvency.* Each Loan Party and the Completion Guarantor is, and after giving effect to (i) the incurrence of all Indebtedness, (ii) the use of the proceeds of such Indebtedness (including, without limitation, the use of proceeds of the extensions of credit made by the Lenders hereunder) and (iii) obligations being incurred in connection with the Operative Documents, will be and will continue to be Solvent.

4.21 *Senior Indebtedness.* The Obligations (including, without limitation, the guarantee obligations of each Guarantor under the Loan Documents) constitute senior secured debt of each of the Loan Parties and "Permitted Debt" under and as defined in the Mortgage Notes Indenture. The Mortgage Notes, when issued and paid for, will be the legally valid and binding obligations of the Borrower and Capital Corp., enforceable against the Borrower and Capital Corp. in accordance with their terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability. The issuance and sale of Mortgage Notes, either (a) have been registered or qualified under applicable federal and state securities laws or (b) are exempt therefrom.

4.22 *Regulation H.* No Mortgage encumbers improved real property which is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968.

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4.23 *Insurance.* Each of the Loan Parties is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which it is engaged and in any event in accordance with Section 6.5; and none of the Loan Parties has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers at a cost that could not reasonably be expected to have a Material Adverse Effect (other than as a result of general market conditions).

4.24 *Performance of Agreements; Material Contracts.* Neither the Completion Guarantor nor any Loan Party is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists that, with the giving of notice or the lapse of time or both, would constitute such a default, in each case, except where the consequences of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect. *Schedule 4.24* contains a true, correct and complete list of all the Material Contracts in effect on the Closing Date. All Material Contracts (other than Material Contracts described in clause (ii) of the definition thereof) are, to the knowledge of the Borrower, in full force and effect and no material defaults currently exist thereunder.

4.25 *Real Estate.*

(a) As of the Closing Date, *Schedule 4.25(a)* sets forth a true, complete and correct list of all Real Estate, including a brief description thereof, including, in the case of leases, the street address, landlord name, tenant name, guarantor name, current rent amount, lease date and lease expiration date. The Borrower has delivered to the Administrative Agent true, complete and correct copies of all such leases.

(b) All Real Estate and the current use thereof complies with all applicable Requirements of Law (including building and zoning ordinances and codes) and with all Insurance Requirements, and none of the Loan Parties are non-conforming users of such Real Estate, except where noncompliance or such non-conforming use could not, individually or collectively, reasonably be expected to have a Material Adverse Effect.

(c) No Taking has been commenced or, to the Borrower's knowledge, is contemplated with respect to all or any portion of any Real Estate or for the relocation of roadways providing access to such Real Estate except, in each case, as could not, individually or collectively, reasonably be expected to have a Material Adverse Effect.

(d) Except as set forth on *Schedule 4.25(d)*, as of the Closing Date there are no current, pending or, to the knowledge of the Borrower, proposed special or other assessments for public improvements or otherwise affecting any Real Estate, nor are there any contemplated improvements to such Real Estate that may result in such special or other assessments. There are no current, pending or, to the knowledge of the Borrower, proposed special or other assessments for public improvements or otherwise affecting any Real Estate, nor are there any contemplated improvements to such Real Estate that may result in such special or other assessments, in any case that could reasonably be expected to result in a material liability to any Loan Party.

(e) None of the Loan Parties has suffered, permitted or initiated the joint assessment of any Real Estate with any other real property constituting a separate tax lot. The Mortgaged Properties have been properly subdivided or entitled to exception therefrom, and for all purposes the Mortgaged Properties may be mortgaged, conveyed and, other than those with respect to leasehold interests, otherwise dealt with as separate legal lots or parcels.

(f) The use being made of all Real Estate is in conformity with the certificate of occupancy and/or such other permits, licenses, variances and certificates for such Real Estate and any other reciprocal easement agreements, restrictions, covenants or conditions affecting such Real Estate except,

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in each case, to the extent such non-conformity could not reasonably be expected to materially and adversely affect the ownership, occupancy, use or operation of the Mortgaged Properties in furtherance of the Permitted Business of the applicable Loan Party.

(g) There are no outstanding options to purchase or rights of first refusal or restrictions on transferability affecting any Real Estate (other than those set forth in the Financing Agreements).

(h) All Real Estate (other than the Phase II Land) has adequate rights of access to public ways and is served by installed, operating and adequate water, electric, gas, telephone, sewer, sanitary sewer and storm drain facilities, in each case as necessary to permit the Real Estate to be used for its intended purposes. All roads necessary for the utilization of the Real Estate (other than the Phase II Land) for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities or are the subject of access easements for the benefit of such Real Estate.

(i) Except as could not, individually or collectively, reasonably be expected to have a Material Adverse Effect, no building or structure constituting Real Estate or any appurtenance thereto or equipment thereon, or the use, operation or maintenance thereof, violates any restrictive covenant or encroaches on any

easement or on any property owned by others.

(j) Since the Closing Date, no portion of the Real Estate has suffered any material damage by fire or other casualty loss that has not heretofore been repaired and restored. No portion of the Real Estate is located in a special flood hazard area as designated by any federal governmental authorities.

4.26 *Permits.* Other than exceptions to any of the following that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (i) each of the Loan Parties has obtained and holds all Permits required as of the date this representation is deemed made in respect of all Real Estate and for any other Property otherwise operated by or on behalf of, or for the benefit of, such Person and for the operation of its Permitted Businesses, (ii) all such Permits are in full force and effect, and each of the Loan Parties has performed and observed all requirements of such Permits (to the extent required to be performed by the date this representation is deemed made), (iii) no event has occurred which allows or results in, or after notice or lapse of time would allow or result in, revocation, modification, suspension or termination by the issuer thereof or in any other impairment of the rights of the holder of any such Permit, (iv) no such Permits contain any restrictions, either individually or in the aggregate, that are burdensome to any of the Loan Parties, or to the operation of its Permitted Business or any Property owned, leased or otherwise operated by such Person, (v) the Borrower has no knowledge that any Governmental Authority is considering limiting, modifying, suspending, revoking or renewing on burdensome terms any such Permit, and (vi) each of the Loan Parties reasonably believes that each such Permit will be timely renewed and complied with, without undue expense or delay, and that any Permit not required to have been obtained by the date this representation is deemed made that may be required of such Person is of a type that is routinely granted on application and compliance with the conditions of issuance (such conditions being ministerial or of a type satisfied in the ordinary course of business, without undue expense or delay) and will be timely obtained and complied with, without undue expense or delay.

4.27 *Sufficiency of Project Documents.* Other than those that can be reasonably expected to be commercially available when and as required, the services to be performed, the materials to be supplied and Real Estate and other rights granted or to be granted pursuant to the Project Documents in effect as of such date (a) comprise all of the property interests necessary to secure any right material to the operation and maintenance of the Project in accordance with all Requirements of Law, (b) are sufficient to enable the Project to be located and operated on the Site and (c) provide adequate ingress and egress from the Site for any reasonable purpose in connection with the operation of the Project.

4.28 *Utilities.* All gas, water and electrical interconnection and utility services necessary for the operation of the Project for its intended purposes are available at the Site.

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4.29 *Fiscal Year.* The fiscal year of each of the Loan Parties (including the Borrower) ends on December 31 of each calendar year.

SECTION 5. CONDITIONS PRECEDENT

5.1 *Conditions to Closing Date.* The occurrence of the Closing Date is subject to the satisfaction of each of the conditions precedent described in Section 3.1 of the Disbursement Agreement (unless waived in writing by the Administrative Agent with the consent of all the Lenders).

5.2 *Conditions to Extensions of Credit on or prior to the Completion Date or otherwise pursuant to Section 2.5(a).* The agreement of each Lender to make extensions of credit requested to be made by it on Borrowing Dates occurring on or prior to the Completion Date and, to the extent the provisions of Section 2.5(a) apply to such extensions of credit, after the Completion Date but prior to the Final Completion Date is subject to the satisfaction, prior to or concurrently with the making of such extensions of credit, of the following conditions precedent:

(a) *Notice.* The Borrower and/or the Disbursement Agent, as the case may be, shall have delivered to the Administrative Agent and, in the case of Letters of Credit, the Issuing Lender the Advance Requests and Notice of Advance Requests and related Advance Confirmation Notices with respect to the Loans and/or Letters of Credit requested on such Borrowing Date, in each case in the form, at the times and as required under Section 2.4 of the Disbursement Agreement and in accordance with the procedures specified in Section 2.5(a) hereof in the case of Loans and Section 3.2(a) hereof in the case of Letters of Credit.

(b) *Drawdown Frequency for Loans:* Loans shall be made no more frequently than once every calendar month.

(c) *Satisfaction of Disbursement Agreement Conditions Precedent.* All conditions precedent described in Section 3.3 of the Disbursement Agreement shall have been satisfied or waived in accordance with the terms of the Disbursement Agreement.

5.3 *Conditions to Extensions of Credit after the Completion Date other than pursuant to Section 2.5(a).* The agreement of each Lender to make extensions of credit requested to be made by it on Borrowing Dates occurring after the Completion Date (other than extensions of credit after the Completion Date but prior to the Final Completion Date to the extent the provisions of Section 2.5(a) apply to such extensions of credit) is subject to the satisfaction, prior to or concurrently with the making of such extensions of credit, of the following conditions precedent:

(a) *Notice.* The Borrower shall have delivered (i) in the case of the borrowing of Revolving Loans, a Notice of Borrowing to the Administrative Agent in accordance with the procedures specified in Section 2.5(b), (ii) in the case of the issuance of Letters of Credit, a Letter of Credit Request and the certificates, documents and other papers and information delivered to it in connection therewith to the Issuing Lender in accordance with the procedures specified in Section 3.2(b) and (iii) in the case of the borrowing of Swing Line Loans, the Borrower shall have complied with the provisions of Section 2.7(a).

(b) *Representations and Warranties.* Each of the representations and warranties made by the Completion Guarantor, Wynn Resorts or any Loan Party in or pursuant to the Loan Documents shall be true and correct in all material respects on and as of such date as if made on and as of such date, except for representations and warranties expressly stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date.

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(c) *No Default.* No Default or Event of Default shall have occurred and be continuing on such date or immediately after giving effect to the extensions of credit requested to be made on such date.

(d) *No Material Adverse Effect.* No events or circumstances individually or collectively having a Material Adverse Effect shall have occurred since the Closing Date (except as is no longer continuing).

Each borrowing of Loans by and issuance of a Letter of Credit on behalf of the Borrower hereunder after the Completion Date shall constitute a representation and warranty by the Borrower as of the date of such extension of credit that the conditions contained in this Section 5.3 have been satisfied.

SECTION 6. AFFIRMATIVE COVENANTS

The Borrower hereby agrees that, so long as the Commitments remain in effect, any Letter of Credit remains outstanding or any Loan or other amount is owing to any Lender, any Arranger, any Manager or any Agent hereunder or under any other Loan Document, the Borrower shall and shall cause each of the other Loan Parties to, directly or indirectly (and by executing the Guarantee and Collateral Agreement, each such other Loan Party agrees that it will):

6.1 *Financial Statements.* Furnish to each Agent and each Lender:

(a) as soon as available, but in any event not later than the earlier of (i) 10 days after the filing with the SEC of Wynn Resorts' Annual Report on Form 10-K (or successor form thereto) with respect to each Fiscal Year and (ii) 90 days after the end of each Fiscal Year, a copy of the audited consolidated and consolidating balance sheets of Valvino and its consolidated Subsidiaries (including the consolidated balance sheet of the Borrower and its consolidated Subsidiaries) as at the end of such Fiscal Year and the related audited consolidated statements of income and of cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, reported on without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit, by Deloitte & Touche LLP or other independent certified public accountants of nationally recognized standing;

(b) as soon as available, but in any event not later than the earlier of (i) 10 days after the filing with the SEC of Wynn Resorts' Quarterly Report on Form 10-Q (or successor form thereto) with respect to each of the first three quarterly periods of each Fiscal Year and (ii) 45 days after the end of each of the first three quarterly periods of each Fiscal Year, the unaudited consolidated and consolidating balance sheets of Valvino and its consolidated Subsidiaries (including the consolidated balance sheet of the Borrower and its consolidated Subsidiaries) as at the end of such quarter and the related unaudited consolidated and consolidating statements of income and of cash flows for such quarter and the portion of the Fiscal Year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year, certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year-end audit adjustments); and

(c) on and after the Opening Date, as soon as available, but in any event not later than 45 days after the end of each month occurring during each Fiscal Year (other than the third, sixth, ninth and twelfth such month), the unaudited consolidated and consolidating balance sheets of Valvino and its consolidated Subsidiaries (including the consolidated balance sheet of the Borrower and its consolidated Subsidiaries) as at the end of such month and the related unaudited consolidated and consolidating statements of income and of cash flows for such month and the portion of the Fiscal Year through the end of such month, setting forth in each case in comparative form the figures for the previous year and the figures from the applicable Projections, certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year-end audit adjustments).

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All such financial statements shall be complete and correct in all material respects (in the case of financial statements delivered pursuant to subsections (b) and (c) of this Section 6.1, subject to normal year-end audit adjustments) and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein and with prior periods (except as approved by such accountants or officer, as the case may be, and disclosed therein).

6.2 *Certificates; Other Information.* Furnish to each Agent and each Lender, or, in the case of subsections (g), (h) and (j), to the Administrative Agent, or, in the case of subsection (l), to the relevant Lender:

(a) concurrently with the delivery of the financial statements referred to in Section 6.1(a), a certificate of the independent certified public accountants reporting on such financial statements stating that (i) their audit examination has included a review of the terms of this Agreement and the other Loan Documents as they relate to accounting matters, (ii) in making the examination necessary therefor no knowledge was obtained of any Default or Event of Default, except as specified in such certificate, and (iii) based on their audit examination nothing has come to their attention that causes them to believe that the information contained in the certificates (including, without limitation, the Compliance Certificate) delivered therewith pursuant to subsection (b) below is not correct or stated in accordance with the terms of this Agreement;

(b) concurrently with the delivery of any financial statements pursuant to Section 6.1, (i) a certificate of a Responsible Officer stating that, to the best of each such Responsible Officer's knowledge, each Loan Party during such period has observed or performed all of its covenants and other agreements, and satisfied every condition, contained in this Agreement and the other Loan Documents to which it is a party to be observed, performed or satisfied by it, and that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate (ii) in the case of quarterly or annual financial statements, a Compliance Certificate containing all information and calculations necessary for determining compliance by the Loan Parties with the provisions of this Agreement referred to therein as of the last day of the applicable fiscal quarter or Fiscal Year, as the case may be and (iii) in the case of monthly financial statements delivered after the Completion Date, a certificate of a Responsible Officer setting forth all payments made by the Borrower with respect to Affiliated Overhead Expenses during the 12-month period ending on the last day of the applicable month (or such shorter period commencing on the Completion Date if the Completion Date occurred during such 12-month period) and stating that all such payments were in reimbursement of Affiliated Overhead Expenses and permitted pursuant to Section 7.10(d);

(c) as soon as available, and in any event no later than the Completion Date and 30 days prior to the beginning of each Fiscal Year thereafter, a detailed consolidated and consolidating budget of Valvino and its consolidated Subsidiaries (including a detailed consolidated budget of the Borrower and its consolidated Subsidiaries) for such Fiscal Year (or portion thereof from the Completion Date through the end of such Fiscal Year) (including a projected consolidated and consolidating balance sheet of Valvino and its consolidated Subsidiaries (including a consolidated balance sheet for the Borrower and its consolidated Subsidiaries) as of the end of such Fiscal Year, and the related consolidated and consolidating statements of projected cash flow, projected changes in financial position and projected income), and, as soon as available, significant revisions, if any, of such budget and projections with respect to such Fiscal Year (collectively, the "Projections"), which Projections shall in each case be accompanied by a certificate of a Responsible Officer stating that such Projections are

based on reasonable estimates, information and assumptions and that such Responsible Officer has no reason to believe that such Projections are incorrect or misleading in any material respect;

(d) within 45 days after the end of each fiscal quarter after the Completion Date, a narrative discussion and analysis of the financial condition and results of operations of each of the Loan Parties for such fiscal quarter and for the period from the beginning of the then current Fiscal Year (or if the

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then current Fiscal Year is the Fiscal Year in which the Completion Date has occurred, from the Completion Date) to the end of such fiscal quarter, as compared to the portion of the Projections covering such periods and to the comparable periods of the previous Fiscal Year;

(e) within five days after the same are sent, copies of all financial statements and reports that any Loan Party sends to the holders of any class of its debt securities to the extent not previously delivered to the Lenders and, within five days after the same are filed, copies of all financial statements and reports that any Loan Party may make to, or file with, the SEC;

(f) on the date of the occurrence thereof, notice that (i) any or all of the obligations under the Mortgage Notes Indenture or the FF&E Facility Agreement have been accelerated, or (ii) the trustee or the required holders of Mortgages Notes, or the FF&E Agent or required FF&E Lenders, as the case may be, has given notice that any or all such obligations are to be accelerated;

(g) promptly, and in any event within ten Business Days after any Material Contract, or any other contract or arrangement (or series of related contracts or arrangements) pursuant to which the Loan Parties are, or any one of them is, reasonably expected to incur obligations or liabilities with a Dollar value in excess of \$8,000,000 during the term of such contract or arrangement, is terminated or amended or any new Material Contract or any other such contract or arrangement is entered into, or upon becoming aware of any material default by any Person under a Material Contract or any other such contract or arrangement, a written statement describing such event with copies of such amendments or new Material Contracts or such other contracts or arrangements, and, with respect to any such terminations or material defaults, an explanation of any actions being taken with respect thereto;

(h) promptly upon receipt, copies of all notices provided to any Loan Party or their Affiliates pursuant to any documents evidencing Other Indebtedness relating to material defaults or material delays and promptly upon execution and delivery thereof, copies of all amendments to any of the documents evidencing Other Indebtedness;

(i) to the extent not included in subsections (a) through (h) above, no later than the date the same are required to be delivered thereunder, copies of all agreements, documents or other instruments (including, without limitation, (i) audited and unaudited, pro forma and other financial statements, reports, forecasts, and projections, together with any required certifications thereon by independent public auditors or officers of any Loan Party or otherwise, (ii) press releases, (iii) statements or reports furnished to any other holder of the securities of any Loan Party, and (iv) regular, periodic and special securities reports) that any Loan Party is required to provide pursuant to the terms of the Other Indebtedness;

(j) promptly, and in any event within 30 days of the end of each Fiscal Year after the Completion Date, deliver to the Administrative Agent a certificate substantially in the form of Exhibit H hereto and otherwise in form and substance satisfactory to the Administrative Agent in consultation with the Insurance Advisor, certifying that the insurance requirements of Section 6.5 have been implemented and are being complied with in all material respects;

(k) within twenty days after the end of each fiscal quarter of the Borrower, a schedule of all Proceedings involving an alleged liability of, or claims against or affecting, any Loan Party equal to or greater than \$1,000,000, and promptly after request by the Administrative Agent such other information as may be reasonably requested by the Administrative Agent to enable the Administrative Agent and its counsel to evaluate any of such Proceedings; and

(l) promptly, such additional financial and other information as any Lender may from time to time reasonably request.

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6.3 *Payment of Obligations.* To the extent not otherwise subject to valid subordination, standstill, intercreditor or similar arrangements, pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its material obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the relevant Loan Party.

6.4 *Conduct of Business and Maintenance of Existence, etc.* (i) Preserve, renew and keep in full force and effect its corporate or limited liability company existence and in each case remain a Wholly Owned Subsidiary of Wynn Resorts and its direct parent entity, and (ii) take all reasonable action to maintain all rights, privileges, franchises, Permits and licenses necessary or desirable in the normal conduct of its business, except, in each case, as otherwise permitted by Section 7.4 and except, in the case of subsection (ii) above, to the extent that failure to do so could not (individually or in the aggregate) reasonably be expected to have a Material Adverse Effect.

6.5 *Maintenance of Property; Leases; Insurance.* (a) Keep all Property and systems useful and necessary in its business in good working order and condition, ordinary wear and tear excepted.

(b) Maintain all rights of way, easements, grants, privileges, licenses, certificates, and Permits necessary for the intended use of any Real Estate, except any such item the loss of which, individually or in the aggregate, could not reasonably be expected to materially and adversely affect or interfere with the Permitted Business of any Loan Party or have a material adverse effect on the Casino Land, the Golf Course Land or the Phase II Land.

(c) Comply with the terms of each lease or other grant of Real Estate, including easement grants, so as to not permit any material uncured default on its part to exist thereunder, except, in each case, where noncompliance therewith could not reasonably be expected to materially and adversely affect or interfere with the Permitted Business or Property of any Loan Party.

(d) At all times maintain in full force and effect the insurance policies and programs listed on *Schedule 6.5(d)*, which policies and programs may be modified from time to time subject to the prior approval of the Administrative Agent in consultation with the Insurance Consultant, which approval shall not be unreasonably withheld, if (i) the insurance policies and programs listed on *Schedule 6.5(d)* are not then available on commercially reasonable terms and (ii) the resulting coverage is, at the time of the modification, customary for companies engaged in the same or similar business, which are similarly situated, and which have obtained or are then obtaining insurance coverage under similar conditions (including leverage structure) as those then currently applicable to the applicable Loan Party. In the event that, in accordance with the preceding sentence, any Loan Party is, at any time or from time to time, permitted to deviate from the insurance policies and programs described in *Schedule 6.5(d)* and, thereafter, any such requirement set forth in *Schedule 6.5(d)* becomes available on commercially reasonable terms, the applicable Loan Party, as the case may be, shall promptly procure coverage satisfying such requirement.

(e) Deliver to the Administrative Agent on behalf of the Secured Parties, (i) upon request of any Secured Party from time to time, full information as to the insurance carried, (ii) promptly following receipt thereof, from any insurer, a copy of any notice of cancellation or material change in coverage from that existing on the Closing Date, (iii) forthwith, notice of any cancellation or nonrenewal of coverage by any Loan Party, unless such insurance is replaced prior to the cancellation or non-renewal thereof in accordance with *Schedule 6.5(d)*, and (iv) promptly after such information is available to any Loan Party, full information as to any claim for an amount in excess of \$500,000 with respect to any property and casualty insurance policy maintained by any such Loan Party.

(f) Preserve and protect the Lien status of each respective Mortgage and, if any Lien (other than Liens permitted under Section 7.3) is asserted against a Mortgaged Property, promptly give the

Administrative Agent a detailed written notice of such Lien and pay the underlying claim in full or take such other action so as to cause it to be released or bonded over in a manner reasonably satisfactory to the Administrative Agent.

6.6 *Inspection of Property; Books and Records; Discussions.* (a) Keep proper books of records and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities and (b) subject to any Nevada Gaming Laws restricting such actions, permit representatives of any Lender, coordinated through the Administrative Agent, to visit and inspect any of its properties and examine and, at the Borrower's expense, make abstracts from any of its books and records at any reasonable time and upon reasonable prior notice and as often as may reasonably be desired and to discuss the business, operations, properties and financial and other condition of any Loan Party with officers of such Loan Party and with their respective independent certified public accountants.

6.7 *Notices.* Promptly give notice to the Administrative Agent and each Lender of:

(a) the occurrence of any Default or Event of Default;

(b) any (i) default or event of default (or alleged default) under any Contractual Obligation of any Loan Party or (ii) litigation, investigation or proceeding which may exist at any time between any Loan Party and any Governmental Authority, that in either case, if not cured or if adversely determined, as the case may be, could reasonably be expected to have a Material Adverse Effect;

(c) upon any officer of a Loan Party obtaining knowledge thereof, the institution of any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration against or affecting any Loan Party, or any Property of a Loan Party (collectively, "*Proceedings*") not previously disclosed in writing by the Borrower to the Lenders that, in any case (A) if adversely determined, has a reasonable possibility of giving rise to a Material Adverse Effect or (B) seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, or any material development in any such Proceeding, in each case together with such other information as may be reasonably available to the Loan Parties to enable Lenders and their counsel to evaluate such matters;

(d) the following events, as soon as possible and in any event within 30 days after any Loan Party knows or has reason to know thereof: (i) the occurrence of any Reportable Event with respect to any Plan, a material failure to make any required contribution to a Plan, the creation of any Lien in favor of the PBGC or a Plan or any withdrawal from, or the termination, Reorganization or Insolvency of, any Multiemployer Plan or (ii) the institution of proceedings or the taking of any other action by the PBGC, the Borrower, any other Loan Party or any Commonly Controlled Entity or any Multiemployer Plan with respect to the withdrawal from, or the termination, Reorganization or Insolvency of, any Plan; and

(e) any development or event that has had or could reasonably be expected to have a Material Adverse Effect;

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action the relevant Loan Party proposes to take with respect thereto.

6.8 *Environmental Laws; Permits.* (a) Comply in all material respects with, and use best efforts to ensure compliance in all material respects by all tenants and subtenants, if any, with, all applicable Environmental Laws and Environmental Permits, and obtain, maintain and comply in all material respects with, and use best efforts to ensure that all tenants and subtenants obtain, maintain and comply in all material respects with, any and all licenses, approvals, notifications, registrations or Permits required by applicable Environmental Laws.

(b) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply in all material respects with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws related to the Mortgaged Property or the Project.

(c) The Administrative Agent may, from time to time and in its reasonable discretion, (i) retain, at the Borrower's expense, an independent professional consultant to review any environmental audits, investigations, analyses and reports relating to Hazardous Substances in respect of the Site or the Project prepared by or for any Loan Party and (ii) conduct its own investigation of the Site or the Project. For purposes of conducting such a review and/or investigation, the Administrative Agent and its agents, employees, consultants and contractors shall have the right to enter into or onto the Site or the Project and to perform such

tests on such property (including taking samples of soil, groundwater and suspected asbestos-containing materials) as are reasonably necessary in connection therewith. Any such investigation shall be conducted, unless otherwise agreed to by a Loan Party and the Administrative Agent, during normal business hours and shall be conducted so as not to unreasonably interfere with the ongoing operations at the Site or the Project or to cause any damage or loss to any property at the Site or the Project. Any report of any investigation conducted at the request of the Administrative Agent pursuant to this Section will be obtained and shall be used by the Administrative Agent and the Lenders for the purposes of the Lenders' internal credit decisions, to monitor and police the Loans and to protect the Lenders' security interests, if any, created by the Loan Documents. The Administrative Agent agrees that any such investigation shall be conducted by an environmental consulting firm qualified and licensed by the State of Nevada.

(d) Deliver to the Administrative Agent (i) as soon as practicable following receipt thereof, copies in any Loan Party's possession or any Loan Party's control of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of the Loan Parties or by independent consultants, governmental authorities or any other Persons, with respect to Environmental Matters at the Site or the Project or with respect to any Environmental Claims, (ii) promptly upon the occurrence thereof, written notice describing in reasonable detail (A) any Release required to be reported to any federal, state or local governmental or regulatory agency under any applicable Environmental Laws, (B) any remedial action taken by any Person in response to (1) any Hazardous Materials Activities the existence of which has a reasonable possibility of resulting in one or more Environmental Claims against a Loan Party that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, or (2) any Environmental Claims against a Loan Party that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (iii) as soon as practicable following the sending or receipt thereof by any Loan Party, a copy of any and all written communications with respect to (A) any Environmental Claims that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (B) any Release required to be reported to any federal, state or local governmental or regulatory agency, and (C) any request for information from any governmental agency indicating that such agency is investigating whether any Loan Party may be potentially responsible for any Hazardous Materials Activity, (iv) prompt written notice describing in reasonable detail (A) any proposed acquisition of stock, assets, or property by any Loan Party that could reasonably be expected to (1) expose any Loan Party to, or result in, Environmental Claims that could reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect or (2) affect the ability of any Loan Party to maintain in full force and effect all material Permits required under any Environmental Laws for their respective operations and (B) any proposed action to be taken by any Loan Party to modify current operations in a manner that could reasonably be expected to subject such Loan Party to any material additional obligations or requirements under any Environmental Laws that could reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect, (v) any notice that any Governmental Authority may condition approval of, or any application for, any material Permit held by any Loan Party on terms and conditions that are materially burdensome to such Loan Party, or to the operation

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of any of its businesses or any property owned, leased or otherwise operated by such Person, (vi) notice of any actions or proceedings of the types described in Sections 4.17(c) through (e), (vii) as soon as practicable, all documents submitted to, filed with or received from any Governmental Authority, including without limitation the Nevada Public Utilities Commission and the State of Nevada, Division of Water Resources, with respect to the Water Permits and (viii) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by the Administrative Agent in relation to any matters disclosed pursuant to this Section 6.8(d).

6.9 *Interest Rate Protection.* In the case of the Borrower, on or before the borrowing of each Loan, enter into Hedge Agreements to the extent necessary to provide that at least 50% of each such Loan will upon drawdown be subject to either a fixed interest rate or interest rate protection for a period of not less than the Term Loan Commitment Period (in the case of Term Loans) or the Revolving Credit Commitment Period (in the case of Revolving Credit Loans), as the case may be, which Hedge Agreements shall have terms and conditions reasonably satisfactory to the Administrative Agent; *provided*, that in no event shall Loans in excess of \$325,000,000 be required to be subject to Hedge Agreements pursuant to this Section 6.9.

6.10 *Additional Collateral, Discharge of Liens, etc.* (a) With respect to any Property acquired after the Closing Date by any Loan Party as to which the Administrative Agent, for the benefit of the Secured Parties, does not have a perfected security interest (other than the Aircraft), subject to compliance with applicable Nevada Gaming Laws and restrictions on the grant of Liens permitted pursuant to Section 7.13, promptly (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement or such other documents as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a security interest in such Property and (ii) take all actions necessary or advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected first priority security interest in such Property (subject to Permitted Liens), including, without limitation, the filing of UCC financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be requested by the Administrative Agent. In addition to the foregoing, in the event any such Property acquired after the Closing Date consists of Real Estate or other Property with respect to which a recording in the real property records of an appropriate jurisdiction is required or advisable in order to perfect a security interest therein, promptly (and, in any event, within two Business Days following the date of such acquisition) (1) execute and deliver a mortgage, substantially in the form of the Mortgages (with such modifications, if any, as are necessary to comply with Requirements of Law or that the Administrative Agent may reasonably request), such mortgage to be recorded in the real property records of the appropriate jurisdiction, or execute and deliver to the Administrative Agent for recording a supplement to an existing Mortgage, in either case pursuant to which the applicable Loan Party grants to the Administrative Agent on behalf of the Secured Parties a Lien on such Real Estate subject only to Permitted Liens, (2) provide the Secured Parties with title and extended coverage insurance covering such Real Estate in an amount at least equal to the fair market value of such Real Estate, and in any event consistent with (except for coverage amount) the title and extended coverage insurance covering the Site obtained pursuant to the Disbursement Agreement, or obtain an appropriate endorsement or supplement to an existing Title Policy, (3) execute and deliver an environmental indemnity agreement with respect to such Real Estate, substantially in the form of the Indemnity Agreements (with such modifications, if any, as are necessary to comply with Requirements of Law or that the Administrative Agent may reasonably request), and (4) execute and/or deliver such other documents or provide such other information in furtherance thereof as the Administrative Agent may reasonably request, including delivering documents and taking such other actions which would have been required under Section 3.1 of the Disbursement Agreement if such Real Estate were part of the Mortgaged Property on the Closing Date.

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(b) With respect to any new Subsidiary created or acquired after the Closing Date by any Loan Party, subject to compliance with Nevada Gaming Laws, promptly (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Capital Stock of such new Subsidiary (subject to Permitted Liens), (ii) deliver to the Administrative Agent the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of such Loan Party, as applicable, (iii) cause such new Subsidiary (A) to become a

party to the Guarantee and Collateral Agreement, the Subordinated Intercompany Note and, to the extent applicable, the Intellectual Property Security Agreements and (B) to take such actions necessary or advisable to grant to the Administrative Agent for the benefit of the Secured Parties a perfected first priority security interest (subject to Permitted Liens) in the Collateral described in the Guarantee and Collateral Agreement and, to the extent applicable, the Intellectual Property Security Agreements with respect to such new Subsidiary, including, without limitation, the recording of instruments in the United States Patent and Trademark Office and the United States Copyright Office, the execution and delivery by all necessary Persons of Control Agreements and the filing of UCC financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement, the Intellectual Property Security Agreements or by law or as may be requested by the Administrative Agent, (iv) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent and (v) execute and/or deliver such other documents or provide such other information as the Administrative Agent may reasonably request, including delivering documents and taking such other actions which would have been required under Section 3.1 of the Disbursement Agreement if such new Subsidiary were a Loan Party on the Closing Date. In addition to the foregoing, in the event any such new Subsidiary owns or otherwise has interests in any Real Estate or other Property with respect to which a recording in the real property records of an appropriate jurisdiction is required or advisable in order to perfect a security interest therein, promptly (and, in any event, within two Business Days following the date of such acquisition) (1) execute and deliver a mortgage, substantially in the form of the Mortgages (with such modifications, if any, as are necessary to comply with Requirements of Law or that the Administrative Agent may reasonably request), such mortgage to be recorded in the real property records of the appropriate jurisdiction, or execute and deliver to the Administrative Agent for recording a supplement to an existing Mortgage, in either case pursuant to which the applicable Loan Party grants to the Administrative Agent on behalf of the Secured Parties a Lien on such Real Estate subject only to Permitted Liens, (2) provide the Secured Parties title and extended coverage insurance covering such Real Estate in an amount at least equal to the fair market value of such Real Estate, and in any event consistent with (except for coverage amount) the title and extended coverage insurance covering the Site obtained pursuant to the Disbursement Agreement, or obtain an appropriate endorsement or supplement to an existing Title Policy, (3) execute and deliver an environmental indemnity agreement with respect to such Real Estate, substantially in the form of the Indemnity Agreements (with such modifications, if any, as are necessary to comply with Requirements of Law or that the Administrative Agent may reasonably request), and (4) execute and/or deliver such other documents or provide such other information in furtherance thereof as the Administrative Agent may reasonably request, including delivering documents and taking such other actions which would have been required under Section 3.1 of the Disbursement Agreement if such Real Estate were part of the Mortgaged Property on the Closing Date.

(c) Notwithstanding anything to the contrary in this Section 6.10, paragraphs (a) and (b) of this Section 6.10 shall not apply to any Property or new Subsidiary created or acquired after the Closing Date, as applicable, as to which the Administrative Agent has determined in its sole discretion that the

collateral value thereof is insufficient to justify the difficulty, time and/or expense of obtaining a perfected security interest therein.

6.11 *Use of Proceeds and Revenues.* (a) Use the proceeds of the Loans and request the issuance of Letters of Credit, only for the purposes specified in Section 4.16; *provided*, that (i) no more than \$968,490,525 (or, during such times as the conditions set forth in Section 3.3.22(b) of the Disbursement Agreement have not been satisfied or waived, \$963,490,525) of proceeds of extensions of credit hereunder shall be available for application toward Project Costs and (ii) in addition to and without duplication of proceeds of extensions of credit available under clause (i) above with respect to Project Costs, no more than an additional \$28,509,475 of proceeds of extensions of credit hereunder shall be available during the Additional Completion Period for application toward Debt Service due and payable during the Additional Completion Period.

(b) deposit in a Funding Account all Project Revenues, other than On-Site Cash, (i) received by the Borrower, Capital Corp. or Wynn Design after the Completion Date or (ii) received by any other Loan Party at any time; *provided*, that, in no event shall (A) funds deposited in a Funding Account be (x) transferred to any "Company Account" (as defined in the Disbursement Agreement) or (y) subject to Section 2.5.5 of the Disbursement Agreement, used to pay Project Costs or (B) subject to Section 2.5.5 of the Disbursement Agreement, On-Site Cash (other than to the extent reflecting proceeds of advances made pursuant to the Disbursement Agreement for the payment of Project Costs) be used to pay Project Costs.

(c) Apply (whether directly or through an equity contribution to the Borrower) all Net Cash Proceeds, Excess Cash Flow, Extraordinary Deposit Receipts, Loss Proceeds, Liquidated Damages, Insurance Proceeds and Eminent Domain Proceeds received by it in accordance with Sections 2.12, 2.18 and 2.24.

(d) Apply all amounts on deposit in the Entertainment Facility Fund Account solely and exclusively to the costs and expenses of developing, constructing and opening the Entertainment Facility.

6.12 *Compliance with Laws, Project Documents, etc.; Permits.* (a) Comply with all Requirements of Law, noncompliance with which could reasonably be expected to cause, individually or in the aggregate, a Material Adverse Effect and comply in all material respects with its Governing Documents.

(b) Comply, duly and promptly, in all material respects with its respective obligations and enforce all of its respective rights under all Project Documents, except, in the case of Project Documents other than Material Affiliated Contracts, where the failure to comply could not reasonably be expected to have a Material Adverse Effect.

(c) From time to time obtain, maintain, retain, observe, keep in full force and effect and comply with the terms, conditions and provisions of all Permits as shall now or hereafter be necessary under applicable laws, except to the extent the noncompliance therewith could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. From time to time maintain, retain, observe and keep in full force and effect and comply with the terms conditions and provisions of all Water Permits.

6.13 *Further Assurances.* From time to time execute and deliver, or cause to be executed and delivered, such additional instruments, certificates or documents, and take all such actions, as the Administrative Agent may reasonably request, for the purposes of implementing or effectuating the provisions of this Agreement and the other Loan Documents, or of more fully perfecting or renewing the rights of the Administrative Agent and the Lenders with respect to the Collateral (or with respect to any additions thereto or replacements or proceeds or products thereof or with respect to any other property or assets hereafter acquired by any Loan Party which may be deemed to be part of the

Collateral) pursuant hereto or thereto. Upon the exercise by the Administrative Agent or any Lender of any power, right, privilege or remedy pursuant to this Agreement or the other Loan Documents which requires any consent, approval, recording, qualification or authorization of any Governmental Authority, the Borrower shall, or shall cause any other applicable Loan Party to (and by executing the Guarantee and Collateral Agreement each such other Loan Party agrees that it will), execute and deliver, or will cause the execution and delivery of, all applications, certifications, instruments and other documents and papers that the Administrative Agent or such Lender may be required to obtain from the Borrower or the applicable Loan Party for such governmental consent, approval, recording, qualification or authorization. In the event that, notwithstanding the covenants contained in Article 7, a Lien not otherwise permitted under this Agreement shall encumber the Mortgaged Property or other item of Collateral or any portion thereof, the relevant Loan Party shall promptly discharge or cause to be discharged by payment to the lienor or lien claimant or promptly secure removal by bonding or deposit with the county clerk or otherwise or, at the Administrative Agent's option, and if obtainable promptly obtain title insurance against, any such Lien or mechanics' or materialmen's claims of lien filed or otherwise asserted against the Mortgaged Property or any other item of Collateral or any portion thereof within 60 days after the date of notice thereof; *provided*, that the provisions of this Section 6.13 (and compliance therewith) shall not be deemed to constitute a waiver of any of the provisions of Article 7. Each of the Loan Parties shall fully preserve the Lien and the priority of each of the Mortgages and the other Security Documents without cost or expense to the Administrative Agent or the Lenders. If any Loan Party fails to promptly discharge, remove or bond off any such Lien or mechanics' or materialmen's claim of lien as described above, which is not being contested by the applicable Loan Party in good faith by appropriate proceedings promptly instituted and diligently conducted, within 30 days after the receipt of notice thereof, then the Administrative Agent may, but shall not be required to, procure the release and discharge of such Lien, mechanics' or materialmen's claim of lien and any judgment or decree thereon, and in furtherance thereof may, in its sole discretion, effect any settlement or compromise with the lienor or lien claimant or post any bond or furnish any security or indemnity as the Administrative Agent, in its sole discretion, may elect. In settling, compromising or arranging for the discharge of any Liens under this subsection, the Administrative Agent shall not be required to establish or confirm the validity or amount of the Lien. The Borrower agrees that all costs and expenses expended or otherwise incurred pursuant to this Section 6.13 (including reasonable attorneys' fees and disbursements) by the Administrative Agent shall constitute Obligations and shall be paid by the Borrower in accordance with the terms hereof.

6.14 *Dissolution of the Completion Guarantor.* Promptly following the Final Completion Date, liquidate, wind up and dissolve the Completion Guarantor.

6.15 *Water Company Transfers.* With respect to Desert Inn Improvement, use its commercially reasonable efforts (i) unless the DIIC Water Transfer has been effected prior thereto, to obtain the approval of the Nevada Public Utilities Commission to the execution and delivery to the Administrative Agent of the Water Property Mortgage and, no later than 10 days after obtaining such approval, execute the Water Property Mortgage and take such other actions required pursuant to Section 6.10 had the Water Property been newly acquired by Desert Inn Improvement on the day of such approval by the Nevada Public Utilities Commission, (ii) to amend the DIIC Casino Water Permit in accordance with all applicable Requirements of Law and pursuant to all necessary consents of Governmental Authorities (including, if applicable, the Nevada Public Utilities Commission and the State of Nevada, Division of Water Resources) so that the designated place of use for water available under such Permit includes the Le Rêve hotel and casino's water features, (iii) to amend the DIIC Water Permits (other than the DIIC Casino Water Permit) in accordance with all applicable Requirements of Law and pursuant to all necessary consents of Governmental Authorities (including, if applicable, the Nevada Public Utilities Commission and the State of Nevada, Division of Water Resources) so that the designated place of use for water available under such Permits includes the Golf Course Land, and

(iv) to effectuate the DIIC Water Transfer and take such other actions required pursuant to Section 6.10 with respect to the Property transferred thereby.

SECTION 7. NEGATIVE COVENANTS

The Borrower hereby agrees that, so long as the Commitments remain in effect, any Letter of Credit remains outstanding or any Loan or other amount is owing to any Lender, any Arranger, any Manager or any Agent hereunder or under any other Loan Document, the Borrower shall not, and shall not permit any of the other Loan Parties to, directly or indirectly (and by executing the Guarantee and Collateral Agreement each such other Loan Party agrees that it will not):

7.1 *Financial Condition Covenants.*

(a) *Consolidated Leverage Ratio.* Permit the Consolidated Leverage Ratio of the Borrower as at the last day of any period of four full consecutive fiscal quarters (or such shorter period ending on any Quarterly Date set forth below and beginning on the first day of the first fiscal quarter which begins after the Opening Date) ending on any Quarterly Date set forth below to exceed the ratio set forth below opposite such Quarterly Date:

| Quarterly Date | Consolidated Leverage Ratio |
|---|-----------------------------|
| First Quarterly Date | 6.75:1 |
| Second Quarterly Date | 5.75:1 |
| Third Quarterly Date | 5.50:1 |
| Fourth, Fifth and Sixth Quarterly Dates | 5.25:1 |
| Seventh and Eighth Quarterly Dates | 5.00:1 |
| Ninth and Tenth Quarterly Dates | 4.75:1 |
| Eleventh Quarterly Date | 4.50:1 |
| Twelfth and Thirteenth Quarterly Dates | 4.25:1 |
| Fourteenth and Fifteenth Quarterly Dates | 4.00:1 |
| Sixteenth Quarterly Date and each Quarterly Date thereafter | 3.75:1 |

; *provided*, that for purposes of calculating Consolidated EBITDA pursuant to this Section 7.1(a) for any period which is less than four full fiscal quarters, Consolidated EBITDA shall be calculated on an annualized basis.

(b) *Minimum Consolidated EBITDA.* Permit Consolidated EBITDA of the Borrower for any period of four full consecutive fiscal quarters (or such shorter period ending on the Initial EBITDA Calculation Date (if any) or any Quarterly Date set forth below and beginning on the first day of the first fiscal quarter which begins after the Opening Date) ending on the Initial EBITDA Calculation Date (if any) or any Quarterly Date set forth below to be less than the amount set forth below opposite the Initial EBITDA Calculation Date (if any) or such Quarterly Date:

| Initial EBITDA Calculation Date/Quarterly Date | Consolidated EBITDA |
|---|---------------------|
| Initial EBITDA Calculation Date | \$ 170,000,000 |
| First Quarterly Date | \$ 215,000,000 |
| Second and Third Quarterly Dates | \$ 250,000,000 |
| Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Quarterly Dates | \$ 260,000,000 |
| Tenth, Eleventh and Twelfth Quarterly Dates | \$ 270,000,000 |
| Thirteenth and Fourteenth Quarterly Dates | \$ 275,000,000 |
| Fifteenth Quarterly Date and each Quarterly Date thereafter | \$ 280,000,000 |

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; provided, that for purposes of calculating Consolidated EBITDA pursuant to this Section 7.1(b) for any period which is less than four full fiscal quarters, Consolidated EBITDA shall be calculated on an annualized basis.

(c) *Consolidated Fixed Charge Coverage Ratio.* Permit the Consolidated Fixed Charge Coverage Ratio of the Borrower for any period of four full consecutive fiscal quarters (or such shorter period ending on any Quarterly Date set forth below and beginning on the first day of the first fiscal quarter which begins after the Opening Date) ending with any Quarterly Date set forth below to be less than the ratio set forth below opposite such Quarterly Date:

| Quarterly Date | Consolidated Fixed Charge Coverage Ratio |
|--|--|
| First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Quarterly Dates | 1.00:1 |
| Ninth Quarterly Date and each Quarterly Date thereafter | 1.05:1 |

(d) *Maintenance of Net Worth.* Permit the Consolidated Net Worth of the Borrower (i) at the first Quarterly Date to be less than the sum of (such sum, the "Required First Quarter Net Worth") \$900,000,000 and (x) if Consolidated Net Income of the Borrower from the Closing Date through the first Quarterly Date is less than or equal to zero, 100% of the negative amount of such Consolidated Net Income or (y) if Consolidated Net Income from the Closing Date through the first Quarterly Date is greater than zero, 75% of the positive amount of such Consolidated Net Income and (ii) at any Quarterly Date subsequent to the first Quarterly Date to be less than the sum of the Required First Quarter Net Worth and an amount equal to the sum of 75% of Consolidated Net Income of the Borrower for each fiscal quarter ending after the first Quarterly Date through such Quarterly Date.

(e) *Consolidated Interest Coverage Ratio.* Permit the Consolidated Interest Coverage Ratio of the Borrower for any period of four full consecutive fiscal quarters (or such shorter period ending on any Quarterly Date set forth below and beginning on the first day of the first fiscal quarter which begins after the Opening Date) ending on any Quarterly Date set forth below to be less than the ratio set forth below opposite such Quarterly Date:

| Quarterly Date | Consolidated Interest Coverage Ratio |
|--|--------------------------------------|
| First Quarterly Date | 1.55:1 |
| Second Quarterly Date | 1.75:1 |
| Third Quarterly Date | 1.90:1 |
| Fourth, Fifth and Sixth Quarterly Dates | 2.00:1 |
| Seventh, Eighth and Ninth Quarterly Dates | 2.10:1 |
| Tenth, Eleventh, Twelfth and Thirteenth Quarterly Dates | 2.25:1 |
| Fourteenth Quarterly Date and each Quarterly Date thereafter | 2.50:1 |

7.2 *Limitation on Indebtedness.* Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of any Loan Party created under any Loan Document;

(b) Unsecured Indebtedness of (i) any Loan Party (other than Desert Inn Improvement) to the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. and the Completion Guarantor (except with respect to Indebtedness, the proceeds of which are necessary for the corporate maintenance of Capital Corp.)), (ii) Valvino to Wynn Resorts Holdings or Wynn Resorts Holdings to Valvino (so long as Wynn Resorts Holdings, on the one hand, or Valvino, on the other hand, is Solvent) and (iii) any Wynn Group Entity to any other Solvent Loan Party other

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than Desert Inn Improvement, Capital Corp. or the Completion Guarantor; provided, that in each case such Indebtedness is evidenced by, and subject to the terms and conditions of, the Subordinated Intercompany Note and is otherwise subordinated in right of payment to the Obligations under the Loan Documents and the Mortgage Notes Indenture on terms and conditions reasonably satisfactory to the Administrative Agent;

(c) Indebtedness of World Travel to the Borrower represented by the Aircraft Note;

(d) Indebtedness (other than the Indebtedness referred to in Section 7.2(f)) of the Loan Parties outstanding on the date hereof and listed on Schedule 7.2(d) and any refinancings, refundings, renewals or extensions thereof (without any increase in the principal amount thereof or any shortening of the maturity of any principal amount thereof);

(e) Unsecured Guarantee Obligations made in the ordinary course of business (i) by any Loan Party (other than Desert Inn Improvement) of obligations of the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. and the Completion Guarantor), (ii) by Valvino of

obligations of Wynn Resorts Holdings or by Wynn Resorts Holdings of obligations of Valvino (so long as Wynn Resorts Holdings, on the one hand, or Valvino, on the other hand, is Solvent) and (iii) any Wynn Group Entity to any other Solvent Loan Party other than Desert Inn Improvement, Capital Corp. or the Completion Guarantor;

(f) (i) Indebtedness of the Borrower and Capital Corp. created under the Mortgage Notes Indenture in respect of the Mortgage Notes in an aggregate principal amount, including all Permitted Refinancing Indebtedness incurred to refund, refinance or replace any Indebtedness incurred pursuant to this clause (i), not to exceed \$370,000,000 in principal amount (reduced by any principal payments required to be made thereon) and Guarantee Obligations of any Loan Party in respect of such Indebtedness represented by the Mortgage Notes Guarantee; *provided*, that the principal amount of the Indebtedness permitted pursuant to this Section (f)(i) may be increased for purposes of, and in an amount equal to, Indebtedness permitted pursuant to Section 7.2(l), and (ii) Indebtedness of the Borrower created under the FF&E Facility Agreement, including all Permitted Refinancing Indebtedness incurred to refund, refinance or replace any Indebtedness incurred pursuant to this clause (ii), in an aggregate principal amount not to exceed \$188,500,000 (plus any accrued and unpaid interest thereon added to principal) and Guarantee Obligations of any Loan Party in respect of such Indebtedness represented by the FF&E Guarantee; *provided*, that the principal amount of the Indebtedness permitted pursuant to this Section (f)(ii) may be increased by an amount not greater than \$10,000,000 so long as the proceeds of such additional Indebtedness are applied to the acquisition of the Replacement Aircraft in accordance with Section 7.5(o); *provided, further*, that in no event shall the Borrower borrow proceeds under the FF&E Facility Agreement on the Initial Advance Date unless the proceeds of such borrowing are applied to, among other things, the payment in full and termination of the Existing Aircraft Indebtedness and any Liens granted in respect thereof.

(g) Indebtedness of the Loan Parties (including, without limitation, Capital Lease Obligations) secured by Liens permitted by Section 7.3(s) in an aggregate principal amount not to exceed \$10,000,000 at any one time outstanding;

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(h) Indebtedness of the Loan Parties to employees of the Loan Parties (or their estates) incurred in connection with any repurchase of employee stock options or stock upon death, disability or termination of such employee in accordance with employment agreements or option plans or agreements, *provided*, that (i) such Indebtedness, when aggregated with any payments made under Section 7.6(f), will not exceed \$2,000,000 in any Fiscal Year and \$6,000,000 during the term of this Agreement, (ii) such Indebtedness shall be unsecured and subordinated on terms and conditions satisfactory to the Initial Arrangers and in any event not less favorable to the Loan Parties and the Lenders than the terms of the Subordinated Intercompany Note, subject to such covenants and events of default as may be acceptable to the Initial Arrangers and expressly provide that payments thereon shall be required only to the extent not restricted by any Financing Agreement;

(i) Subordinated Debt of the Loan Parties not to exceed an aggregate of \$25,000,000 at any one time outstanding; *provided*, that the Net Cash Proceeds of such Subordinated Debt shall be applied within one Business Day of the incurrence of such Subordinated Debt to the prepayment of the Term Loans and the reduction of the Revolving Credit Commitments as set forth in Section 2.12(a);

(j) Indebtedness of the Loan Parties incurred to finance the acquisition of the Additional Land, provided that such Indebtedness shall not exceed the fair market value of the Additional Land (*provided*, that in determining such fair market value, consideration will be given to the value of the Additional Land to the Loan Parties in light of their current Property and Permitted Business);

(k) on or prior to the Final Completion Date, Guarantee Obligations represented by performance bonds, guaranties, commercial or standby letters of credit (other than Letters of Credit), bankers' acceptances or similar instruments issued by a Person other than Wynn Resorts or any Loan Party for the benefit of a trade creditor of any such Loan Party, in an aggregate amount not to exceed \$10,000,000 at any time outstanding so long as (i) such Indebtedness is incurred in the ordinary course of business and (ii) the obligations of any Loan Party, as the case may be, supported by such performance bonds, guaranties, trade letters of credit, bankers' acceptances or similar instruments (1) consist solely of payment obligations with respect to costs incurred in accordance with the Project Budget which would otherwise be permitted to be paid by the applicable Loan Party pursuant to the Disbursement Agreement, (2) are secured, and (3) are secured solely by Liens permitted by Section 7.3(v);

(l) after the Final Completion Date, Guarantee Obligations represented by performance bonds, guaranties, commercial or standby letters of credit (other than Letters of Credit), bankers' acceptances or similar instruments issued by a Person other than Wynn Resorts or any Loan Party for the benefit of a trade creditor of any such Loan Party, in an aggregate amount not to exceed \$5,000,000 at any time outstanding so long as (i) such Indebtedness is incurred in the ordinary course of business and (ii) the obligations of any Loan Party, as the case may be, supported by such performance bonds, guaranties, trade letters of credit, bankers' acceptances or similar instruments (1) do not consist of payment obligations with respect to Project Costs and (2) if secured, are secured solely by Liens permitted by Section 7.3(w);

(m) Indebtedness of the Borrower to be used solely for the development, construction and opening of the Entertainment Facility, in an aggregate principal amount (or original accreted value, as applicable) at any time not to exceed the lesser of (a) \$50,000,000 and (b) 200% of the Entertainment Facility Equity Proceeds; *provided*, that in no event shall borrowings or other extensions of credit under the documentation governing such Indebtedness be made until all Entertainment Facility Equity Proceeds have been applied to the development, construction and opening of the Entertainment Facility; and

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(n) additional Indebtedness of the Loan Parties in an aggregate principal amount (for all the Loan Parties) not to exceed \$5,000,000 at any one time outstanding.

7.3 *Limitation on Liens.* Create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, except for:

(a) Liens for taxes not yet due or which are being contested in good faith by appropriate proceedings, *provided* that adequate reserves with respect thereto are maintained on the books of the applicable Loan Party, as the case may be, in conformity with GAAP;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business for amounts which are not overdue for a period of more than 30 days or that are being contested in good faith by appropriate proceeding (such contest proceedings conclusively operating to stay the sale of any portion of the Collateral on account of such Lien); *provided*, that adequate reserves with respect thereto are maintained on the books of the applicable Loan Party, as the case may be, in conformity with GAAP;

(c) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation;

(d) deposits by or on behalf of the Loan Parties to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, appeal bonds and other obligations of a like nature incurred in the ordinary course of business, including, without limitation, deposits permitted pursuant to Section 6.10(c) of the Disbursement Agreement.

(e) easements, rights-of-way, restrictions, encroachments and other similar encumbrances and other minor defects and irregularities in title, in each case incurred in the ordinary course of business that, in the aggregate, are not substantial in amount and which do not in any case materially detract from the value of the Property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Loan Party;

(f) Liens in existence on the date hereof listed on *Schedule 7.3(f)*, securing Indebtedness permitted by Section 7.2(d); *provided*, that no such Lien is spread to cover any additional Property (other than proceeds of the sale or other disposition thereof) after the Closing Date and that the amount of Indebtedness secured thereby is not increased;

(g) Liens created pursuant to the Security Documents (including Liens created thereunder securing Specified Hedge Agreements);

(h) leases and subleases permitted under Section 7.5(f) and any leasehold mortgage in favor of any party financing the lessee under any lease or sublease permitted under Section 7.5(f); *provided*, that (a) no Loan Party is liable for the payment of any principal of, or interest, premiums or fees on, such financing and (b) the affected lease and leasehold mortgage are expressly made subject and subordinate to the Lien of the applicable Mortgage;

(i) Liens created by the Golf Course Lease, the Driving Range Lease, the Building Lease or the Employee Parking Lot Lease (in each case encumbering only the Property covered by such lease agreement);

(j) licenses of patents, trademarks and other intellectual property rights granted by a Loan Party in the ordinary course of business and not interfering in any material respect with the ordinary conduct of the business of such Loan Party;

(k) Liens securing Indebtedness permitted under Section 7.2(f)(i); *provided*, that such Liens are junior in priority (other than in respect of the Second Mortgage Notes Proceeds Account) to the Liens securing the Obligations;

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(l) Liens with respect to Property of the Borrower securing Indebtedness permitted under Section 7.2(f)(ii) and to any proceeds of the sale or other disposition thereof; *provided*, that such Liens attach only to the Specified FF&E and to any proceeds of the sale or transfer thereof (senior in priority to the Liens of the Security Documents on the Specified FF&E);

(m) prior to the Final Completion Date, any "Permitted Liens" under the Disbursement Agreement;

(n) any attachment or judgment Lien not constituting an Event of Default under Section 8.1(h);

(o) Permitted Encumbrances;

(p) Liens arising from the filing of UCC financing statements relating solely to leases permitted by this Agreement;

(q) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(r) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any Real Estate;

(s) Liens securing Indebtedness of the Loan Parties incurred pursuant to Section 7.2(g) to finance the acquisition of fixed or capital assets; *provided*, that (i) such Liens shall be created substantially simultaneously with the acquisition of such fixed or capital assets (or the refinancing of such Indebtedness as otherwise permitted hereunder), (ii) such Liens do not at any time encumber any Property other than the Property (and proceeds of the sale or other disposition thereof) financed by such Indebtedness, (iii) the principal amount of Indebtedness secured thereby is not increased and (iv) the Property financed by such Indebtedness is not of a type that will become affixed to the Project such that the removal thereof could reasonably be expected to materially interfere with the ongoing ordinary course operations of the Project;

(t) Liens securing Indebtedness of the Loan Parties incurred pursuant to Section 7.2(j) to finance the acquisition of the Additional Land, *provided* that (i) such Liens shall be created substantially simultaneously with the acquisition of the Additional Land, (ii) such Liens do not at any time encumber any Property other than the Additional Land (and proceeds of the sale or other disposition thereof) and (iii) the principal amount of Indebtedness secured thereby is not increased;

(u) Liens with respect to the Aircraft granted by World Travel to the Borrower securing Indebtedness under the Aircraft Note;

(v) Liens on cash disbursed pursuant to the Disbursement Agreement and deposited with, or held for the account of, any Loan Party securing reimbursement obligations under performance bonds, guaranties, commercial or standby letters of credit, bankers' acceptances or similar instruments permitted under Section 7.2(k), granted in favor of the issuers of such performance bonds, guaranties, commercial letters of credit or bankers' acceptances, so long as (i) any cash disbursed to secure such reimbursement obligations is invested (if at all) in Permitted Securities only (to the extent the Borrower has the right to direct the investment thereof) and is segregated from the Loan Parties' general cash accounts so that such Liens attach only to such cash and Permitted Securities and (ii) the amount of cash and/or Permitted Securities secured by such Liens is not less than the amount of Indebtedness secured

thereby and in any event does not exceed 110% of the amount of the Indebtedness secured thereby (ignoring any interest earned or paid on such cash and any dividends or distributions declared or paid in respect of such Permitted Investments); and

(w) Liens on cash deposited with, or held for the account of, any Loan Party securing reimbursement obligations under performance bonds, guaranties, commercial or standby letters of credit, bankers' acceptances or similar instruments permitted under Section 7.2(l), granted in favor of the issuers of such performance bonds, guaranties, commercial letters of credit or bankers' acceptances, so long as (i) any cash used as security for such reimbursement obligations is invested (if at all) in Cash Equivalents only (to the extent the Borrower has the right to direct the investment thereof) and is segregated from the Loan Parties' general cash accounts so that such Liens attach only to such cash and Cash Equivalents and (ii) the amount of cash and/or Cash Equivalents secured by such Liens does not exceed 110% of the amount of the Indebtedness secured thereby (ignoring any interest earned or paid on such cash and any dividends or distributions declared or paid in respect of such Cash Equivalents).

7.4 *Limitation on Fundamental Changes.* Enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its Property or business, except that:

(a) (i) any Solvent Loan Party may be merged or consolidated with or into the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. or the Completion Guarantor), (ii) Valvino may be merged or consolidated with or into Wynn Resorts Holdings and Wynn Resorts Holdings may be merged or consolidated with or into Valvino (in each case so long as each of Wynn Resorts Holdings and Valvino are Solvent) and (iii) any Solvent Wynn Group Entity may be merged or consolidated with or into any other Solvent Loan Party other than Desert Inn Improvement, Capital Corp. or the Completion Guarantor (*provided*, that in the event any such merger or consolidation involves the Borrower, the Borrower shall be the continuing or surviving entity and, in the event such merger or consolidation involves a Subsidiary of the Borrower (but not the Borrower), a Subsidiary of the Borrower shall be the continuing or surviving entity);

(b) (i) any Solvent Loan Party may Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. or the Completion Guarantor), (ii) Valvino may Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to Wynn Resorts Holdings and Wynn Resorts Holdings may Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to Valvino (in each case so long as each of Wynn Resorts Holdings and Valvino are Solvent) and (iii) any Solvent Wynn Group Entity may Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to any other Solvent Loan Party other than Desert Inn Improvement, Capital Corp. or the Completion Guarantor; *provided*, that any permitted Disposition of Capital Stock of a Loan Party pursuant to this Section 7.4(b) must be of no less than all Capital Stock of such Loan Party; *provided, further*, that in no event shall (x) Wynn Resorts Holdings be permitted to Dispose of any Capital Stock of the Borrower (other than to the extent such Disposition occurs in connection with the merger of Wynn Resorts Holdings into Valvino as permitted pursuant to Section 7.4(a)) or (y) the Borrower or any of its Subsidiaries acquire the Capital Stock of either of the Water Entities (other than to the extent such Disposition occurs in connection with the merger of a Water Entity into the Borrower or a Subsidiary of the Borrower as permitted pursuant to Section 7.4(a) and any such merger could not result in any of the Loan Parties becoming subject to regulation by the Nevada Public Utilities Commission; *provided, further*, that in no event shall Desert Inn Improvement become a Subsidiary of the Borrower); and

(c) any Loan Party may Dispose of any of its Property in accordance with Section 7.5.

7.5 *Limitation on Disposition of Property.* Dispose of any of its Property (including, without limitation, receivables and leasehold interests), whether now owned or hereafter acquired, or issue or sell any shares of Capital Stock to any Person, except:

(a) the Disposition for fair market value in the ordinary course of business of obsolete or worn out Property or Property no longer useful in the business of the applicable Loan Party; *provided*, that either (i) such Disposition could not reasonably be expected to materially adversely affect the Project, any of the Mortgaged Properties or any of the other Collateral or (ii) with respect to Property Disposed of by reason of its obsolescence or worn out condition, prior to or promptly following such Disposition any such Property shall be replaced with other Property of substantially equal or greater utility and similar use and either (x) a value at least substantially equal to that of the replaced Property when first acquired or (y) substantially equal or greater quality and, if applicable, prestige and caliber as the replaced Property when first acquired and free from any Lien of any other Person (subject to Permitted Liens) and the applicable Loan Party shall promptly subject such replacement property to the Lien of the Security Documents in favor of the Lenders of at least the same priority as the Property so replaced;

(b) the Disposition of Cash or Cash Equivalents (in each case in transactions otherwise permitted hereunder), Investments permitted pursuant to Section 7.8, inventory (in the ordinary course of business) and receivables (in connection with the collection thereof and otherwise as customary in gaming operations of the type conducted by the Loan Parties);

(c) Dispositions permitted by Section 7.4 (including the Disposition of Capital Stock of Loan Parties pursuant to Section 7.4(b));

(d) the sale or issuance of any Loan Party's Capital Stock (other than Disqualified Stock) to its direct parent that is a Loan Party in consideration for Investments permitted pursuant to Section 7.8(e);

(e) Dispositions of Property having a fair market value not in excess of \$5,000,000 in the aggregate (with respect to all the Loan Parties) in any Fiscal Year following the Completion Date; *provided*, that (i) the consideration received for such Property shall be in an amount at least equal to the fair market value thereof; and (ii) the sole consideration received shall be cash;

(f) subject to the last paragraph of this Section 7.5, the Borrower may enter into any leases with respect to any space on or within the Project and any subleases with respect to any space in the Phase II Land Building;

(g) (x) any Loan Party may dedicate space within the Project for the purpose of constructing (i) a mass transit system, (ii) a pedestrian bridge over or a pedestrian tunnel under Las Vegas Boulevard or Sands Avenue or similar structures to facilitate the movement of pedestrians or vehicle traffic, (iii) a right turn lane or other roadway dedication or (iv) such other structures or improvements reasonably related to and in furtherance of the development, construction and operation of the Project; *provided*, that in each case such dedication does not materially impair or interfere in the use or operations of the Project or any Loan Party or materially detract from the value of the Property subject thereto and (y) the exchange of real property between Valvino and Clark County, Nevada, pursuant to which each such party shall transfer to each other fee ownership in real property having approximately equal fair market values; *provided*, that (I) in no event shall Valvino transfer more than an aggregate amount of 40,000 square feet of real property pursuant to this clause (y), (II) Valvino shall take such actions as required pursuant to Sections 6.10 and 7.26 with respect to any real property acquired pursuant to this clause (y) and (III) such exchange of real property could not reasonably be expected to materially and adversely affect or interfere with the Permitted Business of any Loan Party or have a material adverse effect on the Casino Land, the Golf Course Land or the Phase II Land;

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(h) (x) the Loan Parties may license trademarks and trade names in the ordinary course of business and, in any event, Wynn Resort Holdings may license to Wynn Resorts, for less than fair market value, any or all Intellectual Property in or relating to the name "Wynn Resorts" (including, without limitation, any and all Intellectual Property identified in subparts (a)(12), (a)(14)-(19), (b)(1), and (c) of Part IX of *Schedule 4.9(b)*) (collectively, the "Wynn Resorts IP") and (y) Wynn Resorts Holdings may transfer to Wynn Resorts, for less than fair market value, any or all of the Wynn Resorts IP (*provided*, that all of the Wynn Resorts IP shall be transferred by Wynn Resorts Holdings to Wynn Resorts as soon as is practicable after the Closing Date);

(i) the incurrence of Liens permitted under Section 7.3; *provided*, that any leases other than those permitted pursuant to Section 7.3(i) (whether or not constituting Permitted Liens) shall be permitted only to the extent provided in subsection (f) above and the last paragraph of this Section 7.5;

(j) the applicable Golf Course Land Owner(s) shall be permitted to Dispose of the Wynn Home Site Land to Mr. Wynn, and the Lenders hereby consent to such Disposition, on the conditions that (i) no Default or Event of Default has occurred and is continuing at the time of such Disposition and such Disposition is permitted under the other Financing Agreements, (ii) the cash purchase price paid by Mr. Wynn to such Golf Course Land Owner(s) for the Wynn Home Site Land is in immediately available funds and equal to or greater than the fair market value of the Wynn Home Site Land, as determined in good faith by such Golf Course Land Owner(s), (iii) such Golf Course Land Owner(s) contributes the entire amount of the purchase price paid by Mr. Wynn for the Wynn Home Site Land to the Borrower as a common equity capital contribution, (iv) the Mortgaged Properties affected by the Disposition of the Wynn Home Site Land constitute separate legal parcels under Nevada Revised Statutes, Chapter 278, (v) the Borrower shall have certified and demonstrated to the Initial Arrangers, to the reasonable satisfaction of the Initial Arrangers, that construction of Mr. Wynn's personal residence on the Wynn Home Site will not interfere with the use or operations of the Golf Course and could not otherwise reasonably be expected to impair the overall value of the Project, (vi) the applicable Mortgages with respect to the Golf Course Land shall have been amended to reflect the exclusion of the legal description of the Wynn Home Site Land (or applicable portion thereof) as a result of the transfer of fee ownership therein and re-recorded at the Clark County, Nevada Recorder's Office, (vii) the Borrower shall have delivered to the Administrative Agent: (A) (1) a legal opinion from counsel reasonably acceptable to the Administrative Agent to the effect that the Mortgages with respect to the Golf Course Land, to the extent amended and re-recorded pursuant to subsection (vi) above, are enforceable in accordance with their respective terms and are effective to create the security interests described therein and (2) such other legal opinions as the Administrative Agent may reasonably request, each in form and substance reasonably satisfactory to the Administrative Agent, and (B) endorsements, or commitments by the Title Insurer to issue endorsements, to the Title Policy, in each case in form and substance satisfactory to the Administrative Agent, insuring the continuing perfection and priority of the respective Liens on the Golf Course Land (after giving effect to the release of the Wynn Home Site Land and the amendments and re-recordations contemplated by subsection (vi) above) and (viii) (A) either (x) no Points of Diversion with respect to the Water Permits, wells associated therewith or rights-of-way necessary for the transportation of water available under the Water Permits to the Golf Course Land or the water features of the Le Rêve hotel and casino, as the case may be, are located on the Wynn Home Site Land or (y) the applicable Golf Course Land Owner(s) shall have transferred at no cost to the Borrower and/or Wynn Resorts Holdings, as the case may be, (I) in the case of Points of Diversion and associated wells with respect to the Valvino Water Permits or the DIIC Casino Water Permit, and rights-of-way necessary for the transportation of water available under such Water Permits to the water features of the Le Rêve hotel and casino, such easements to the Borrower as are necessary for the Borrower to access such Points of Diversion,

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own and operate such wells and transport such water to the water features of the Le Rêve hotel and casino and (II) in the case of Points of Diversion and associated wells with respect to all other DIIC Water Permits, and rights-of-way necessary for the transportation of water available under such Water Permits to the Golf Course Land, such easements to the Borrower and Wynn Resorts Holdings as are necessary for such Persons to access such Points of Diversion, own and operate such wells and transport such water to the Golf Course Land and (B) the Borrower and Wynn Resorts Holdings, as the case may be, shall have taken all actions required pursuant to Section 6.10 with respect to any Property acquired pursuant to clause (viii)(A) above. Upon satisfaction of the foregoing conditions, the Administrative Agent shall execute and deliver to the appropriate Golf Course Land Owners such documents and instruments, including UCC-3 termination statements and deeds of reconveyance, all as may be reasonably necessary to release the Liens granted to the Lenders in the Wynn Home Site Land, and to permit such Disposition; *provided*, that an instrument reasonably acceptable to the Administrative Agent is recorded against the Wynn Home Site Land to the effect that until the earlier of (x) the Disposition of the Golf Course Land in accordance with Section 7.5(k) or (y) the payment in full of the Obligations, only a personal residence for Mr. Wynn will be developed on the Wynn Home Site Land, the provisions of such instrument to burden the Wynn Home Site Land for the benefit of the Golf Course Land;

(k) the Golf Course Land Owners shall be permitted to Dispose of the Golf Course Land and in connection therewith the applicable Loan Parties shall be permitted to Dispose of their ownership in the Capital Stock of Desert Inn Water and Desert Inn Improvement and the DIIC Water Permits (other than the DIIC Casino Water Permit), and the Lenders hereby consent to such Dispositions, on the conditions that (i) no Default or Event of Default has occurred and is continuing at the time of such Disposition and such Dispositions are permitted under the other Financing Agreements, (ii) such Dispositions occur on or after the third anniversary of the Opening Date, (iii) at the time of such Dispositions, the Consolidated Leverage Ratio of the Borrower for the most recent period of four full consecutive fiscal quarters of the Borrower was 3.0 to 1.0 or less (*provided*, that there shall be excluded from the calculation of the Consolidated Leverage Ratio the Consolidated EBITDA, if any, derived from the Golf Course for such four full consecutive fiscal quarters), (iv) after giving effect to such Dispositions, the senior secured long-term Indebtedness under the Facilities shall be rated at least Ba1 by

Moody's and BB+ by S&P and (v) (A) either (x) no Points of Diversion with respect to the Valvino Water Permits or the DIIC Casino Water Permit, wells associated therewith or rights-of-way necessary for the transportation of water available under such Water Permits to the water features of the Le Rêve hotel and casino are located on the Golf Course Land or (y) the applicable Golf Course Land Owner(s) shall have transferred at no cost to the Loan Parties such easements to the Borrower as are necessary for the Borrower to access such Points of Diversion, own and operate such wells and transport such water to the water features of the Le Rêve hotel and casino and (B) the Borrower shall have taken all actions required pursuant to Section 6.10 with respect to any Property acquired pursuant to clause (v)(A) above. Upon satisfaction of the foregoing conditions, the Administrative Agent shall execute and deliver to the applicable Loan Parties such documents and instruments, including UCC-3 termination statements, deeds of reconveyance and certificates of Capital Stock, all as may be reasonably necessary to release the Liens granted to the Lenders in the Golf Course Land, Desert Inn Water, Desert Inn Improvement and the DIIC Water Permits (other than the DIIC Casino Water Permit) (including, without limitation all Capital Stock of Desert Inn Water, and Desert Inn Improvement and Property of Desert Inn Water and Desert Inn Improvement) and to permit such Dispositions;

(l) the applicable Golf Course Land Owners shall be permitted to Dispose of the Home Site Land, and the Lenders hereby consent to such Disposition, on the conditions that (i) no Default or Event of Default has occurred and is continuing at the time of such Disposition and such Disposition is permitted under the other Financing Agreements, (ii) at the time of such

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Disposition, the Consolidated EBITDA of the Borrower for the most recent period of four full consecutive fiscal quarters of the Borrower was equal to or greater than \$325,000,000, (iii) the Mortgaged Properties affected by the Disposition of the Home Site Land constitute separate legal parcels under Nevada Revised Statutes, Chapter 278, (iv) the Borrower shall have certified and demonstrated to the Initial Arrangers, to the reasonable satisfaction of the Initial Arrangers, that construction of permitted improvements on the Home Site will not interfere with the use or operations of the Golf Course and could not otherwise reasonably be expected to impair the overall value of the Project, (v) the applicable Mortgages with respect to the Golf Course Land shall have been amended to reflect the exclusion of the legal description of the Home Site Land (or portion thereof) as a result of the transfer of fee ownership therein and re-recorded at the Clark County, Nevada, Recorder's Office, (vi) the Borrower shall have delivered to the Administrative Agent: (A) (1) a legal opinion from counsel reasonably acceptable to the Administrative Agent to the effect that the Mortgages with respect to the Golf Course Land, to the extent amended and re-recorded pursuant to subsection (v) above, are enforceable in accordance with their respective terms and are effective to create the security interests described therein and (2) such other legal opinions as the Administrative Agent may reasonably request, each in form and substance reasonably satisfactory to the Administrative Agent, and (B) endorsements, or commitments by the Title Insurer to issue endorsements, to the Title Policy, in each case in form and substance satisfactory to the Administrative Agent, insuring the continuing perfection and priority of the respective Liens on the Golf Course Land (after giving effect to the release of the Home Site Land and the amendments and re-recordations contemplated by subsection (v) above) and (vii) (A) either (x) no Points of Diversion with respect to the Water Permits, wells associated therewith or rights-of-way necessary for the transportation of water available under the Water Permits to the Golf Course Land or the water features of the Le Rêve hotel and casino, as the case may be, are located on the Home Site Land or (y) the applicable Golf Course Land Owner(s) shall have transferred at no cost to the Loan Parties (I) in the case of Points of Diversion and associated wells with respect to the Valvino Water Permits or the DIIC Casino Water Permit, and rights-of-way necessary for the transportation of water available under such Water Permits to the water features of the Le Rêve hotel and casino, such easements to the Borrower as are necessary for the Borrower to access such Points of Diversion, own and operate such wells and transport such water to the water features of the Le Rêve hotel and casino and (II) in the case of Points of Diversion with respect to all other DIIC Water Permits and rights-of-way necessary for the transportation of water available under such Water Permits to the Golf Course Land, such easements to the Borrower and Wynn Resorts Holdings as are necessary for such Persons to access such Points of Diversion, own and operate such wells and transport the water drawn therefrom to the Golf Course Land and (B) the Borrower and Wynn Resorts Holdings, as the case may be, shall have taken all actions required pursuant to Section 6.10 with respect to any Property acquired pursuant to clause (vii)(A) above. Upon satisfaction of the foregoing conditions, the Administrative Agent shall execute and deliver to the appropriate Golf Course Land Owners such documents and instruments, including UCC-3 termination statements and deeds of reconveyance, all as may be reasonably necessary to release the Liens granted to the Lenders in the Home Site Land, and to permit such Disposition; *provided*, that an instrument reasonably acceptable to the Administrative Agent is recorded against the Home Site Land to the effect that until the earlier of (x) the Disposition of the Golf Course Land in accordance with Section 7.5(k) or (y) the payment in full of the Obligations, only residential housing and other non-gaming related developments will be developed on the Home Site Land, the provisions of such instrument to burden the Home Site Land for the benefit of the Golf Course Land;

(m) Valvino shall be permitted to Dispose of the Phase II Land, and the Lenders hereby consent to such Disposition, on the conditions that (i) no Default or Event of Default has occurred

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and is continuing at the time of such Disposition and such Disposition is permitted under the other Financing Agreements, (ii) at the time of such Disposition, (A) the Consolidated EBITDA of the Borrower for the most recent period of two full consecutive fiscal quarters of the Borrower was equal to or greater than \$170,000,000 and the Required Lenders consent to such Disposition or (B) the Consolidated EBITDA of the Borrower for the most recent period of four full consecutive fiscal quarters of the Borrower was equal to or greater than \$325,000,000, (iii) the Valvino Water Permit Transfer shall have occurred and (iv) in the event that any portion of the Entertainment Facility or any other improvements related to the Le Rêve hotel and casino (other than the Phase II Building, the Employee Parking Lot or the Driving Range) are located on the Phase II Land, the Phase II Land upon which such improvements are located shall have been transferred in fee ownership to the Borrower (whether pursuant to lot line adjustments or otherwise) and the Borrower shall have taken all actions required pursuant to Section 6.10 with respect to any Real Estate and other Property acquired pursuant to this clause (iv). Upon satisfaction of the foregoing conditions, the Administrative Agent shall execute and deliver to Valvino such documents and instruments, including UCC-3 termination statements and deeds of reconveyance, all as may be reasonably necessary to release the Liens granted to the Lenders in the Phase II Land, and to permit such Disposition;

(n) any Event of Eminent Domain; *provided*, that the requirements of Sections 2.12(c) and 2.24 are complied with in connection therewith;

(o) the Disposition of the Existing Aircraft so long as (i) the consideration received for the Existing Aircraft shall be in an amount at least equal to the fair market value thereof and the sole consideration received therefor shall be cash, (ii) either (A) the aggregate Net Disposition Proceeds from such Disposition shall be applied to the prepayment of the FF&E Facility in accordance therewith or (B) (1) within three Business Days after such Disposition,

World Travel or a trust of which World Travel is the beneficial interest holder acquires the Replacement Aircraft and (2) the aggregate Net Disposition Proceeds from such Disposition are applied to the acquisition of the Replacement Aircraft and no Loan Party applies any other amounts to such acquisition other than (x) proceeds of equity capital contributions from Wynn Resorts (or another Loan Party to the extent acting as an intermediary for purposes of contributing equity capital contributions from Wynn Resorts) and (y) proceeds from Indebtedness permitted pursuant to Section 7.2(f)(ii) and (iii) such Disposition of the Existing Aircraft and, if applicable, the acquisition of the Replacement Aircraft is permitted pursuant to the Other Indebtedness;

(p) Valvino shall be permitted to effectuate the Valvino Water Permit Transfer (or any portion thereof) and DIIC shall be permitted to effectuate the DIIC Water Transfer (or any portion thereof); and

(q) subject to Section 7.4, Dispositions (i) by any Loan Party (other than Desert Inn Improvement) to the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. or the Completion Guarantor (except with respect to Dispositions, the proceeds of which are necessary for the corporate maintenance of Capital Corp.)), (ii) by Valvino to Wynn Resorts Holdings or by Wynn Resorts Holdings to Valvino (so long as Wynn Resorts Holdings, on the one hand, or Valvino, on the other hand, is Solvent) and (iii) by any Wynn Group Entity to any other Solvent Loan Party other than Desert Inn Improvement, Capital Corp. or the Completion Guarantor; *provided*, that in each case each Loan Party shall have taken all actions required pursuant to Section 6.10 with respect to any Property acquired by it pursuant to this clause (q);

Notwithstanding the foregoing provisions of this Section 7.5, subsection (f) above shall be subject to the additional provisos that: (a) no Default or Event of Default shall exist and be continuing at the time of such transaction, lease or sublease or would occur after as a result of entering into such transaction, lease or sublease (or immediately after any renewal or extension

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thereof at the option of the Borrower), (b) such transaction, lease or sublease could not reasonably be expected to materially interfere with, impair or detract from the operation of the business of the Borrower or Valvino, as the case may be, and will, in the case of leases associated with the casino, hotel and shopping operations, in the reasonable good faith judgment of the Borrower enhance the value and operations of the Project, (c) except with respect to the Dealership Lease Agreement and subleases of space in the Phase II Land Building by the Borrower, such transaction, lease or sublease is at a fair market rent or value (in light of other similar or comparable prevailing commercial transactions) and contains such other terms such that the lease, taken as a whole, is commercially reasonable and fair to the Borrower in light of prevailing or comparable transactions in other casinos, hotels, hotel attractions, shopping venues or similarly situated buildings, as applicable (*provided*, that each sublease of the Phase II Land Building by the Borrower and the Dealership Lease Agreement shall contain such terms such that the transaction, taken as a whole, does not expose the Borrower to undue liabilities or obligations in light prevailing or comparable transactions), (d) no gaming, hotel or casino operations (other than the operation of arcades and games for minors) may be conducted on any space that is subject to such transaction, lease or sublease other than by and for the benefit of the Borrower, (e) with respect to subleases of the Phase II Land Building by the Borrower, no operations other than those conducted in the ordinary course of business in commercial office buildings and those related to the temporary operation of a full service Ferrari and Maserati automobile dealership may be conducted on any space that is subject to such transaction unless, subject at all times to the restrictions set forth in clauses (a) through (d) above, otherwise approved in writing by the Administrative Agent and (f) no lease or sublease may provide that the Borrower or Valvino, as the case may be, may subordinate its fee, condominium or leasehold interest to any lessee or any party financing any lessee; *provided*, that (x) the Administrative Agent on behalf of the Lenders shall agree to provide the tenant under any such lease or sublease with a Subordination, Non-Disturbance and Attornment Agreement and (y) with respect to any such lease having a term of two years or more or aggregate annual rents in excess of \$500,000 (other than leases solely between Loan Parties), the Borrower shall enter into, and cause the tenant under any such lease or sublease to enter into with the Administrative Agent for the benefit of the Lenders, a Subordination, Non-Disturbance and Attornment Agreement, in each case substantially in the form of Exhibit N hereto with such changes as the Administrative Agent may approve, which approval shall not be unreasonably withheld, conditioned or delayed (*provided*, that such changes do not materially and adversely affect the security interests granted in favor of the Lenders under any of the Security Documents).

7.6 *Limitation on Restricted Payments.* Declare or pay any dividend (other than dividends payable solely in common stock (excluding Disqualified Stock) of the Person making such dividend) on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of any Loan Party, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of any Loan Party, or enter into any derivatives or other transaction with any financial institution, commodities or stock exchange or clearinghouse (a "*Derivatives Counterparty*") obligating any Loan Party to make payments to such Derivatives Counterparty as a result of any change in market value of any such Capital Stock (collectively, "*Restricted Payments*"), except that:

(a) any Loan Party may pay dividends or other distributions (not in excess of \$15,000,000 in the aggregate) to Wynn Resorts, through any intermediate Wholly Owned Subsidiaries of Wynn Resorts, of amounts necessary to repurchase Capital Stock or Indebtedness of Wynn Resorts (other than Capital Stock held by the Existing Stockholders) to the extent required by the Nevada Gaming Authorities for not more than the fair market value thereof in order to avoid the suspension, revocation or denial by the Nevada Gaming Authorities of a gaming license necessary

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for the ownership, construction, maintenance, financing or operation of the Project, in any event to the extent such suspension, revocation or denial would have a Material Adverse Effect; *provided*, that so long as such efforts do not jeopardize any such gaming license necessary for the ownership, construction, maintenance, financing or operation of the Project, Wynn Resorts and its Subsidiaries shall have diligently and in good faith attempted to find a third-party purchaser(s) for such Capital Stock or Indebtedness and no third-party purchaser(s) acceptable to the Nevada Gaming Authorities was willing to purchase such Capital Stock or Indebtedness within a time period acceptable to the Nevada Gaming Authorities;

(b) (i) on the Completion Guaranty Release Date, the Completion Guarantor may pay a dividend or other distribution to Wynn Resorts, through any intermediate Wholly Owned Subsidiaries of Wynn Resorts, in an amount equal to the amount released from the Completion Guaranty Deposit Account to the Completion Guarantor in accordance with Section 2.10 of the Disbursement Agreement and (ii) on the Final Completion Date, the Completion Guarantor may pay a dividend or other distribution to Wynn Resorts, through any intermediate Wholly Owned Subsidiaries of Wynn Resorts, in an amount equal to the amount released from the Completion Guaranty Deposit Account to the Completion Guarantor in accordance with Section 2.11 of the Disbursement Agreement;

(c) to the extent constituting Restricted Payments, (i) any Loan Party may consummate a transaction permitted pursuant to Section 7.4, (ii) any Loan Party may make Dispositions permitted pursuant to Section 7.5, (iii) any Loan Party may make Investments permitted pursuant to Section 7.8, (iv) any Loan Party may pay Management Fees to Wynn Resorts permitted pursuant to Section 7.22 and (v) any Loan Party may take actions permitted pursuant to Section 7.10;

(d) (i) any Subsidiary of the Borrower may declare and pay cash dividends to the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. or the Completion Guarantor), (ii) Wynn Resorts Holdings may declare and pay cash dividends to Valvino (so long as Valvino is Solvent) and (iii) any Wynn Group Entity may declare and pay cash dividends to any other Solvent Loan Party;

(e) any Loan Party may make distributions to the direct or indirect owners of such Loan Party with respect to any period during which such Loan Party is a Pass Through Entity or a Consolidated Member, such distributions in an aggregate amount not to exceed such owners' Tax Amounts for such period;

(f) so long as no Default or Event of Default shall have occurred and be continuing and no Material Adverse Effect shall have occurred and be continuing (or, in either case, would result therefrom), the Loan Parties may pay dividends to other Loan Parties to permit such other Loan Parties to (i) repurchase common stock or common stock options from present or former employees of the Loan Parties (or their estates) upon the death, disability or termination of employment of such employees in accordance with employment agreements or option plans or agreements; *provided*, that the aggregate amount of payments under this subsection (f), when aggregated with any Indebtedness incurred by the Loan Parties pursuant to Section 7.2(h), will not exceed \$2,000,000 in any Fiscal Year and \$6,000,000 during the term of this Agreement;

(g) on and after the Completion Date and so long as no Default or Event of Default shall have occurred and be continuing and no Material Adverse Effect shall have occurred and be continuing (or, in either case, would result therefrom), the Loan Parties may make Restricted Payments not otherwise permitted under any other subsection of this Section 7.6 in an amount not to exceed an aggregate of \$5,000,000, *plus*, for each Fiscal Year occurring after the Fiscal Year in which the Completion Date occurs, \$2,000,000; *provided*, that amounts applied to the

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determination of Non-Equity Cost pursuant to clause (b)(ii) of the definition thereof shall be considered Restricted Payments distributed pursuant to this Section 7.6(g);

(h) to the extent constituting Restricted Payments, on or prior to the Final Completion Date the Borrower may pay Project Costs as permitted pursuant to the Disbursement Agreement; and

(i) until the earlier of (i) 12 months following the acquisition of the Replacement Aircraft with the Replacement Aircraft Indebtedness, and (ii) the sale by World Travel or the Aircraft Trustee, as the case may be, of the Existing Aircraft, the payment to Wynn Resorts of amounts necessary to pay interest then due and payable on the Replacement Aircraft Indebtedness in an aggregate amount not to exceed \$1,000,000.

7.7 Limitation on Capital Expenditures. Make, commit to make or incur Capital Expenditures, in any Fiscal Year indicated below, in an aggregate amount among all Loan Parties in excess of the corresponding amount set forth below opposite such Fiscal Year; *provided*, that other than Capital Expenditures (x) necessary to keep all associated Property and systems reasonably related to the operation of the Golf Course Land and improvements thereon and the Phase II Land and improvements thereon in good and working order and condition or (y) funded by the proceeds of equity capital contributions from Wynn Resorts (or another Loan Party to the extent acting as an intermediary for purposes of contributing equity capital contributions from Wynn Resorts for such Capital Expenditures), in no event shall any Loan Party commit to make or incur Capital Expenditures with respect to the Golf Course Land or improvements thereon in excess of (A) \$3,000,000 during the period from the Completion Date through the 18 month anniversary thereof and (B) \$5,000,000 in any 12 month period thereafter, and in no event shall any Loan Party commit to make or incur Capital Expenditures with respect to the Phase II Land or improvements thereon in excess of \$5,000,000 in any Fiscal Year; *provided, further*, that other than Capital Expenditures (x) necessary or advisable to keep all associated Property and systems reasonably related to the operation of the Aircraft in good and working order and condition, whether pursuant to manufacturer requirements or suggestions, Requirements of Law, good aircraft maintenance practices or otherwise, or (y) funded by the proceeds of equity capital contributions from Wynn Resorts (or another Loan Party to the extent acting as an intermediary for purposes of contributing equity capital contributions from Wynn Resorts for such Capital Expenditures), in no event shall any Loan Party commit to make or incur Capital Expenditures with respect to the Aircraft.

| <u>Fiscal Year</u> | <u>Maximum Capital Expenditures</u> |
|--------------------|-------------------------------------|
| Fiscal Year 2005 | \$ 25,000,000 |
| Fiscal Year 2006 | \$ 50,000,000 |
| Fiscal Year 2007 | \$ 60,000,000 |
| Fiscal Year 2008 | \$ 65,000,000 |
| Fiscal Year 2009 | \$ 52,500,000 |

7.8 Limitation on Investments. Make any advance, loan, extension of credit (by way of guaranty or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting an ongoing business from, or make any other investment in, any other Person (all of the foregoing, "*Investments*"), except:

(a) extensions of trade credit in the ordinary course of business (including, without limitation, advances to patrons of the Project's casino operation consistent with ordinary course gaming operations);

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(b) (i) prior to the Completion Date, Investments in Permitted Securities and (ii) on or after the Completion Date, Investments in Cash Equivalents;

(c) to the extent constituting Investments, the incurrence of Indebtedness permitted by Sections 7.2(b), 7.2 (c) and 7.2(d);

(d) loans and advances to employees of the Loan Parties in the ordinary course of business (including, without limitation, for travel, entertainment and relocation expenses) in an aggregate amount for all Loan Parties not to exceed \$1,000,000 at any one time outstanding;

(e) Investments (other than those relating to the incurrence of Indebtedness permitted by Section 7.8(c)) (i) by any Loan Party (other than Desert Inn Improvement) in the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. or the Completion Guarantor (except with respect to Investments, the proceeds of which are necessary for the corporate maintenance of Capital Corp.)), (ii) by Valvino in Wynn Resorts Holdings or by Wynn Resorts Holdings in Valvino (so long as Wynn Resorts Holdings, on the one hand, or Valvino, on the other hand, is Solvent) and (iii) by any Wynn Group Entity in any other Solvent Loan Party other than Desert Inn Improvement, Capital Corp. or the Completion Guarantor;

(f) Investments consisting of securities received in settlement of debt created in the ordinary course of business and owing to any Loan Party or in satisfaction of judgments;

(g) nominal capital contributions in connection and in furtherance of the formation of new Subsidiaries in accordance with Section 7.17;

(h) to the extent constituting Investments, (i) any Loan Party may consummate a transaction permitted pursuant to Section 7.4, (ii) any Loan Party may make Dispositions permitted pursuant to Section 7.5, (iii) any Loan Party may make Restricted Payments permitted pursuant to Section 7.8 and (iv) any Loan Party may take actions expressly permitted pursuant to Section 7.10; and

(i) in addition to Investments otherwise expressly permitted by this Section 7.8, so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom and no Material Adverse Effect shall have occurred and be continuing or would result therefrom, Investments by the Loan Parties in an aggregate amount (valued at cost) not to exceed \$10,000,000 at any one time outstanding.

7.9 Limitation on Optional Payments and Modifications of Governing Documents. (a) Make or offer to make any optional or voluntary payment, prepayment, repurchase or redemption of, or otherwise voluntarily or optionally defease, any Indebtedness, or segregate funds for any such payment, prepayment, repurchase, redemption or defeasance, or enter into any derivative or other transaction with any Derivatives Counterparty obligating any Loan Party to make payments to such Derivatives Counterparty as a result of any change in market value of such Indebtedness, other than the prepayment of Indebtedness incurred hereunder or the prepayment of the Other Indebtedness with the proceeds of Permitted Refinancing Indebtedness; *provided*, that the Borrower may voluntarily prepay the FF&E Facility so long as no Default or Event of Default shall have occurred and be continuing and the Term Loans and/or the Revolving Loans (in the case of the prepayment of Revolving Credit Loans, with a corresponding permanent reduction of the Revolving Credit Commitment) are prepaid on a *pro rata* basis (*provided*, that, for clarification, (i) the prepayment of the FF&E Facility with respect to any "Casualty Amounts" (as defined in the FF&E Facility Agreement) pursuant to Section 8.1 of the FF&E Facility Agreement and (ii) the prepayment of the FF&E Facility with the proceeds of any asset sale pursuant to Sections 7.5(e) and 7.5(p) of the FF&E Facility Agreement shall not be "voluntary" prepayments for purposes of this proviso), (b) amend or modify, or permit the amendment or modification of its Governing Documents in any manner adverse to the Lenders unless otherwise required in order to satisfy a condition or requirement set forth in the Disbursement Agreement or (c) amend, modify or otherwise change the provisions of Article VII (or the provisions corresponding

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to Article VII of the limited liability agreement of Valvino) of its limited liability company agreement relating to conduct or any comparable provisions contained in its other charter documents (or, in each case, to the extent the relevant Loan Party is not a limited liability company, any comparable provisions contained in its Governing Documents), or fail to include provisions corresponding to those contained in Article VII of the limited liability company agreement of Valvino, as in effect on the Closing Date, in its limited liability company agreement or other applicable Governing Documents.

7.10 Limitation on Transactions with Affiliates. Enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than such transactions solely between the Borrower and its Subsidiaries or solely between Subsidiaries of the Borrower) unless such transaction is:

(a) on terms that are not less favorable to that Loan Party than those that might be obtained at the time in a comparable arm's length transaction with Persons who are not Affiliates of such Loan Party and the Borrower has delivered to the Administrative Agent (1) with respect to any transaction or series of related transactions involving an amount in excess of \$1,000,000, a certificate signed by a Responsible Officer certifying that such transaction or series of related transactions complies with this Section 7.10, (2) with respect to any transaction or series of related transactions involving an amount in excess of \$5,000,000, a resolution of the Board of Directors of the applicable Loan Party(ies) certifying that such transaction or series of related transactions complies with this Section 7.10 and that such transaction or series of related transactions has been approved by a majority of the Independent Directors of the applicable Loan Party(ies) and (3) with respect to any such transaction or series of related transactions that involves aggregate payments in excess of \$10,000,000 (or, with respect to Qualified Affiliate Transactions, \$25,000,000), an opinion as to the fairness to the applicable Loan Party at the time such transaction or series of related transactions is entered into from a financial point of view issued by an independent financial advisor satisfactory to the Administrative Agent; *provided*, that, in no such case shall such a transaction or series of related transactions consist of, contain, or provide for the payment of (i) Affiliated Overhead Expenses or (ii) any fee, profit or similar component benefiting any Loan Party or Affiliate of a Loan Party, all payments under such transactions to represent only the payment or reimbursement of actual costs and expenses, except (x) transactions where the Borrower or a Subsidiary of the Borrower is the recipient of such payments or (y) transactions where a Loan Party is the recipient of such payments and such payments are being made by a Person other than a Loan Party; *provided, however*, that (x) the Borrower shall be permitted to lease space at the Project for the development and operation of a Ferrari and Maserati automobile dealership to an Affiliate of the Borrower pursuant to the Dealership Lease Agreement at below market rent and (y) the Borrower shall be permitted to sublease space at the Phase II Building to Affiliates of the Borrower at below market rents;

(b) a Disposition permitted pursuant to Section 7.5 (*provided*, that the requirements of subsection (a) above shall apply to leases of the Project by the Borrower permitted pursuant to Section 7.5(f) (other than the Dealership Lease and subleases of the Phase II Land Building) and Dispositions permitted pursuant to Section 7.5(b)), an Investment permitted pursuant to Section 7.8 or a Restricted Payment permitted pursuant to Section 7.6;

(c) so long as no Default or Event of Default shall have occurred and be continuing and no Material Adverse Effect shall have occurred and be continuing (or, in either case, would result therefrom), expressly contemplated by the Tax Indemnification Agreement;

(d) on and after the Completion Date, the reimbursement by the Borrower and its Subsidiaries to the other Loan Parties and Wynn Resorts of Allocable Overhead to the extent incurred by the other Loan Parties and Wynn Resorts; *provided*, that the amount of Allocable Overhead reimbursable by the Borrower and its Subsidiaries pursuant to this Section 7.10(d)

during any 12-month period shall not exceed, in the aggregate, the greater of (x) \$21,500,000 and (y) if the Consolidated Leverage Ratio of the Borrower for the period of four full consecutive fiscal quarters ending on the Quarterly Date immediately prior to the commencement of such 12 month period is 3.5 to 1.0 or less, 1.29% of Net Revenues of the Borrower and its consolidated Subsidiaries for such four full consecutive fiscal quarter period;

(e) expressly contemplated by the Golf Course Lease, the Driving Range Lease, the Employee Parking Lot Lease, the Art Rental and Licensing Agreement, the Water Supply Agreement, the Management Agreement (but only to the extent payments thereunder do not constitute Management Fees (payments of such amounts being governed pursuant to Section 7.22)), the Building Lease, the WDD Agreement, the Tax Indemnification Agreement, the Shuttle Easement Agreement, the DIIC Land Use Agreement or the Aircraft Operating Agreement; *provided, however*, that any amendments, modifications or supplements thereto after the Closing Date shall comply with Section 7.10(a);

(f) on or prior to the Final Completion Date, the payment of Project Costs as permitted pursuant to the Disbursement Agreement; and

(g) associated with the use of the Aircraft for any purpose not reasonably related to the Project or the Project-related Permitted Businesses of the Borrower, Las Vegas Jet or World Travel, in which case the Borrower, Las Vegas Jet or World Travel, as the case may be, shall be reimbursed promptly for all actual costs and expenses incurred by such Loan Party in connection with such use.

7.11 *Limitation on Sales and Leasebacks.* Enter into any arrangement with any Person providing for the leasing by any Loan Party of Property which has been or is to be sold or transferred by any Loan Party to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such Property or rental obligations of any Loan Party.

7.12 *Limitation on Changes in Fiscal Periods.* Permit the fiscal year of any Loan Party to end on a day other than December 31 or change any Loan Party's method of determining fiscal quarters.

7.13 *Limitation on Negative Pledge Clauses.* Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of a Loan Party to create, incur, assume or suffer to exist any Lien upon any of its Property or revenues, whether now owned or hereafter acquired, to secure the Obligations or, in the case of any Guarantor, its obligations under the Guarantee and Collateral Agreement other than (a) this Agreement and the other Financing Agreements, (b) any agreements governing any purchase money Liens or Capital Lease Obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby and proceeds thereof); provided, that the principal amount of Indebtedness thereunder shall exceed 75% of the original purchase price of the assets financed thereby, and (c) as required by applicable law or any applicable rule or order of any Nevada Gaming Authority.

7.14 *Limitation on Restrictions on Subsidiary Distributions, etc.* Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Loan Party to (a) make Restricted Payments in respect of any Capital Stock of such Loan Party held by, or pay or subordinate any Indebtedness owed to, any other Loan Party, (b) make Investments in any other Loan Party or (c) transfer any of its assets to any other Loan Party, except for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents, (ii) any restrictions under the Mortgage Notes Indenture, (iii) any restrictions existing under the FF&E Facility Agreement and (iv) as required by applicable law or any applicable rule or order of any Nevada Gaming Authority.

7.15 *Limitation on Lines of Business.* Subject to Sections 7.24 and 7.25, enter into any business or investment activities, whether directly or indirectly, other than Permitted Businesses; *provided, however*, that (a) Capital Corp. shall not hold any material Property, incur any Indebtedness or become

liable for any obligations or engage in any business activities (other than as co-obligor with respect to the Other Indebtedness and Other Security Documents with respect to the Mortgage Notes Indenture) or have any Subsidiaries and (b) the Water Entities shall not hold any material Property other than the DIIC Water Permits and other Property reasonably related to the provision of water services to the Golf Course and the Additional Land or engage in any business activities other than the provision of water services to the Golf Course and the Additional Land.

7.16 *Restrictions on Changes.* (a) Agree to any amendment to, assignment or termination of, or waive any of its rights under, any Permit or Project Document or enter into any new Project Document or Permit (it being understood that any Material Contracts which are covered by subsection (c) of this Section 7.16 shall also be subject to the restrictions set forth therein) without in each case obtaining the prior written consent of the Required Lenders if in any such case such amendment, assignment, termination or waiver or new Project Document or Permit could reasonably be expected to have a Material Adverse Effect or otherwise adversely affect the Lenders in any material respect (taking into consideration any viable replacements or substitutions therefor at the time such determination is made).

(b) Amend or otherwise change the terms of any Financing Agreements (other than the Loan Documents) or permit the termination thereof (other than in accordance with the terms thereof), or enter into any new Financing Agreements or make any payment consistent with an amendment thereof or change thereto, (i) if the effect of such amendment, change or new Financing Agreement is to increase the interest rate or fees on the Indebtedness evidenced thereby, change (to earlier or more frequent dates) any dates upon which payments of principal or interest are due thereon (including, without limitation, changes to, or new additions of, mandatory prepayment provisions), change the redemption, prepayment or defeasance provisions thereof or change the subordination provisions thereof (or of any guaranty thereof) or (ii) in the case of the Mortgage Notes Indenture, the Mortgage Notes, the Mortgage Notes Guaranty or any documents related thereto, if the effect of such amendment, change or new Financing Agreement, together with all other amendments and changes previously made or new Financing Agreements previously entered into, is to materially increase the obligations of the obligors thereunder or to confer any additional rights on the holders of the Indebtedness or obligations evidenced thereby (or a trustee or other representative on their behalf) which could be materially adverse to any Loan Party or the Lenders; *provided*, that the Borrower may amend the terms of any other Financing Agreement to increase the principal amount thereof if such increase is otherwise expressly permitted by the Intercreditor Agreements and this Agreement; *provided, further*, that any amendments or changes with respect to the FF&E Facility Agreement, the FF&E Guarantee or any documents related thereto expressly permitted pursuant to Section 4.2 of the FF&E Intercreditor Agreement shall not be restricted pursuant to this Section 7.16(b).

(c) Agree to any amendment to, assignment or termination of, or waive any of its rights under, any Material Contract (other than Material Contracts described in clause (ii) of the definition thereof) or enter into an Additional Material Contract (other than Material Contracts described in clause (ii) of the definition thereof but including the Additional Material Contracts described in clauses (ii) and (iii) of the definition of "Water Show Entertainment and Production

Agreement") without in each case obtaining the prior written consent of the Administrative Agent, which consent shall not be unreasonably withheld or delayed. Notwithstanding anything to the contrary contained in this Section 7.16(c), this Section 7.16(c) shall not apply to Construction Contracts.

7.17 *Limitation on Formation and Acquisition of Subsidiaries and Purchase of Capital Stock.* Except as otherwise permitted pursuant to Section 7.4, form, create or acquire any direct or indirect Subsidiary, except so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, the Borrower and its Subsidiaries may form, create or acquire new Domestic Subsidiaries (so long as such new Domestic Subsidiary is Solvent); *provided*, that (a) no such new Subsidiary shall own or operate or possess any material license, franchise or right used in connection

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with the ownership or operation of the Project or any material Project assets, (b) any such new Subsidiary shall be a Wholly Owned Subsidiary of its requisite parent entity, and (c) any such new Subsidiary shall become a Loan Party hereunder and otherwise comply with the requirements of Section 6.10. Notwithstanding anything to the contrary contained in this Agreement, in no event shall any Loan Party own any Capital Stock other than that of its Wholly Owned Subsidiaries.

7.18 *Limitation on Hedge Agreements.* Enter into any Hedge Agreement other than Hedge Agreements entered into in the ordinary course of business, and not for speculative purposes, and to protect against changes in interest rates or foreign exchange rates.

7.19 *Limitation on Sale or Discount of Receivables.* Except as permitted pursuant to Section 7.5(b), directly or indirectly, sell with recourse, or discount or otherwise sell for less than the face value thereof, any of its notes or accounts receivable other than an assignment for purposes of collection in the ordinary course of business.

7.20 *Limitation on Zoning and Contract Changes and Compliance.* Initiate, consent to or acquiesce to (a) any zoning downgrade of the Mortgaged Properties or seek any material variance under any existing zoning ordinance except, in each case, to the extent such downgrade or variance could not reasonably be expected to materially and adversely affect the occupancy, use or operation of the Golf Course Land, the Phase II Land or the Casino Land, (b) use or permit the use of the Mortgaged Properties in any manner that could result in such use becoming a non-conforming use (other than a non-conforming use otherwise in compliance with applicable land use laws, rules and regulations by virtue of a variance or otherwise) under any zoning ordinance or any other applicable land use law, rule or regulation or (c) any change in any laws, requirements of Governmental Authorities or obligations created by private contracts which now or hereafter could reasonably be likely to materially and adversely affect the occupancy, use or operation of the Golf Course Land, the Phase II Land or the Casino Land.

7.21 *No Joint Assessment; Separate Lots.* Suffer, permit or initiate the joint assessment of any Mortgaged Property with any other real property constituting a separate tax lot.

7.22 *Restrictions on Payments of Management Fees.* Pay to Wynn Resorts any Management Fees unless:

(a) no Default or Event of Default shall have occurred and be continuing or would result from such payment and no Material Adverse Effect shall have occurred and be continuing or would result from such payment;

(b) the Consolidated Leverage Ratio of the Borrower and its consolidated Subsidiaries for the most recently ended four full consecutive fiscal quarter period of the Borrower immediately preceding the date on which such Management Fee is proposed to be paid is no greater than 3.5 to 1.0 (calculated on a pro forma basis, giving effect to the payment of the Management Fees proposed to be paid and any Indebtedness proposed to be incurred to finance the payment of such Management Fees as if the same was paid and/or incurred during such prior period); and

(c) such Management Fees in the aggregate do not exceed, during any 12-month period, 1.5% of the Net Revenues of the Borrower and its consolidated Subsidiaries for the period of four full consecutive fiscal quarters of the Borrower most recently ended prior to the commencement of such 12-month period.

Any Management Fees not permitted to be paid during a particular 12-month period pursuant to this Section 7.22 shall be deferred and shall accrue. Such accrued and unpaid Management Fees may be paid in any subsequent 12-month period to the extent such payment would be permitted under subsections (a), (b) and (c) of this Section 7.22 and the Management Fees Subordination Agreement.

7.23 *Additional Material Contracts.* Enter into or become a party to any Additional Material Contract except upon delivery to the Administrative Agent of each Delivery Requirement with respect

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to such Additional Material Contract; *provided, however*, that the requirements of this Section 7.23 shall not apply to Construction Contracts or the Material Contracts described in clauses (ii) and (iii) of the definition of "Water Show Entertainment and Production Agreement".

7.24 *Limitation on Phase II Land and Phase II Building Development and Operations.* At any time prior to the Disposition of the Phase II Land in accordance with Section 7.5(m), (i) construct upon, develop, improve, use or operate, or permit to be constructed upon, developed, improved, used or operated, the Phase II Land or any improvement on the Phase II Land (including further construction, development, improvement, use or operation of the Phase II Land Building), including any excavation or site work on the Phase II Land, (ii) enter into, or permit to be entered into, any contract or agreement for such construction, development, improvement, use or operation or for any materials, supplies or labor necessary in connection with such construction, development, improvement, use or operation (other than a contract or agreement that is conditional upon the Disposition of the Phase II Land in accordance with Section 7.5(m)) or (iii) incur any Indebtedness, the proceeds of which are expected to be used, or are used, for the construction, development, improvement, use or operation of the Phase II Land or any improvement on the Phase II Land, except:

(a) construction upon, development of or improvement to the Phase II Land and improvements thereon (including, without limitation, the Phase II Land Building, the Employee Parking Lot and the Driving Range) prior to the Final Completion Date in accordance with the Plans and Specifications or as otherwise contemplated in the Project Budget;

(b) use and operation of the Phase II Land and improvements thereon (including, without limitation, the Phase II Land Building, the Employee Parking Lot and the Driving Range) (i) for commercial office space purposes, including services and amenities reasonably related thereto and customary

for commercial office space properties, (ii) for the temporary operation of a full service Ferrari and Maserati automobile dealership, (iii) in accordance with the Phase II Building Lease, the Driving Range Lease and the Employee Parking Lot Lease, and (iv) for such other purposes as the Administrative Agent may approve in writing; *provided, however*, that in no event shall the Phase II Land or the improvements thereon (including, without limitation, the Phase II Land Building, the Employee Parking Lot and the Driving Range) be used or operated for gaming, hotel, entertainment or casino purposes;

(c) maintenance and repairs of the Phase II Land and improvements thereon (including, without limitation, the Phase II Land Building, the Employee Parking Lot and the Driving Range) in the ordinary course of business necessary to keep all associated Property and systems reasonably related to the operation of such Real Estate and other Property in good and working order and condition;

(d) modifications and/or reconfigurations to the Phase II Land Building in furtherance of the provision of office space and associated amenities to the Project or under leases to Persons permitted pursuant to Section 7.5(f);

(e) the design, construction, development and operation of the Entertainment Facility to the extent any of the same is located on the Phase II Land; and

(f) in the event of loss or damage to the Phase II Land or improvements thereon (including, without limitation, the Phase II Land Building, the Employee Parking Lot and the Driving Range), the repair and restoration of such Property in accordance with Section 2.24.

7.25 Limitation on Golf Course Land and Golf Course Development. At any time prior to the Disposition of the Golf Course Land in accordance with Section 7.5(k) (i) construct upon, develop or improve, or permit to be constructed upon, developed or improved, the Golf Course Land or any improvement on the Golf Course Land, including any excavation or site work on the Golf Course Land, (ii) enter into, or permit to be entered into, any contract or agreement for such construction, development or improvement, or for any materials, supplies or labor necessary in connection with such

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construction, development or improvement (other than a contract or agreement that is conditional upon the Disposition of the Golf Course Land in accordance with Section 7.5(k)) or (iii) incur any Indebtedness, the proceeds of which are expected to be used, or are used, for the construction, development or improvement of the Golf Course Land or any improvement on the Golf Course Land, except:

(a) construction upon, development of or improvement to the Golf Course Land and improvements thereon prior to the Final Completion Date in accordance with the Plans and Specifications;

(b) maintenance and repairs in the ordinary course of business necessary to keep all associated Property and systems reasonably related to the operation of the Golf Course Land and the Golf Course in good and working order and condition;

(c) modifications and/or reconfigurations of the Golf Course either (x) in connection with and in furtherance of the Disposition of the Wynn Home Site Land or the Home Site Land in accordance with Sections 7.5(j) and 7.5(l) or (y) desirable, in the reasonable opinion of the Borrower, in order to enhance or improve the Golf Course;

(d) use and operation of the Golf Course on the Golf Course Land in accordance with the Golf Course Lease; and

(e) in the event of loss or damage to the Golf Course Land or improvements thereon, the repair and restoration of such Property in accordance with Section 2.24.

7.26 Acquisition of Real Property. Acquire a fee, easement or other interest in any real property (including, without limitation, any lease of real property, but excluding (x) the acquisition (but not the exercise) of any options to acquire any such interests in real property, (y) the leasing of the Project or the Phase II Land Building as permitted by Section 7.5(f) and (z) the transactions contemplated by the Golf Course Lease, the Driving Range Lease, the Employee Parking Lot Lease and the Building Lease and any other leasehold interests acquired by a Loan Party over real property already subject to the Lien of the Mortgages) unless (a) the Borrower or an applicable other Loan Party shall have delivered to the Administrative Agent a Phase I Report with respect to such real property along with a corresponding reliance letter from an environmental consultant reasonably satisfactory to the Administrative Agent confirming that no Hazardous Substances were found in, on or under such real property in a manner that could reasonably be expected to result in a material liability to such Loan Party and that a Phase II Report is not warranted by the findings of such Phase I Report and (b) if Hazardous Substances were found in, on or under such real property pursuant to such Phase I Report in a manner that could reasonably be expected to result in a material liability to such Loan Party or a Phase II Report is warranted by the findings of such Phase I Report, the Borrower or an applicable other Loan Party shall have either (i) delivered to the Administrative Agent on behalf of the Lenders a Phase II Report with respect to such real property along with a corresponding reliance letter from an environmental consultant reasonably satisfactory to the Administrative Agent, confirming, in form and substance reasonably satisfactory to the Administrative Agent, either (A) that no Hazardous Substances were found in, on or under such real property in a manner that could reasonably be expected to result in a material liability to such Loan Party or (B) matters otherwise reasonably satisfactory to the Administrative Agent or (ii) delivered to the Administrative Agent an environmental indemnity agreement in form and substance reasonably satisfactory to the Administrative Agent pursuant to which an indemnitor reasonably satisfactory to the Administrative Agent indemnifies the Borrower, the relevant other Loan Parties and the Lenders from any and all damages or other liabilities relating to or arising from Hazardous Substances then in, on or under such real property or otherwise caused by or attributable to such indemnitor.

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7.27 Project Liquidity Reserve Account. (a) Prior to the Completion Date, utilize, apply or otherwise withdraw any amounts on deposit in the Project Liquidity Reserve Account except in accordance with Section 5.9.2 of the Disbursement Agreement.

(b) On or after the Completion Date, subject to Section 2.12(f), utilize, apply or otherwise withdraw any amounts on deposit in the Project Liquidity Reserve Account; provided, that to the extent Project Revenues or other funds (including proceeds of Revolving Loans or other Indebtedness permitted pursuant to Section 7.2) are not available to the Borrower or otherwise sufficient to pay Bank Debt Service or Note Debt Service as the same become due and payable (such circumstance to be certified in writing to the Administrative Agent by a Responsible Officer of the Borrower), the Administrative Agent shall apply amounts on deposit in the Project Liquidity Reserve Account to pay, first, due and owing Bank Debt Service and, second, in the event the Mortgage Notes Indenture Trustee delivers a Note Debt Service Shortfall Notice and no Bank Debt Service is due and owing at such time, due and owing Note Debt Service.

7.28 *Lease Terminations.* Terminate or permit the termination of, or reduce or permit the reduction of the Real Estate or other Property covered by, (i) the Driving Range Lease, the Building Lease or the Parking Lot Lease, in each case until such time as (A) the Phase II Land is Disposed of in accordance with Section 7.5(m) and (B) with respect to the Parking Lot Lease, the Borrower has entered into such agreements or otherwise obtained such Property which in the reasonable opinion of the Majority Arrangers provides a satisfactory alternative to the Parking Lot Lease with respect to the provision of parking services for the Borrower's employees or (ii) the Golf Course Lease until such time as the Golf Course Land is Disposed of in accordance with Section 7.5(k) (*provided*, that the Real Estate or other Property subject to the Golf Course Lease may be reduced in connection with the Disposition of the Wynn Home Site Land pursuant to Section 7.5(j) or the Disposition of the Home Site Land in accordance with Section 7.5(l), in either case so long as such reduction is only with respect to such Real Estate or other Property being Disposed of pursuant to such Disposition).

SECTION 8. EVENTS OF DEFAULT

If any of the following events shall occur and be continuing:

(a) (i) The Borrower shall fail to pay any principal of any Loan or Reimbursement Obligation when due in accordance with the terms hereof; or (ii) the Borrower shall fail to pay any interest on any Loan or Reimbursement Obligation or any Loan Party shall fail to pay any other amount payable hereunder or under any other Loan Document within five days after any such interest or other amount under this clause (ii) becomes due in accordance with the terms hereof; *provided*, that the failure to pay any amount due under the Disbursement Agreement (and not otherwise due hereunder) shall constitute an Event of Default hereunder only to the extent such failure to pay constitutes a Disbursement Agreement Event of Default; or

(b) Any representation or warranty made or deemed made by Wynn Resorts, the Completion Guarantor or any Loan Party herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with this Agreement or any such other Loan Document shall prove to have been inaccurate in any material respect on or as of the date made or deemed made; *provided*, that the inaccuracy of any representation or warranty contained only in the Disbursement Agreement shall constitute an Event of Default hereunder only to the extent such inaccuracy constitutes a Disbursement Agreement Event of Default; or

(c) (i) any Loan Party shall default in the observance or performance of any agreement contained in Section 6.4, Section 6.7(a), Section 7 or Section 5 of the Guarantee and Collateral Agreement (*provided*, that with respect to those covenants incorporated by reference from this Agreement into the Guarantee and Collateral Agreement and made the direct obligations of the

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Loan Parties pursuant to Section 5.1 of the Guarantee and Collateral Agreement, no Event of Default shall occur from a Loan Party's default in the observance or performance of such covenants until expiration of the notice and cure periods, if any, set forth under this Section 8 that are applicable to the corresponding covenants in this Agreement), (ii) Wynn Resorts shall default in the observance or performance of any agreement contained in the Wynn Resorts Guaranty (or, to the extent executed and delivered pursuant to the Wynn Resorts Guaranty, the Wynn Resorts Security Agreement), (iii) the Completion Guarantor shall default in the observance or performance of any covenant or agreement contained in the Completion Guaranty, (iv) an "Event of Default" under and as defined in any Mortgage shall have occurred and be continuing, (v) a Disbursement Agreement Event of Default shall have occurred and be continuing, (vi) any Loan Party shall fail to at all times maintain in full force and effect the insurance policies and programs listed on Schedule 6.5(d) (except for automobile, workers compensation, pollution liability and design errors and omissions insurance) or (vii) any Loan Party shall fail to at all times maintain in full force and effect the insurance policies and programs with respect to automobile, workers compensation, pollution liability and design errors and omissions insurance listed on Schedule 6.5(d) where such default shall not have been remedied within thirty (30) days after the earlier of (x) the applicable Loan Party becoming aware of such failure or (y) notice of such failure from the Administrative Agent or any Lender to such Loan Party; or

(d) Wynn Resorts or any Loan Party shall default in the observance or performance of any other covenant or agreement contained in this Agreement or any other Loan Document to which it is a party (other than as provided in subsections (a) through (c) of this Section but subject to the proviso set forth in Section 8(c)), and such default shall continue unremedied for a period of 30 days after the earlier of (i) the Borrower or any other Loan Party becoming aware of such default or (ii) receipt by the Borrower or any other Loan Party of notice from the Administrative Agent or any Lender of such default; *provided*, that the failure to perform or comply with any such provision of the Disbursement Agreement shall constitute an Event of Default hereunder only to the extent such failure to perform or to comply constitutes a Disbursement Agreement Event of Default; or

(e) The Borrower or any other Loan Party shall (i) default in making any payment of any principal of any Indebtedness (including, without limitation, any Guarantee Obligation, but excluding the Loans) on the scheduled due date with respect thereto; or (ii) default in making any payment of any interest on any such Indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; or (iii) default in the observance or performance of any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or beneficiary of such Indebtedness (or a trustee or agent on behalf of such holder or beneficiary) to cause immediately such Indebtedness to become due prior to its stated maturity or (in the case of any such Indebtedness constituting a Guarantee Obligation) to become payable; *provided*, that a default, event or condition described in subsection (i), (ii) or (iii) of this subsection (e) shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in subsections (i), (ii) and (iii) of this subsection (e) shall have occurred and be continuing with respect to Indebtedness the outstanding principal amount of which exceeds in the aggregate \$5,000,000; or

(f) (i) Wynn Resorts, the Completion Guarantor, the Borrower or any other Loan Party shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation,

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dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or Wynn Resorts, the Completion Guarantor, the Borrower or any other Loan Party shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Wynn Resorts, the Completion Guarantor, the Borrower or any other Loan Party any case, proceeding or other action of a nature referred to in subsection (i) above that (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of 60 days; or (iii) there shall be commenced against Wynn Resorts, the Completion Guarantor, the Borrower or any other Loan Party any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof; or (iv) Wynn Resorts, the Completion Guarantor, the Borrower or any other Loan Party shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in subsection (i), (ii), or (iii) above; or (v) Wynn Resorts, the Completion Guarantor, the Borrower or any other Loan Party shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(g) (i) Any Person shall engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan, (ii) any "accumulated funding deficiency" (as defined in Section 302 of ERISA), whether or not waived, shall exist with respect to any Plan or any Lien in favor of the PBGC or a Plan shall arise on the assets of any Loan Party or any Commonly Controlled Entity, (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of the Required Lenders, likely to result in the termination of such Plan for purposes of Title IV of ERISA, (iv) any Single Employer Plan shall terminate for purposes of Title IV of ERISA other than in a standard termination under Section 4041(b) of ERISA, (v) any Loan Party or any Commonly Controlled Entity shall, or in the reasonable opinion of the Required Lenders is likely to, incur any liability in connection with a withdrawal from, or the Insolvency or Reorganization of, a Multiemployer Plan or (vi) any Loan Party, or any of their Subsidiaries or any Commonly Controlled Entity shall be required to make during any Fiscal Year payments pursuant to any employee welfare benefit plan (as defined in Section 3(1) of ERISA) that provides benefits to retired employees (or their dependents), other than as required by Sections 601 et. seq. of ERISA, Section 4980B of the Code, or the corresponding provisions of applicable state law; and in each case in subsections (i) through (vi) above, such event or condition, together with all other such events or conditions, if any, could reasonably be expected to have a Material Adverse Effect; or

(h) One or more judgments or decrees shall be entered against any Loan Party involving for the Loan Parties taken as a whole a liability (not paid or fully covered by insurance as to which the relevant insurance company has acknowledged coverage) of \$5,000,000 or more, and all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within 45 days from the entry thereof; or

(i) Any of the Security Documents, the guarantee contained in Section 2 of the Guarantee and Collateral Agreement or, to the extent executed and delivered pursuant to the Wynn Resorts Guaranty, the Wynn Resorts Security Agreement, shall cease, for any reason (other than pursuant to the terms thereof), to be in full force and effect, or any Loan Party or any Affiliate of any Loan Party shall so assert or shall assert that any provision of any Loan Document is not in full force

and effect, or any Lien created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby; or

(j) Any of the Operative Documents shall terminate or be terminated or canceled, become invalid or illegal or otherwise cease to be in full force and effect prior to its stated expiration date or Wynn Resorts, the Borrower, any other Loan Party, any Affiliate of the Borrower or any other Person shall breach or default under any term, condition, provision, covenant, representation or warranty contained in any Project Document (after the giving of any applicable notice and the expiration of any applicable grace period); provided, that the occurrence of any of the foregoing events with respect to any Project Document (other than any Material Affiliated Contract) shall constitute an Event of Default hereunder only if the same could reasonably be expected to result in a Material Adverse Effect and the same shall continue unremedied for thirty (30) days after the earlier of (i) the Borrower or any other Loan Party becoming aware of such occurrence or (ii) receipt by the Borrower or any other Loan Party of notice from the Administrative Agent or any Lender of such occurrence; provided, however, that in the case of any such Project Document, if the occurrence is the result of actions or inactions by a party other than a Loan Party, then no Event of Default shall be deemed to have occurred as a result thereof if the Borrower provides written notice to the Administrative Agent immediately upon (but in no event more than two (2) Banking Days after) the Borrower or any Loan Party becoming aware of, or receiving notice of, such occurrence that the relevant Loan Party intends to replace such Project Document and (x) such Loan Party obtains a replacement obligor or obligors for the affected party, (y) such Loan Party enters into a replacement Project Document on terms no less beneficial to such Loan Party and the Secured Parties in any material respect than the Project Document being replaced within sixty (60) days of such occurrence; *provided, however*, that the replacement Project Document may require the applicable Loan Party to pay amounts under the replacement Project Document in excess of those that would have been payable under the replaced Project Document and (z) such occurrence, after considering any replacement obligor and replacement Project Document and the time required to implement such replacement, has not had and could not reasonably be expected to have a Material Adverse Effect; *provided, further*, that a breach, default or termination under any Construction Contract prior to the Completion Date shall constitute an Event of Default hereunder only to the extent such breach, default or termination constitutes a Disbursement Agreement Event of Default; or

(k) an "event of default" under and as defined in any of the Financing Agreements (other than the Loan Documents) (in any event, after the expiration of any applicable cure periods); or

(l) (i) A Change of Control shall occur; or (ii) a Specified Change of Control shall occur; or

(m) The Liens on the Property of the Completion Guarantor, the Loan Parties or Wynn Resorts, under the Mortgage Notes Indenture or the Mortgage Notes Guarantee, in each case as permitted pursuant to Section 7.3(k), shall cease, for any reason, to be validly subordinated and junior in right to the Liens of the Administrative Agent and the Secured Parties on the Property of such Persons under the Loan Documents;

(n) Any Subordinated Debt or the Management Fees payable under the Management Agreement shall cease, for any reason, to be validly subordinated to the Obligations of the Loan Parties as provided in the Management Agreement, the Management Fee Subordination Agreement and the documentation, instruments or other agreements related to the Subordinated Debt, as the case may be;

(p) The Borrower or any other Loan Party shall fail to observe, satisfy or perform, or there shall be a violation or breach of, any of the terms, provisions, agreements, covenants or conditions attaching to or under the issuance to such Person of any Permit or any such Permit or any provision thereof shall be suspended, revoked, cancelled, terminated or materially and adversely modified or fail to be in full force and effect or any Governmental Authority shall challenge or seek to revoke any such Permit if such failure to perform, violation, breach, suspension, revocation, cancellation, termination or modification could reasonably be expected to have a Material Adverse Effect; or

(p) The Completion Date shall not have occurred by the Scheduled Completion Date.

then, and in any such event, (A) if such event is an Event of Default specified in subsection (i) or (ii) of paragraph (f) above with respect to Wynn Resorts or any Loan Party, automatically the Commitments shall immediately terminate and the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents (including, without limitation, all amounts of L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented the documents required thereunder) shall immediately become due and payable, and (B) if such event is any other Event of Default, either or both of the following actions may be taken: (i) with the consent of the Required Facility Lenders for the respective Facility, the Administrative Agent may, or upon the request of the Required Facility Lenders for the respective Facility, the Administrative Agent shall, by notice to the Borrower, declare the Revolving Credit Commitments and/or the Term Loan Commitments, as the case may be, to be terminated forthwith, whereupon the applicable Commitments shall immediately terminate; and (ii) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower, declare the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents (including, without limitation, all amounts of L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented the documents required thereunder) to be due and payable forthwith, whereupon the same shall immediately become due and payable. Upon the occurrence and during the continuation of an Event of Default, the Administrative Agent and the Lenders shall be entitled to exercise any and all remedies available under the Security Documents (subject to applicable Nevada Gaming Laws and securing any required Nevada Gaming Approvals), including, without limitation, the Guarantee and Collateral Agreement and the Mortgages, or otherwise available under applicable law, in equity or otherwise, including, without limitation, the right to (I) enter into possession of the Project and perform any and all work and labor necessary to complete the Project or to operate and maintain the Project, and all sums expended by the Administrative Agent or any other Secured Party in so doing, together with interest on such total amount at the highest default rate provided hereunder, shall be Obligations hereunder, shall be repaid by the Borrower to the Administrative Agent or such Secured Party upon demand and shall be secured by the Loan Documents, notwithstanding that such expenditures may, together with amounts advanced under this Agreement, exceed the total amount of the Commitments and (II) set off and apply all monies on deposit in any Account or any amounts paid under the Completion Guaranty or any other monies of a Loan Party on deposit with the Administrative Agent or any Lender to the satisfaction of the Obligations. With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to this paragraph, the Borrower shall at such time deposit in a cash collateral account opened by the Administrative Agent an amount in immediately available funds equal to the aggregate then undrawn and unexpired amount of such Letters of Credit (and the Borrower hereby grants to the Administrative Agent, for the ratable benefit of the Secured Parties, a continuing security interest in all amounts at any time on deposit in such cash collateral account to secure the undrawn and unexpired amount of such Letters of Credit and all other Obligations). If

at any time the Administrative Agent determines that any funds held in such cash collateral account are subject to any right or claim of any Person other than the Administrative Agent and the Secured Parties or as otherwise permitted pursuant to Section 7.3(k) or that the total amount of such funds is less than the aggregate undrawn and unexpired amount of outstanding Letters of Credit, the Borrower shall, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited and held in such cash collateral account, an amount equal to the excess of (a) such aggregate undrawn and unexpired amount over (b) the total amount of funds, if any, then held in such cash collateral account that the Administrative Agent determines to be free and clear of any such right and claim. Amounts held in such cash collateral account shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay other Obligations of the Loan Parties hereunder and under the other Loan Documents. After all such Letters of Credit shall have expired or been fully drawn upon, all Reimbursement Obligations shall have been satisfied and all other Obligations of the Loan Parties hereunder and under the other Loan Documents shall have been paid in full, the balance, if any, in such cash collateral account shall be returned to the Loan Parties (or such other Person as may be lawfully entitled thereto). Notwithstanding anything to the contrary contained in this Agreement, in the event the consent of the Lenders (whether the Required Lenders, the Required Facility Lenders for a particular Facility or otherwise) is required in connection with the exercise of remedies pursuant to this Section 8, for purposes of determining the required lender consent pursuant to the applicable definitions thereto (whether the "Required Lenders", the "Required Facility Lenders" or otherwise), the Commitments of the Lenders shall be deemed terminated.

SECTION 9. THE AGENTS; THE ARRANGERS; THE MANAGERS

9.1 *Appointment.* Each Lender hereby irrevocably designates and appoints the Agents as the agents of such Lender under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes each Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to such Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, no Agent shall have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against any Agent.

9.2 *Delegation of Duties.* Each Agent may execute any of its duties under this Agreement and the other Loan Documents by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. No Agent shall be responsible for the negligence or

misconduct of any agents or attorneys in-fact selected by it with reasonable care.

9.3 *Exculpatory Provisions.* No Arranger, Manager or Agent nor any of their respective officers, directors, partners, employees, agents, attorneys and other advisors, attorneys-in-fact or affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan Document (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted solely and proximately from its or such Person's own gross negligence or willful misconduct in breach of a duty owed to the party asserting liability) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Person or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Arrangers, the

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Managers or the Agents under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of any Person party thereto to perform its obligations hereunder or thereunder. Neither the Agents, the Managers nor the Arrangers shall be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Person.

9.4 *Reliance by Agents.* Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any instrument, writing, resolution, notice, consent, certificate, affidavit, letter, teletype, telex or teletype message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Loan Parties), independent accountants and other experts selected by such Agent. The Agents may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. Each Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders or the requisite Lenders required under Section 10.1 to authorize or require such action (or, if so specified by this Agreement, all Lenders) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Each Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders or the requisite Lenders under Section 10.1 to authorize or require such action (or, if so specified by this Agreement, all Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans and Letters of Credit.

9.5 *Notice of Default.* No Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless such Agent has received notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the requisite Lenders (or, if so specified by this Agreement, all Lenders); *provided*, that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

9.6 *Non-Reliance on Agents, Managers, Arrangers and Other Lenders.* Each Lender expressly acknowledges that neither the Arrangers, the Agents, the Managers nor any of their respective officers, directors, employees, agents, attorneys and other advisors, partners, attorneys-in-fact or affiliates have made any representations or warranties to it and that no act by any Arranger, Agent or Manager hereinafter taken, including any review of the affairs of a Loan Party, the Completion Guarantor or any other Person, shall be deemed to constitute any representation or warranty by any Arranger, Agent or Manager to any Lender. Each Lender represents to the Arrangers, the Agents and the Managers that it has, independently and without reliance upon any Arranger, Agent or Manager or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition, prospects and creditworthiness of the Loan Parties and the Completion Guarantor and their affiliates and made its own decision to make its Loans (and in the case of the Issuing Lender, its Letters of Credit) hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without

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reliance upon any Arranger, Agent or Manager or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition, prospects and creditworthiness of the Loan Parties and the Completion Guarantor and their affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, no Arranger, Agent or Manager shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or the Completion Guarantor or any other Person that may come into the possession of such Arranger, Agent or Manager or any of its officers, directors, employees, agents, attorneys and other advisors, partners, attorneys-in-fact or affiliates.

9.7 *Indemnification.* The Lenders agree to indemnify each Arranger, Agent and Manager in its capacity as such (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their respective Aggregate Exposure Percentages in effect on the date on which indemnification is sought under this Section (or, if indemnification is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such Aggregate Exposure Percentages immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (including, without limitation, at any time following the payment of the Loans) be imposed on, incurred by or asserted against such Arranger, Agent or Manager in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Arranger, Agent or Manager under or in connection with any of the foregoing; provided, that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have

resulted solely and proximately from such Arranger's, Agent's or Manager's gross negligence or willful misconduct in breach of a duty owed to such Lender. The agreements in this Section 9.7 shall survive the payment of the Loans and Letters of Credit and all other amounts payable hereunder.

9.8 *Arrangers, Agents and Managers in Their Individual Capacities.* Each Arranger, Agent and Manager and their respective affiliates may make loans to, accept deposits from and generally engage in any kind of business with any Loan Party as though such Arranger was not an Arranger, such Agent was not an Agent and such Manager was not a Manager. With respect to any Loans made or renewed by it and with respect to any Letter of Credit issued or participated in by it, each Arranger, Agent and Manager shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not an Arranger, an Agent or a Manager, as the case may be, and the terms "Lender" and "Lenders" shall include each Arranger, Agent and Manager in their respective individual capacities.

9.9 *Successor Agents.* The Administrative Agent may resign as Administrative Agent upon 10 days' notice to the Lenders and the Borrower. If the Administrative Agent shall resign as Administrative Agent under this Agreement and the other Loan Documents, then the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which successor agent shall (unless an Event of Default under Section 8(a) or Section 8(f) with respect to the Borrower shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld, conditioned or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the term "Administrative Agent" shall mean such successor agent effective upon such appointment and approval, and the former

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Administrative Agent's rights, powers and duties as Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any holders of the Loans or Letters of Credit. If no successor agent has accepted appointment as Administrative Agent by the date that is 10 days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. After any retiring Administrative Agent's resignation as the Administrative Agent, the provisions of this Section 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent under this Agreement and the other Loan Documents.

9.10 *Authorization to Release Liens.* The Administrative Agent is hereby irrevocably authorized by each of the Lenders to release any Lien covering any Property of the Completion Guarantor, the Borrower or any of the other Loan Parties or any other Person that is the subject of a Disposition which is permitted by this Agreement or any other Loan Document or which has been consented to in accordance with Section 10.1.

9.11 *The Arrangers and Managers.* Other than with respect to, in the case of the Arrangers, Sections 2.4, 2.24, 7.2(h) and 7.5 and the definition of "Subordinated Debt", the Arrangers and the Managers, in their capacity as such, shall have no duties or responsibilities, and shall incur no liability, under this Agreement and the other Loan Documents.

9.12 *Withholdings.* (a) To the extent required by any applicable law, the Administrative Agent may withhold from any interest payment to any Lender an amount equivalent to any applicable withholding tax. If the forms or other documentation required by Section 2.20(f) are not delivered to the Administrative Agent, then the Administrative Agent may withhold from any interest payment to any Lender not providing such forms or other documentation, an amount equivalent to the applicable withholding tax.

(b) If the Internal Revenue Service or any authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as tax or otherwise, including penalties and interest, together with all expenses incurred, including legal expenses, allocated staff costs and any out of pocket expenses.

(c) If any Lender sells, assigns, grants a participation in, or otherwise transfers its rights under this Agreement, the purchaser, assignee, participant or transferee, as applicable, shall comply and be bound by the terms of Section 2.20(f) and this Section 9.12.

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SECTION 10. MISCELLANEOUS

10.1 *Amendments and Waivers.* (a) Neither this Agreement nor any other Loan Document, nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 10.1. The Required Lenders and each other Person party to the relevant Loan Document may, or (with the written consent of the Required Lenders) the Administrative Agent and each other Person party to the relevant Loan Document may, from time to time, (x) enter into written amendments, supplements or modifications hereto and to the other Loan Documents (including amendments and restatements hereof or thereof) for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the other Persons hereunder or thereunder or (y) waive, on such terms and conditions as may be specified in the instrument of waiver, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences. Notwithstanding the foregoing, no such waiver and no such amendment, supplement or modification shall (i) forgive the principal amount or extend the final scheduled date of maturity of any Loan or Reimbursement Obligation, extend the scheduled date of any amortization payment in respect of any Term Loan, reduce the stated rate of any interest or fee payable hereunder or forgive the payment of any interest or fee payable hereunder or extend the scheduled date of any payment thereof, or increase the amount or extend the expiration date of any Commitment of any Lender, in each case without the consent of each Lender (other than a Defaulting Lender) directly affected thereby (such consent being in lieu of the consent of the Required Lenders required pursuant to the second sentence of this Section 10.1); (ii) amend, modify or waive any provision of this Section or reduce any percentage specified in the definition of Required Lenders, Required Facility Lenders, Applicable Facility Lenders or Majority Initial Arrangers, consent to the assignment or transfer by any Person (other than a Lender) of any of its rights and obligations under this Agreement and the other Loan Documents, release all or substantially all of the Collateral or release a significant Guarantor from its guarantee obligations under the Loan Documents, in each case without the consent of all Lenders (other than Defaulting Lenders); (iii) amend, modify or waive any provision of Section 9 without the consent of any Arranger, Agent or Manager directly affected thereby (in addition to the consent of the Required Lenders required pursuant to the second sentence of this Section 10.1); (iv) amend, modify or waive any provision of Section 2.6 or 2.7 without the written consent of the Swing Line Lender (in

addition to the consent of the Required Lenders required pursuant to the second sentence of this Section 10.1); (v) amend, modify or waive any provision of Section 2.12(g) or Section 2.18 without the consent of the Required Facility Lenders with respect to the Facility directly affected thereby (such consent being in lieu of the consent of the Required Lenders required pursuant to the second sentence of this Section 10.1); (vi) amend, modify or waive any provision of Section 3 without the consent of the Issuing Lender (in addition to the consent of the Required Lenders required pursuant to the second sentence of this Section 10.1), (vii) amend, modify or waive any condition, provision or requirement to the funding of Loans or the issuance or amendment of Letters of Credit (whether pursuant to the Disbursement Agreement, this Agreement or otherwise) without the consent of, (I) in the case of Term Loans, the Required Facility Lenders with respect to the Term Loan Facility, (II) in the case of Revolving Credit Loans, the Required Facility Lenders with respect to the Revolving Credit Facility, and (III) in the case of the issuance or amendment of Letters of Credit, the Required Facility Lenders with respect to the Revolving Credit Facility (in each case such consent being in lieu of the consent of the Required Lenders required pursuant to the second sentence of this Section 10.1), (viii) subject to clause (ii) above, amend, modify or waive any condition, provision or requirement set forth in Section 7.5 or release any Collateral not permitted to be Disposed of pursuant to Section 7.5 without, in each case, the consent of the Supermajority Lenders, (ix) amend, modify or waive any provision of Section 2.5.1 or 2.5.2 of the Disbursement Agreement without the written consent of all Lenders (other than Defaulting Lenders) and (x) reduce or otherwise diminish the amounts (I) required to be deposited, and from time to time maintained on deposit, by the Borrower in the Company's Funds Account and

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the Second Mortgage Notes Proceeds Account, respectively, as required pursuant to the Disbursement Agreement or (II) utilized or to be utilized from such Accounts for the payment of Project Costs as required pursuant to the Disbursement Agreement, in each case without the written consent of all Lenders (other than Defaulting Lenders); *provided, however*, that any Loan Conversion shall be at the sole discretion of the Majority Initial Arrangers and shall not require the consent of any other Lender pursuant to this Section 10.1 or otherwise. Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, the Agents, the Arrangers, the Managers and all future holders of the Loans and Letters of Credit. In the case of any waiver, the Loan Parties, the Lenders, the Arrangers, the Managers and the Agents shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. Any such waiver, amendment, supplement or modification shall be effected by a written instrument signed by the parties required to sign pursuant to the foregoing provisions of this Section; *provided*, that delivery of an executed signature page of any such instrument by facsimile transmission shall be effective as delivery of a manually executed counterpart thereof. Subject to subsections (vii), (ix) and (x) above, to the extent the Administrative Agent is entitled or required to make any determinations (whether a consent, waiver or otherwise) under the Intercreditor Agreements or the Disbursement Agreement, the Administrative Agent shall make such determinations upon the advice of the Required Lenders.

(b) Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Required Facility Lenders with respect to the affected Facility and the Borrower to permit a Revolving Credit Lender(s) or a Term Loan Lender(s), as the case may be (or other Eligible Assignee reasonably acceptable to the Administrative Agent, who desires to become a Revolving Credit Lender or a Term Loan Lender, as the case may be), to increase its (their) Revolving Credit Commitments or Term Loan Commitments, as the case may be (or, in the case of an Eligible Assignee, acquire Revolving Credit Commitments or Term Loan Commitments, as the case may be, in which case such Eligible Assignee shall be deemed a "Revolving Credit Lender" or "Term Loan Lender", as the case may be, hereunder), *provided*, that the Administrative Agent may make such changes to this Agreement and the other Loan Documents as are necessary solely to permit a Revolving Credit Lender(s) or a Term Loan Lender(s), as the case may be (or other Eligible Assignee reasonably acceptable to the Administrative Agent, who desires to become a Revolving Credit Lender or a Term Loan Lender, as the case may be), to increase its (their) Revolving Credit Commitments or Term Loan Commitments, as the case may be (or, in the case of an Eligible Assignee, acquire Revolving Credit Commitments or Term Loan Commitments, as the case may be, in which case such Eligible Assignee shall be deemed a "Revolving Credit Lender" or "Term Loan Lender", as the case may be, hereunder), in an amount permitted by, and for the purposes set forth in, Section 7.2(m); *provided, further*, that with respect to any increases in the aggregate Commitments prior to the Completion Date in excess of the sum of (I) \$50,000,000 and (II) Commitment increases made pursuant to the first proviso of this subsection 10.1(b), this Agreement may be amended (or amended and restated) only with the written consent of the Supermajority Lenders, the Supermajority Facility Lenders with respect to the affected Facility and the Borrower to permit a Revolving Credit Lender(s) or a Term Loan Lender(s), as the case may be (or other Eligible Assignee reasonably acceptable to the Administrative Agent, who desires to become a Revolving Credit Lender or a Term Loan Lender, as the case may be), to increase its (their) Revolving Credit Commitments or Term Loan Commitments, as the case may be (or, in the case of an Eligible Assignee, acquire Revolving Credit Commitments or Term Loan Commitments, as the case may be, in which case such Eligible Assignee shall be deemed a "Revolving Credit Lender" or "Term Loan Lender", as the case may be, hereunder) (all such increases in the Revolving Credit Commitments and the Term Loan Commitments pursuant to this subsection 10.1(b), the "*Increased Commitments*"), in each which case the Lenders holding such Increased

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Commitments shall be appropriately included in any future determination of the Required Lenders, the Supermajority Lenders and the Required Facility Lenders and Supermajority Facility Lenders with respect to the applicable Facility; *provided*, that nothing contained in this sentence is intended, nor shall it be construed, to be a commitment or otherwise create an obligation on behalf of any Lender to make Increased Commitments; *provided, further*, that, except with respect to Loan Conversions, in no event shall the Commitment of any Lender be increased without such Lender's consent.

(c) Notwithstanding anything to the contrary in this Section 10.1, the parties to the Administrative Agent Fee Letter and the Facility Fee Letter may, (i) enter into written amendments, supplements or modifications to the Administrative Agent Fee Letter or the Facility Fee Letter, as the case may be (including amendments and restatements thereof), for the purpose of adding any provisions thereto or changing in any manner the rights thereunder of the parties thereto or (ii) waive, on such terms and conditions as may be specified in the instrument of waiver, (1) any of the requirements of the Administrative Agent Fee Letter or the Facility Fee Letter, as the case may be, or (2) any Default or Event of Default to the extent (and only to the extent) relating to the Administrative Agent Fee Letter or the Facility Fee Letter, it being understood that the waiver of any Default or Event of Default (or portion thereof) relating to any of the other Loan Documents may be accomplished only as set forth in the immediately preceding paragraph.

10.2 *Notices.* All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three Business Days after being deposited in the mail, postage prepaid, or, in the case of telecopy notice, when received, addressed (a) in the case of the Borrower, the Arrangers, the Managers and the Agents, as follows and (b) in the case of the Lenders, as set forth on Schedule I to the Lender Addendum to which such Lender is a party or, in the case of a Lender which becomes a party to this Agreement pursuant to an Assignment and Acceptance, in such Assignment and Acceptance or (c) in the case of any party, to such other address as such party may hereafter notify to the other parties hereto:

The Borrower: Wynn Las Vegas, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attention: Ron Kramer
Telecopy: (702) 791-0167
Telephone: (702) 733-4123

with a copy to: Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Attention: C. Kevin McGeehan, Esq.
Telecopy: (310) 282-5610
Telephone: (310) 203-7110

The Administrative Agent
or Swing Line Lender: Deutsche Bank Trust Company Americas
200 Crescent Court
Suite 550
Dallas, Texas 75201
Attention: Gerald K. Dupont
Telecopy: (214) 740-7910
Telephone: (214) 740-7913

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with a copy to: Latham & Watkins
885 Third Avenue
New York, New York 10022
Attention: Christopher Plaut, Esq.
Telecopy: (212) 906-1200
Telephone: (212) 751-4864

Sheppard, Mullin, Richter & Hampton, LLP
333 South Hope Street, 48th Floor
Los Angeles, California 90071
Attention: William M. Scott IV, Esq.
Telecopy: (213) 620-1398
Telephone: (213) 617-4276

Deutsche Bank Securities Inc., as advisor, lead
arranger and joint book running manager 200 Crescent Court
Suite 550
Dallas, Texas 75201
Attention: Gerald K. Dupont
Telecopy: (214) 740-7910
Telephone: (214) 740-7913

with a copy to: Latham & Watkins
885 Third Avenue
New York, New York 10022
Attention: Christopher Plaut, Esq.
Telecopy: (212) 906-1200
Telephone: (212) 751-4864

Banc of America Securities LLC, as advisor, lead
arranger, joint book running manager and
syndication agent 9 West 57th Street, 32nd Floor
New York, New York 10019
Attention: Elton Vogel
Telecopy: (212) 847-5329
Telephone: (212) 583-8000

with a copy to: Latham & Watkins
885 Third Avenue
New York, New York 10022
Attention: Christopher Plaut, Esq.
Telecopy: (212) 906-1200
Telephone: (212) 751-4864

Bear, Stearns & Co. Inc., as advisor, arranger and
joint book running manager: 383 Madison Avenue
New York, New York 10179
Attention: Victor Bulzacchelli
Telecopy: (212) 272-8540
Telephone: (212) 272-3042

with a copy to: Latham & Watkins

885 Third Avenue
New York, New York 10022
Attention: Christopher Plaut, Esq.
Telecopy: (212) 906-1200
Telephone: (212) 751-4864

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Bear Stearns Corporate Lending Inc., as joint
documentation agent

383 Madison Avenue
New York, New York 10179
Attention: Victor Bulzacchelli
Telecopy: (212) 272-8540
Telephone: (212) 272-3042

with a copy to:

Latham & Watkins
885 Third Avenue
New York, New York 10022
Attention: Christopher Plaut, Esq.
Telecopy: (212) 906-1200
Telephone: (212) 751-4864

Dresdner Bank AG, New York and Grand
Cayman Branches, as arranger and joint
documentation agent

1301 Avenue of the Americas—36th Floor
New York, New York 10019
Attention: Michael Lessler
Telecopy: (212) 429-4181
Telephone: (212) 429-2242

with a copy to:

Dresdner Kleinwort Wasserstein Services
75 Wall Street
New York, New York 10005
Attention: Larry Candido, Esq.
Telecopy: (212) 850-0507
Telephone: (914) 522-3247

JPMorgan Chase Bank, as joint documentation
agent

270 Park Avenue, 4th Floor
New York, New York 10017
Attention: John Mix
Telecopy: (212) 270-3153
Telephone: (212) 270-9562

with a copy to:

JPMorgan Chase Bank
270 Park Avenue, 39th Floor
New York, New York 10017
Attention: William C. Viets, Esq.
Telecopy: (212) 270-3153
Telephone: (212) 270-1268

Issuing Lender:

As notified by the Issuing Lender to the
Administrative Agent and the Borrower

10.3 *No Waiver; Cumulative Remedies.* No failure to exercise and no delay in exercising, on the part of any Arranger, any Agent, any Manager or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

10.4 *Survival of Representations and Warranties.* All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans and other extensions of credit hereunder.

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10.5 *Payment of Expenses; Indemnification.* The Borrower agrees (a) to pay or reimburse the Arrangers, the Agents and the Managers for all their reasonable and itemized out-of-pocket costs and expenses incurred in connection with the syndication of the Facilities (other than fees payable to syndicate members) and the development, preparation, negotiation and execution of, and any amendment, supplement or modification to, this Agreement and the other Loan Documents and any other documents prepared in connection herewith or therewith, and the consummation and administration of the transactions contemplated hereby and thereby, including, without limitation, the reasonable fees and disbursements and other charges of the Collateral Agent and counsel to each of the Arrangers, the Agents and the Managers and the charges of IntraLinks and the fees, expenses and disbursements of consultants (including, without limitation, the Construction Consultant and any other engineering, insurance or construction consultants), (b) to pay or reimburse each Lender, Arranger, Manager

and Agent for all its costs and expenses incurred in connection with the enforcement or preservation of any rights under this Agreement, the other Loan Documents and any such other documents, including, without limitation, the fees and disbursements of counsel (including the allocated fees and disbursements and other charges of in-house counsel) to each Lender and of counsel to each Arranger, Manager and Agent and the charges of IntraLinks, (c) to pay, indemnify, and hold each Lender, Arranger, Manager and Agent harmless from, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay in paying, stamp, excise and other taxes, if any, which may be payable or determined to be payable in connection with the execution and delivery of, or consummation or administration of any of the transactions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the other Loan Documents and any such other documents, and (d) to pay, indemnify, and hold each Lender, Arranger, Agent, Manager, their respective affiliates, and their respective officers, directors, partners, trustees, employees, affiliates, shareholders, attorneys and other advisors, agents, attorneys-in-fact and controlling persons (each, an "Indemnitee") harmless from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to or arising out of the execution, delivery, enforcement, performance and administration of this Agreement, the other Loan Documents and any such other documents, including, without limitation, any of the foregoing relating to the use of proceeds of the Loans or Letters of Credit, the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations of any Loan Party or any of their Properties or the use by unauthorized persons of information or other materials sent through electronic, telecommunications or other information transmission systems that are intercepted by such persons and the fees and disbursements and other charges of legal counsel in connection with claims, actions or proceedings by any Indemnitee against the Borrower hereunder (all the foregoing in this subsection (d), collectively, the "Indemnified Liabilities"), provided, that the Borrower shall have no obligation hereunder to any Indemnitee with respect to Indemnified Liabilities to the extent such Indemnified Liabilities are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted solely and proximately from the gross negligence or willful misconduct of such Indemnitee in breach of a duty owed to the Borrower. Without limiting the foregoing, and to the extent permitted by applicable law, the Borrower agrees not to assert and to cause the other Loan Parties not to assert, and hereby waives and agrees to cause the other Loan Parties so to waive, all rights for contribution or any other rights of recovery with respect to all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, under or related to Environmental Laws, that any of them might have by statute or otherwise against any Indemnitee. All amounts due under this Section shall be payable not later than five days after written demand therefor. Statements payable by the Borrower pursuant to this Section shall be submitted to the Borrower in accordance with Section 10.2, or to such other Person or address as may be hereafter designated by the Borrower in a written notice to the Administrative Agent. The agreements in this Section shall survive repayment of the Loans and Letters of Credit and all other amounts payable hereunder.

10.6 *Successors and Assigns; Participations and Assignments* (a) This Agreement shall be binding upon and inure to the benefit of the Borrower, the Lenders, the Arrangers, the Agents, the Managers, all future holders of the Loans and Letters of Credit and their respective successors and assigns, except that the Borrower may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Administrative Agent and each Lender.

(b) Any Lender may, without the consent of the Borrower or any other Person, in accordance with applicable law, at any time sell to one or more banks, financial institutions or other entities (each, a "Participant") participating interests in any Loan owing to such Lender, any Commitment of such Lender or any other interest of such Lender hereunder and under the other Loan Documents. In the event of any such sale by a Lender of a participating interest to a Participant, such Lender's obligations under this Agreement to the other parties to this Agreement shall remain unchanged, such Lender shall remain solely responsible for the performance thereof, such Lender shall remain the holder of any such Loan for all purposes under this Agreement and the other Loan Documents, and the Borrower, the Arrangers, the Agents and the Managers shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Loan Documents. In no event shall any Participant under any such participation have any right to approve any amendment or waiver of any provision of any Loan Document, or any consent to any departure by any Loan Party therefrom, except to the extent that such amendment, waiver or consent would reduce the principal of, or interest on, the Loans or any fees payable hereunder, or postpone the date of the final maturity of the Loans, in each case to the extent subject to such participation. The Borrower agrees that if amounts outstanding under this Agreement and the Loans are due or unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall, to the maximum extent permitted by applicable law, be deemed to have the right of setoff in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement, provided that, in purchasing such participating interest, such Participant shall be deemed to have agreed to share with the Lenders the proceeds thereof as provided in Section 10.7(a) as fully as if it were a Lender hereunder. The Borrower also agrees that each Participant shall be entitled to the benefits of Sections 2.19, 2.20 and 2.21 with respect to its participation in the Commitments and the Loans outstanding from time to time as if it was a Lender; provided, that, in the case of Section 2.20, such Participant shall have complied with the requirements of said Section and provided, further, that no Participant shall be entitled to receive any greater amount pursuant to any such Section than the transferor Lender would have been entitled to receive in respect of the amount of the participation transferred by such transferor Lender to such Participant had no such transfer occurred.

(c) Any Lender (an "Assignor") may, in accordance with applicable law and upon written notice to the Administrative Agent, at any time and from time to time assign to any Lender, any Affiliate of the assigning Lender or of another Lender or any Affiliated Fund of the assigning Lender or of another Lender (provided, that if any funding obligations are assigned to such an Affiliate or such an Affiliated Fund, such Affiliate or Affiliated Fund, as applicable, shall have demonstrable resources to comply with such obligations) or, with the consent of the Borrower and the Administrative Agent and, in the case of any assignment of Revolving Credit Commitments, the written consent of the Issuing Lender and the Swing Line Lender (which, in the case of the Borrower, the Administrative Agent, the Issuing Lender and the Swing Line Lender, shall not be unreasonably withheld, conditioned or delayed), to an additional bank, financial institution or other entity that is an Eligible Assignee (an "Assignee") all or any part of its rights and obligations under this Agreement pursuant to an assignment and acceptance agreement, in the form of Exhibit E hereto (an "Assignment and Acceptance"), executed by such Assignee and such Assignor (and, where the consent of the Borrower, the Administrative Agent or the Issuing Lender or the Swing Line Lender is required pursuant to the foregoing provisions, by the Borrower and such other Persons) and delivered to the Administrative Agent for its acceptance and recording in the Register; provided, that no such assignment to an Assignee (other than any Lender

or any Affiliate of the assigning Lender or of another Lender or Affiliated Fund of the assigning Lender or of another Lender) shall be in an aggregate principal amount of less than \$5,000,000 with respect to Revolving Credit Commitments or \$1,000,000 with respect to Term Loan Commitments, unless otherwise agreed by the Borrower and the Administrative Agent (provided, that for purposes of the foregoing limitations only, any two or more funds that concurrently invest in Loans and are managed by the same investment advisor, or investment advisors that are Affiliates of one another, shall be treated as a single Assignee). Any such

assignment need not be ratable as among the Facilities. Upon such execution, delivery, acceptance and recording, from and after the effective date determined pursuant to such Assignment and Acceptance, (x) the Assignee thereunder shall be a party hereto and, to the extent provided in such Assignment and Acceptance, have the rights and obligations of a Lender hereunder with a Commitment and/or Loans as set forth therein, and (y) the Assignor thereunder shall, to the extent provided in such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of an Assignor's rights and obligations under this Agreement, such Assignor shall cease to be a party hereto). Notwithstanding any provision of this Section, the consent of the Borrower shall not be required for any assignment that occurs at any time when any Event of Default shall have occurred and be continuing.

(d) The Administrative Agent shall, on behalf of the Borrower, maintain at its address referred to in Section 10.2 a copy of each Assignment and Acceptance delivered to it and a register (the "*Register*") for the recordation of the names and addresses of the Lenders and the Commitment of, and principal amount of the Loans owing to, each Lender from time to time. The entries in the Register shall be conclusive, in the absence of manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register as the owner of the Loans and any Notes evidencing such Loans recorded therein for all purposes of this Agreement. Any assignment of any Loan, whether or not evidenced by a Note, shall be effective only upon appropriate entries with respect thereto being made in the Register (and each Note shall expressly so provide). Any assignment or transfer of all or part of a Loan evidenced by a Note shall be registered on the Register only upon surrender for registration of assignment or transfer of the Note evidencing such Loan, accompanied by a duly executed Assignment and Acceptance; thereupon one or more new Notes in the same aggregate principal amount shall be issued to the designated Assignee, and the old Notes shall be returned by the Administrative Agent to the Borrower marked "canceled". The Register shall be available for inspection by the Borrower or any Lender (with respect to any entry relating to such Lender's Loans) at any reasonable time and from time to time upon reasonable prior notice.

(e) Upon its receipt of an Assignment and Acceptance executed by an Assignor and an Assignee (and, in any case where the consent of any other Person is required by Section 10.6(c), by each such other Person) together with payment to the Administrative Agent of a registration and processing fee of \$3,500 (except that no such registration and processing fee shall be payable in the case of an Assignee which is already a Lender or is an Affiliate of the assigning Lender or of another Lender or an Affiliated Fund of the assigning Lender or of another Lender or with respect to the initial syndication of the Commitments), the Administrative Agent shall (i) promptly accept such Assignment and Acceptance and (ii) on the effective date determined pursuant thereto record the information contained therein in the Register and give notice of such acceptance and recordation to the Borrower. On or prior to such effective date, the Borrower, at its own expense, upon request, shall execute and deliver to the Administrative Agent (in exchange for the Revolving Credit Note and/or Term Note, as the case may be, of the assigning Lender) a new Revolving Credit Note and/or Term Note, as the case may be, to such Assignee or its registered assigns in an amount equal to the Revolving Credit Commitment and/or Term Loan Commitment, as the case may be, assumed or acquired by it pursuant to such Assignment and Acceptance and, if the Assignor has retained a Revolving Credit Commitment and/or Term Loan Commitment, as the case may be, upon request, a new Revolving Credit Note and/or Term Notes, as the case may be, to the Assignor or its registered assigns in an amount equal to the Revolving Credit Commitment and/or Term Loans or Term Loan Commitment, as the case may be,

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retained by it hereunder. Such new Note or Notes shall be dated the Closing Date and shall otherwise be in the form of the Note or Notes replaced thereby.

(f) For the avoidance of doubt, the parties to this Agreement acknowledge that the provisions of this Section concerning assignments of Loans and Notes relate only to absolute assignments and that such provisions do not prohibit assignments creating security interests, including, without limitation, any pledge or assignment by a Lender of any Loan or Note to any Federal Reserve Bank in accordance with applicable law.

10.7 *Adjustments; Set-off.* (a) Except to the extent that this Agreement provides for payments to be allocated to a particular Lender or to the Lenders under a particular Facility, if any Lender (a "*Benefited Lender*") shall at any time receive any payment of all or part of the Obligations owing to it, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in Section 8(f), or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of such other Lender's Obligations, such Benefited Lender shall purchase for cash from the other Lenders a participating interest in such portion of each such other Lender's Obligations, or shall provide such other Lenders with the benefits of any such collateral, as shall be necessary to cause such Benefited Lender to share the excess payment or benefits of such collateral ratably with each of the Lenders; *provided, however*, that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefited Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.

(b) In addition to any rights and remedies of the Lenders provided by law, each Lender shall have the right, without prior notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted by applicable law, upon any amount becoming due and payable by the Borrower hereunder (whether at the stated maturity, by acceleration or otherwise), to set off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any branch or agency thereof to or for the credit or the account of the Borrower. Each Lender agrees to notify promptly the Borrower and the Administrative Agent after any such setoff and application made by such Lender, *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

10.8 *Counterparts.* This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart hereof. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

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10.9 *Severability.* Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.10 *Integration.* Other than the promises, undertakings, representations or warranties set forth in the Administrative Agent Fee Letter and the Facility Fee Letter, this Agreement and the other Loan Documents represent the agreement of the Borrower, the Agents, the Arrangers, the Managers and the Lenders

with respect to the subject matter hereof, and there are no promises, undertakings, representations or warranties by any Arranger, any Manager, any Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

10.11 GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAW RULES THEREOF OTHER THAN SECTION 5-1041 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

10.12 *Submission To Jurisdiction; Waivers.* The Borrower hereby irrevocably and unconditionally:

(a) submits for itself and its Property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Borrower at its address set forth in Section 10.2 or at such other address of which the Administrative Agent shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

10.13 *Certain Matters Affecting Lenders.* (a) If (i) the Nevada Gaming Authorities shall determine that any Lender does not meet suitability standards prescribed under the Nevada Gaming Laws or (ii) any other gaming authority with jurisdiction over the gaming business of the Borrower shall determine that any Lender does not meet its suitability standards (in any such case, a "Former Lender"), the Administrative Agent shall have the right (but not the duty) to designate bank(s) or other financial institution(s) (in each case, a "Substitute Lender," which may (but not need) be any Lender or Lenders or Affiliated Fund of a Lender that agree to become a Substitute Lender and to assume the rights and obligations of the Former Lender, subject to receipt by the Administrative Agent of evidence that such Substitute Lender (if not a Lender or Lenders or Affiliated Fund of a Lender) is an Eligible Assignee. The Substitute Lender shall assume the rights and obligations of the Former Lender under this Agreement. The Borrower shall bear the costs and expenses of any Lender required by the Nevada

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Gaming Authorities, or any other gaming authority with jurisdiction over the gaming business of the Borrower, to file an application for a finding of suitability in connection with the investigation of an application by the Borrower for a license to operate a gaming establishment.

(b) Notwithstanding the provisions of subsection (a) of this Section 10.13, if any Lender becomes a Former Lender, and if the Administrative Agent fails to find a Substitute Lender pursuant to subsection (a) of this Section 10.13 within any time period specified by the appropriate gaming authority for the withdrawal of a Former Lender (the "Withdrawal Period"), the Borrower shall immediately prepay in full the outstanding amount of all Revolving Extensions of Credit and Term Loans Extensions of Credit of such Former Lender, together with accrued interest thereon to the earlier of (x) the date of payment or (y) the last day of the applicable Withdrawal Period.

10.14 *Acknowledgments.* The Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) neither any Arranger, any Agent, any Manager nor any Lender has any fiduciary relationship with or duty to the Borrower, the Completion Guarantor or any other Loan Party arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Arrangers, the Agents, the Managers and the Lenders, on one hand, and the Borrower, the Completion Guarantor any other Loan Party, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Arrangers, the Agents, the Managers and the Lenders or among the Borrower, the Completion Guarantor, the other Loan Parties and the Lenders.

10.15 *Confidentiality.* Subject to Section 10.21, each of the Arrangers, the Agents, the Managers and the Lenders agrees to keep confidential all non-public information provided to it by any Loan Party pursuant to this Agreement that is designated by such Loan Party as confidential; *provided*, that nothing herein shall prevent any Arranger, any Agent, any Manager or any Lender from disclosing any such information (a) to any Arranger, any Agent, any Manager, any other Lender or any affiliate of any thereof, (b) to any Participant or Assignee (each, a "Transferee") or prospective Transferee that agrees to comply with the provisions of this Section, (c) to any of its or its Affiliates' employees, directors, agents, auditors, regulators, attorneys, accountants and other professional advisors, (d) to any financial institution that is a direct or indirect contractual counterparty in swap agreements or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section), (e) upon the request or demand of any Governmental Authority having jurisdiction over it, (f) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Requirement of Law, (g) if requested or required to do so in connection with any litigation or similar proceeding, (h) that has been publicly disclosed other than in breach of this Section 10.15, (i) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender or (j) in connection with the exercise of any remedy hereunder or under any other Loan Document.

10.16 *Release of Collateral and Guarantee Obligations.* (a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, upon request of the Borrower in connection with any Disposition of Property permitted by the Loan Documents, the Administrative Agent shall (without notice to

any Collateral being Disposed of in such Disposition, and to release any guarantee obligations of any Person being Disposed of in such Disposition, to the extent necessary to permit consummation of such Disposition in accordance with the Loan Documents *provided* that the Borrower and, if applicable, the appropriate Loan Party shall have delivered to the Administrative Agent, at least five Business Days prior to the date of the proposed release, a written request for release identifying the relevant Collateral being Disposed of in such Disposition and the terms of such Disposition in reasonable detail, including the date thereof, the price thereof and any expenses in connection therewith, together with a certification by the Borrower and, if applicable, the appropriate Loan Party stating that such transaction is in compliance with this Agreement and the other Loan Documents and that the proceeds of such Disposition will be applied in accordance with this Agreement and the other Loan Documents.

(b) Notwithstanding anything to the contrary contained herein or any other Loan Document, when all Obligations (other than Obligations in respect of any Specified Hedge Agreement) have been paid in full, all Commitments have terminated or expired and no Letter of Credit or Reimbursement Obligation shall be outstanding, upon request of the Borrower, the Administrative Agent shall (without notice to or vote or consent of any Lender, or any affiliate of any Lender that is a party to any Specified Hedge Agreement) take such actions as shall be required to release the security interest of the Loan Documents in all Collateral, and to release all guarantee obligations provided for in any Loan Document, whether or not on the date of such release there may be outstanding Obligations in respect of Specified Hedge Agreements.

10.17 *Accounting Changes.* In the event that any "Accounting Change" (as defined below) shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then the Borrower and the Administrative Agent agree to enter into negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Changes with the desired result that the criteria for evaluating the Borrower's and the other Loan Parties' financial condition (including the requirements and restrictions associated with the provisions of this Agreement applicable thereto) shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrower, the Administrative Agent and the Required Lenders, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred. "Accounting Changes" refers to changes in accounting principles required or permitted by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC.

10.18 *Delivery of Lender Addenda.* Each initial Lender shall become a party to this Agreement by delivering to the Administrative Agent a Lender Addendum duly executed by such Lender, the Borrower and the Administrative Agent.

10.19 *Construction.* Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

10.20 **WAIVERS OF JURY TRIAL. THE BORROWER, THE ARRANGERS, THE AGENTS, THE MANAGERS AND THE LENDERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.**

10.21 *Gaming Authorities.* The Arrangers, the Agents, the Managers and each Lender agree to cooperate with the Nevada Gaming Authorities in connection with the administration of their

regulatory jurisdiction over Wynn Resorts, the Borrower and the other Loan Parties, including, without limitation, to the extent not inconsistent with the internal policies of such Lender, Arranger, Agent or Manager and any applicable legal or regulatory restrictions, the provision of such documents or other information as may be requested by any such Nevada Gaming Authorities relating to the Arrangers, the Agents, the Managers, any of the Lenders, Wynn Resorts or the Borrower or any other Loan Party, or the Loan Documents. Notwithstanding any other provision of this Agreement, the Borrower expressly authorizes, and will cause each other Loan Party to authorize, each Agent, Manager, Arranger and Lender to cooperate with the Nevada Gaming Authorities as described above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Credit Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

WYNN LAS VEGAS, LLC,
a Nevada limited liability company,
as the Borrower

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,

a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited, a Nevada
corporation,
its sole member

By: /s/ Ronald Kramer

Name: Ronald Kramer

Title: President

DEUTSCHE BANK SECURITIES, INC.,
as Lead Arranger and Joint Book Running Manager

By: /s/ A. Drew Goldman

Name: A. Drew Goldman

Title:

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Administrative Agent and Swing Line Lender

By: /s/ George Reynolds

Name: George Reynolds

Title: Vice President

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BANC OF AMERICA SECURITIES LLC,
as Lead Arranger, Joint Book Running Manager
and Syndication Agent

By: /s/ Jon Varnell

Name: Jon Varnell

Title: Managing Director

BEAR, STEARNS & CO. INC.,
as Arranger and Joint Book Running Manager

By: /s/ Keith C. Barnish

Name: Keith C. Barnish

Title: Senior Managing Director

BEAR STEARNS CORPORATE LENDING INC.,
as Joint Documentation Agent

By: /s/ Keith C. Barnish

Name: Keith C. Barnish

Title: Executive Vice President

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DRESDNER BANK AG, NEW YORK AND GRAND CAYMAN BRANCHES,
as Arranger and Joint Documentation Agent

By: /s/ J. Michael Leffler

Name: J. Michael Leffler

Title: Managing Director

By: /s/ Deborah Carlson

Name: Deborah Carlson

Title: Director

JPMORGAN CHASE BANK
as Joint Documentation Agent

By: /s/ John F. Mix

Name: John F. Mix

Title: Vice President

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Annex A

**PRICING GRID FOR REVOLVING CREDIT LOANS, SWING LINE LOANS
AND REVOLVING COMMITMENT FEES**

| Consolidated Leverage Ratio | Applicable Margin for Eurodollar Loans | Applicable Margin for Base Rate Loans | Revolving Commitment Fee Rate |
|--|---|--|--|
| x > 4.00:1 4.0 | 0% | 3.00% | 2.00% |
| 3.50:1 x £ 4.00:1 | 5% | 2.75% | 1.00% |
| x £ 3.50:1 3.5 | 0% | 2.50% | 0.50% |

Changes in the Applicable Margin with respect to Revolving Credit Loans and Swing Line Loans or in the Revolving Commitment Fee Rate resulting from changes in the Consolidated Leverage Ratio shall become effective on the first date (each such date, an "Adjustment Date") on which financial statements are delivered to the Lenders pursuant to Section 6.1 with respect to each Quarterly Date (but in any event not later than the 45th day after the end of each of the first three quarterly periods of each Fiscal Year or the 90th day after the end of each Fiscal Year, as the case may be) and shall remain in effect until the next change to be effected pursuant to this paragraph. If any financial statements referred to above are not delivered within the time periods specified above, then, until such financial statements are delivered, the Consolidated Leverage Ratio as at the end of the fiscal period that would have been covered thereby shall for the purposes of this definition be deemed to be greater than 4.00:1. In addition, at all times while an Event of Default shall have occurred and be continuing, the Consolidated Leverage Ratio shall for the purposes of this definition be deemed to be greater than 4.00:1. If on any Adjustment Date the Consolidated Leverage Ratio would result in different Applicable Margins or Revolving Commitment Fee Rates, the higher Applicable Margin or Revolving Commitment Fee Rate shall govern. Each determination of the Consolidated Leverage Ratio pursuant to this definition shall be made with respect to the period of four full consecutive fiscal quarters of the Borrower ending at the end of the period covered by the relevant financial statements (or such shorter period ending on any Quarterly Date and beginning

on the Opening Date); *provided*, that for purposes of calculating Consolidated EBITDA in order to calculate the Consolidated Leverage Ratio for any period which is less than four full fiscal quarters, Consolidated EBITDA shall be calculated on an annualized basis.

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SCHEDULE 1.1

MORTGAGED PROPERTY

S-1.2

SCHEDULE 4.4

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S-4.4

SCHEDULE 4.9(b)

TRADEMARKS, SERVICE MARKS AND TRADE NAMES

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PATENTS

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COPYRIGHTS

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TRADE SECRETS

S-4.9(e)

SCHEDULE 4.9(f)

INTELLECTUAL PROPERTY LICENSES

S-4.9(f)

SCHEDULE 4.15

SUBSIDIARIES

S-4.15

SCHEDULE 4.19(a)-1

UCC FILING JURISDICTIONS—COLLATERAL

Loan Party

Filing Office

S-4.19(a)-1

SCHEDULE 4.19(a)-2

UCC FINANCING STATEMENTS TO REMAIN ON FILE

S-4.19(a)-2

SCHEDULE 4.19(b)

MORTGAGE FILING JURISDICTIONS

S-4.19(b)

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UCC FILING JURISDICTIONS—INTELLECTUAL PROPERTY COLLATERAL

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EXISTING INDEBTEDNESS

S-7.2(d)

SCHEDULE 7.3(f)

EXISTING LIENS

S-7.3(f)

EXHIBIT D

FORM OF MORTGAGE

APNs: _____

Recording requested by and recorded counterparts should be returned to:

Sony Ben-Moshe, Esq.
Latham & Watkins
701 B Street, Suite 2100
San Diego, California 92101

Mail Property Tax Statements to:

DEED OF TRUST, [LEASEHOLD DEED OF TRUST,] ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING

MADE BY

_____,
a _____,
as Trustor,

to

Nevada Title Company,
a Nevada corporation,
as Trustee,
for the benefit of

DEUTSCHE BANK TRUST COMPANY AMERICAS,
in its capacity as Administrative Agent for the benefit of the Banks,
as Beneficiary

THIS INSTRUMENT IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS OF CLARK COUNTY, NEVADA UNDER THE NAMES OF _____ AS "DEBTOR" AND DEUTSCHE BANK TRUST COMPANY AMERICAS AS "SECURED PARTY."

THIS INSTRUMENT IS A "CONSTRUCTION MORTGAGE" AS THAT TERM IS DEFINED IN SECTION 104.9334(8) OF THE NEVADA REVISED STATUTES AND SECURES AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT UPON LAND.

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**DEED OF TRUST, [LEASEHOLD DEED OF TRUST,] ASSIGNMENT OF RENTS AND LEASES,
LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS DEED OF TRUST, [LEASEHOLD DEED OF TRUST,] ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (hereinafter called "**Deed of Trust**") is made and effective as of _____, 200____, by _____, a _____ (together with all successors and assigns of the Trust Estate (as hereinafter defined), "**Trustor**"), whose address is _____, to Nevada Title Company, a Nevada corporation, whose address is 2500 North Buffalo, Suite 150, Las Vegas, Nevada 89128, as Trustee ("**Trustee**"), for the benefit of DEUTSCHE BANK TRUST COMPANY AMERICAS ("**Beneficiary**"), in its capacity as Administrative Agent under (i) that certain Credit Agreement (as the same may be amended or modified from time to time, the "**Credit Agreement**") dated as of October 30, 2002 among Wynn Las Vegas, LLC, a Nevada limited liability company ("**Borrower**"), Beneficiary and the other parties signatory thereto (such other parties, together with Beneficiary, the "**Banks**") pursuant to which the Banks have agreed to lend to Borrower an aggregate principal amount of \$1,000,000,000 and (ii) that certain Guarantee and Collateral Agreement (as the same may be amended or modified from time to time, the "**Guaranty**") dated as of October _____, 2002 by Trustor and the other parties thereto for the benefit of Beneficiary on behalf of the Banks pursuant to which Trustor will guaranty the payment and performance of all obligations of Borrower under the Credit Agreement and the other Loan Documents.

THIS INSTRUMENT SECURES FUTURE ADVANCES. THE MAXIMUM AMOUNT OF PRINCIPAL TO BE SECURED HEREBY IS \$1,000,000,000. THIS INSTRUMENT IS TO BE GOVERNED BY THE PROVISIONS OF NRS 106.300 THROUGH NRS 106.400 INCLUSIVE.

THE OBLIGATIONS SECURED HEREBY INCLUDE REVOLVING CREDIT OBLIGATIONS WHICH PERMIT BORROWING, REPAYMENT AND REBORROWING. INTEREST ON OBLIGATIONS SECURED HEREBY ACCRUES AT A RATE WHICH MAY FLUCTUATE FROM TIME TO TIME.

DEFINITIONS—As used in this Deed of Trust, the following terms have the meanings hereinafter set forth:

"**Accounts Receivable**" shall have the meaning set forth in Section 9-102 (NRS 104.9102) of the UCC for the term "account."

"**Appurtenant Rights**" means all and singular tenements, hereditaments, rights, reversions, remainders, development rights, privileges, benefits, easements (in gross or appurtenant), rights-of-way, licenses, gores or strips of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, and

hereinafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Trustor.

"Bankruptcy" means, with respect to any Person, that (i) a court having jurisdiction in the Trust Estate shall have entered a decree or order for relief in respect of such Person in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order has not been stayed; or any other similar relief shall have been granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against such Person, under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the Trust Estate for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over such Person, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of such Person, for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of such Person, and any such event described in this clause (ii) shall continue for 60 days unless dismissed, bonded or discharged; or (iii) such Person shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or such Person shall make any assignment for the benefit of creditors, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable or if the fair market value of its assets does not exceed its aggregate liabilities; or (iv) such Person shall, or the Board of Directors of such Person (or any committee thereof) shall, adopt any resolution or otherwise authorize any action to approve any of the actions referred to in clause (iii) above.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute thereto.

"Business Day" means any day that is not a Saturday, a Sunday or a day on which banking institutions in the State of Nevada or the City of New York are not required to be open.

"Deed of Trust" means this Deed of Trust as it may be amended, increased or modified from time to time.

"Disbursement Agreement" means that certain Master Disbursement Agreement dated as of _____, 2002, among Borrower, Beneficiary, [TO INSERT TRUSTEE], Deutsche Bank Trust Company Americas, in its capacity as disbursement agent, and the other parties signatory thereto, as the same may hereafter be amended or modified in accordance with its terms and the terms of the Credit Agreement.

["**Lease**" means that certain _____ for the _____ Leased Premises.]

["**Leased Premises**" means the _____ situated in _____ described in the _____ Lease and more specifically described in Schedule B attached hereto and incorporated herein.]

"Event of Default" has the meaning set forth in Section 3.1 hereof.

"FF&E" means all furniture, fixtures, equipment, appurtenances and personal property now or in the future contained in, used in connection with, attached to, or otherwise useful or convenient to the use, operation, or occupancy of, or placed on, but unattached to, any part of the Site or Improvements whether or not the same constitutes real property or fixtures in the State of Nevada, including all removable window and floor coverings, all furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator and escalator plants, cooking facilities, vacuum cleaning systems, public address and communications systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings, fixtures, and building materials, all gaming and financial equipment, computer equipment, calculators, adding machines, gaming tables, video game and slot machines, and any other electronic equipment of every nature used or located on any part of the Site or Improvements, together with all Venetian blinds, shades, draperies, drapery and curtain rods, brackets, bulbs, cleaning apparatus, mirrors, lamps, ornaments, cooling apparatus and equipment, ranges and ovens, garbage disposals, dishwashers, mantels, and any and all such property which is at any time installed in, affixed to or placed upon the Site or Improvements.

"FF&E Financing Agreement" means any financing agreement entered into by Trustor (i) the proceeds of which are used by Trustor for the acquisition or lease of FF&E, (ii) pursuant to which Trustor grants to the lender or lessor thereunder a security interest in the FF&E so acquired or leased and (iii) which is permitted by the Credit Agreement and the Guaranty.

"Governmental Authority" means any agency, authority, board, bureau, commission, department, office, public entity, or instrumentality of any nature whatsoever of the United States federal or foreign government, any state, province or any city or other political subdivision or otherwise, whether now or hereafter in existence, or any officer or official thereof, including, without limitation, any Nevada Gaming Authority.

"Imposition" means any taxes, assessments, water rates, sewer rates, maintenance charges, other governmental impositions and other charges now or hereafter levied or assessed or imposed against the Trust Estate or any part thereof.

"Improvements" means (1) all the buildings, structures, facilities and improvements of every nature whatsoever now or hereafter situated on the Site or any real property encumbered hereby, and (2) all fixtures, machinery, appliances, goods, building or other materials, equipment, including without limitation all gaming equipment and devices, and all machinery, equipment, engines, appliances and fixtures for generating or distributing air, water, heat, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse or garbage; all wall-beds, wall-safes, built-in furniture and installations, shelving, lockers, partitions, doorstops, vaults, motors, elevators, dumb-waiters, awnings, window shades, Venetian blinds, light fixtures, fire hoses and

brackets and boxes for the same, fire sprinklers, alarm, surveillance and security systems, computers, drapes, drapery rods and brackets, mirrors, mantels, screens, linoleum, carpets and carpeting, plumbing, bathtubs, sinks, basins, pipes, faucets, water closets, laundry equipment, washers, dryers, ice-boxes and heating units; all kitchen and restaurant equipment, including but not limited to silverware, dishes, menus, cooking utensils, stoves, refrigerators, ovens, ranges, dishwashers, disposals, water heaters, incinerators, furniture, fixtures and furnishings, communication systems, and equipment; all cocktail lounge supplies, including but not limited to bars, glassware, bottles and tables used in connection with the Site; all chaise lounges, hot tubs, swimming pool heaters and equipment and all other recreational equipment (computerized and otherwise), beauty and barber equipment, and maintenance supplies used in connection with the Site; all amusement rides and attractions attached to the Site, all specifically designed installations and furnishings, and all furniture, furnishings and personal property of every nature whatsoever now or hereafter owned or leased by Trustor or in which Trustor has any rights or interest and located in or on, or attached to, or used or intended to be used or which are now or may hereafter be appropriated for use on or in connection with the operation of the Site or any real or personal property encumbered hereby or any other Improvements, or in connection with any construction being conducted or which may be conducted thereon, and all extensions, additions, accessions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing, and all of the right, title and interest of Trustor in and to any such property, which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and improvements and a part of the real property hereby encumbered.

"Indemnity Agreement" means that certain Indemnity Agreement dated as of _____, 200__ by Trustor for the benefit of Beneficiary and certain other indemnified parties named therein.

"Insolvent" means with respect to any person or entity, that such person or entity shall be deemed to be insolvent if it shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable and/or if the fair market value of its assets does not exceed its aggregate liabilities.

"Intangible Collateral" means (a) the rights to use all names and all derivations thereof now or hereafter used by Trustor in connection with the Site or Improvements, including, without limitation, the name "Le Reve", including any variations thereon, together with the goodwill associated therewith, and all names, logos, and designs used by Trustor, or in connection with the Site or in which Trustor has rights, with the exclusive right to use such names, logos and designs wherever they are now or hereafter used in connection with the Project (or in connection with the marketing of the Project), and any and all other trade names, trademarks or service marks, whether or not registered, now or hereafter used in the operation of the Project, including, without limitation, any interest as a lessee, licensee or franchisee, and, in each case, together with the goodwill associated therewith; (b) subject to the absolute assignment contained herein, the Rents; (c) any and all books, records, customer lists, concession agreements, supply or service contracts, licenses, permits, governmental approvals (to the extent such licenses, permits and approvals may be pledged under applicable law), signs, goodwill, casino and hotel credit and charge records, supplier lists, checking accounts, safe deposit boxes (excluding the contents of such deposit boxes owned by persons other than Trustor and its subsidiaries), cash, instruments, chattel papers, including inter-company notes and pledges,

documents, unearned premiums, deposits, refunds, including but not limited to income tax refunds, prepaid expenses, rebates, tax and insurance escrow and impound accounts, if any, actions and rights in action, and all other claims, including without limitation condemnation awards and insurance proceeds, and all other contract rights and general intangibles resulting from or used in connection with the operation and occupancy of the Trust Estate and the Improvements and in which Trustor now or hereafter has rights; and (d) general intangibles, vacation license resort agreements or other time share license or right to use agreements, including without limitation all rents, issues, profits, income and maintenance fees resulting therefrom, whether any of the foregoing is now owned or hereafter acquired.

"Land" means the real property situated in the County of Clark, State of Nevada, more specifically described in *Schedule A* attached hereto and incorporated herein by reference, including any after acquired title thereto.

[**"Leased Premises"** means, as the context may require, the _____ Leased Premises, the _____ Leased Premises, the _____ Leased Premises and/or the _____ Leased Premises.]

"Legal Requirements" means all applicable restrictive covenants, applicable zoning and subdivision ordinances and building codes, all applicable health and Environmental Laws and regulations, all applicable gaming laws and regulations, and all other applicable laws, ordinances, rules, regulations, judicial decisions, administrative orders, and other requirements of any Governmental Authority having jurisdiction over Trustor, the Trust Estate and/or any Affiliate of Trustor, in effect either at the time of execution of this Deed of Trust or at any time during the term hereof, including, without limitation, all Environmental Laws and Nevada Gaming Laws.

"Nevada Gaming License" means any gaming license necessary for the ownership, construction, maintenance, financing or operation of the Project, whether issued and/or required by Nevada Gaming Authorities, Nevada Gaming Laws or otherwise.

"Notes" means, collectively, those certain promissory note(s) to be issued pursuant to the Credit Agreement, as the same may be amended or replaced from time to time in accordance with its terms.

"NRS" means the Nevada Revised Statutes as in effect from time to time.

"Obligations" means (i) the payment and performance by Borrower of each covenant and agreement of Borrower contained in the Credit Agreement, the Notes and the other Loan Documents (including the Security Documents) and (ii) the payment and performance by Trustor of each covenant and agreement of Trustor contained in the Guaranty, this Deed of Trust, the Indemnity Agreement and the other Loan Documents.

"Permitted Dispositions" means (a) the sale, transfer, lease or other disposition of assets in the Trust Estate, in the ordinary course of business, of inventory held in the ordinary course of business (b) the dispositions set forth in *Section 1.10* hereof and (c) other sales, transfers, leases or other dispositions of assets in the Trust Estate, including entering into Space Leases; *provided* that, in each case, all applicable provisions of the Loan Documents are complied with.

"Personal Property" has the meaning set forth in *Section 1.12* hereof.

"Proceeds" has the meaning assigned to it under the UCC and, in any event, shall include but not be limited to (i) any and all proceeds of any insurance (including without limitation property casualty and title insurance), indemnity, warranty or guaranty payable from time to time with respect to any of the Trust

Estate; (ii) any and all proceeds in the form of accounts, security deposits, tax escrows (if any), down payments (to the extent the same may be pledged under applicable law), collections, contract rights, documents, instruments, chattel paper, liens and security instruments, guarantees or general intangibles relating in whole or in part to the Project and all rights and remedies of whatever kind or nature Trustor may hold or acquire for the purpose of securing or enforcing any obligation due Trustor thereunder; (iii) any and all payments in any form whatsoever made or due and payable from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Trust Estate by any Governmental Authority; (iv) subject to the absolute assignment contained herein, the Rents or other benefits arising out of, in connection with or pursuant to any Space Lease of the Trust Estate; and (v) any and all other amounts from time to time paid or payable in connection with any of the Trust Estate; *provided, however*, that the Trustor is not authorized to dispose of any of the Trust Estate unless such disposition is a Permitted Disposition.

"Project" means the resort-hotel-casino-mall complex proposed to be constructed in Clark County, Nevada as described in the Plans and Specifications, as such Plans and Specifications may be amended pursuant to the Disbursement Agreement.

"Rents" means all rents, room revenues, income, receipts, issues, profits, revenues and maintenance fees, room, food and beverage revenues, license and concession fees, income, proceeds and other benefits to which Trustor may now or hereafter be entitled from the Site, the Improvements, the Space Leases or any property encumbered hereby or any business or other activity conducted by Trustor at the Site or the Improvements.

"Site" means the Land and the Appurtenant Rights[and, if the context so requires, the Leased Premises].

"Space Leases" means any and all leases, subleases, lettings, licenses, concessions, operating agreements, management agreements, and all other agreements affecting the Trust Estate that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, that give any person the right to conduct its business on, or otherwise use, operate or occupy, all or any portion of the Site or Improvements and any leases, agreements or arrangements permitting anyone to enter upon or use any of the Trust Estate to extract or remove natural resources of any kind, together with all amendments, extensions, and renewals of the foregoing entered into in compliance with this Deed of Trust, together with all rental, occupancy, service, maintenance or any other similar agreements pertaining to use or occupation of, or the rendering of services at the Site, the Improvements or any part thereof.

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"Space Lessee(s)" means any and all tenants, licensees, or other grantees of the Space Leases and any and all guarantors, sureties, endorsers or others having primary or secondary liability with respect to such Space Leases.

[**"Subject Leases"** means the Lease, the Lease, the Lease, the Lease and .]

"Tangible Collateral" means all personal property, goods, equipment, supplies, building and other materials of every nature whatsoever and all other tangible personal property constituting a part or portion of the Project and/or used in the operation of the hotel, casino, restaurants, stores, parking facilities, observation tower and all other commercial operations on the Site or Improvements, including but not limited to communication systems, visual and electronic surveillance systems and transportation systems and not constituting a part of the real property subject to the real property lien of this Deed of Trust and including all property and materials stored therein in which Trustor has an interest and all tools, utensils, food and beverage, liquor, uniforms, linens, housekeeping and maintenance supplies, vehicles, fuel, advertising and promotional material, blueprints, surveys, plans and other documents relating to the Site or Improvements, and all construction materials and all furnishings, fixtures and equipment, including, but not limited to, all FF&E and all equipment and devices which are or are to be installed and used in connection with the operation of the Project, those items of furniture, fixtures and equipment which are to be purchased or leased by Trustor, machinery and any other item of personal property in which Trustor now or hereafter own or acquire an interest or right, and which are used or useful in the construction, operation, use and occupancy of the Project and all present and future right and interest of Trustor in and to any casino operator's agreement, license agreement or sublease agreement used in connection with the Site or the Improvements.

"Title Insurer" means Chicago Title Insurance Company.

"Trust Estate" means all of the property described in Granting Clauses (A) through (O) below, inclusive, and each item of property therein described, provided, however, that such term shall not include the property described in Granting Clause (P)[Q] below.

"UCC" means the Uniform Commercial Code in effect in the State of Nevada from time to time, NRS chapters 104 and 104A.

The following terms shall have the meaning assigned to such terms in the Disbursement Agreement:

Disbursement Agent
Plans and Specifications

The following terms shall have the meaning assigned to such terms in the Credit Agreement:

Affiliate
Closing Date
Environmental Laws
Financing Agreements

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Lien
Loan Documents
Nevada Gaming Authorities
Nevada Gaming Laws
Permitted Encumbrance
Permitted Liens
Person
Security Documents

In addition, any capitalized terms used in this Deed of Trust which are not otherwise defined herein shall have the meaning ascribed to such terms in the Disbursement Agreement and, if not defined therein, the meaning ascribed to such terms in the Credit Agreement and, if not defined therein, the meaning ascribed to such terms in the Guaranty; *provided*, that upon termination of the Disbursement Agreement, any defined terms used herein having meanings given to such terms in the Disbursement Agreement shall continue to have the meanings given to such terms in the Disbursement Agreement immediately prior to such termination.

W I T N E S E T H:

IN CONSIDERATION OF TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION; THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, AND FOR THE PURPOSE OF SECURING in favor of Beneficiary (1) the Obligations; (2) the payment of such additional loans or advances as hereafter may be made to Trustor (individually or jointly and severally with any other Person) or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; *provided, however*, that any and all future advances by Beneficiary to Trustor made for the improvement, protection or preservation of the Trust Estate, together with interest at the rate applicable to overdue principal set forth in the Credit Agreement, shall be automatically secured hereby unless such a note or instrument evidencing such advances specifically recites that it is not intended to be secured hereby and (3) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof or to protect the security hereof (including Protective Advances as such term is defined in *Section 4.2* hereof), together with interest thereon as herein provided (without limiting the generality of the protections afforded by NRS Chapter 106, funds disbursed that, in the reasonable exercise of Beneficiary's judgment, are needed to complete Improvements to the Land or to protect Beneficiary's security interest in the Trust Estate are to be deemed obligatory advances hereunder and will be added to the total indebtedness secured by this Deed of Trust and such indebtedness shall be increased accordingly), Trustor, in consideration of the premises, and for the purposes aforesaid, does hereby ASSIGN, BARGAIN, CONVEY, PLEDGE, RELEASE, HYPOTHECATE, WARRANT, AND TRANSFER WITH POWER OF SALE UNTO TRUSTEE IN TRUST FOR THE BENEFIT OF BENEFICIARY AND THE BANKS each of the following:

(A) The Land [and the Subject Leases];

(B) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Improvements;

(C) TOGETHER WITH all Appurtenant Rights;

(D) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Tangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(E) TOGETHER WITH the Intangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(F) TOGETHER WITH (i) all the estate, right, title and interest of Trustor of, in and to all judgments and decrees, insurance proceeds, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of any of the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof, or to any Appurtenant Rights thereto, and Beneficiary is (subject to the terms hereof) hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittance therefor, and (subject to the terms hereof) to apply the same toward the payment of the indebtedness and other sums secured hereby, notwithstanding the fact that the amount owing thereon may not then be due and payable; (ii) all proceeds of any sales or other dispositions of the property or rights described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof whether voluntary or involuntary, provided, however, that the foregoing shall not be deemed to permit such sales, transfers, or other dispositions except as specifically permitted herein; and (iii) whether arising from any voluntary or involuntary disposition of the property described in Granting Clauses

(A), (B), (C), (D) and (E), all Proceeds, products, replacements, additions, substitutions, renewals and accessions, remainders, reversions and after-acquired interest in, of and to such property;

(G) TOGETHER WITH the absolute assignment of any Space Leases or any part thereof that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, together with all of the following (including all "Cash Collateral" within the meaning of the Bankruptcy Law) arising from the Space Leases: (a) Rents (subject, however, to the aforesaid absolute assignment to Trustee for the benefit of Beneficiary and the conditional permission hereinbelow given to Trustor to collect the Rents), (b) all guarantees, letters of credit, security deposits, collateral, cash deposits, and other credit enhancement documents, arrangements and other measures with respect to the Space Leases, (c) all of Trustor's right, title, and interest under the Space Leases, including the following: (i) the right to receive and collect the Rents from the lessee, sublessee or licensee, or their successor(s), under any Space Lease(s) and (ii) the right to enforce against any tenants thereunder and otherwise any and all remedies under the Space Leases, including Trustor's right to evict from possession any tenant thereunder or to retain, apply, use, draw upon, pursue, enforce or realize upon any guaranty of any Space Lease; to terminate, modify, or amend the Space Leases; to obtain possession of, use, or occupy, any of the real or personal property subject to the Space Leases; and to enforce or exercise, whether at law or in equity or by any other means, all provisions of the Space Leases and all obligations of the tenants thereunder based upon (A) any breach by such tenant under the applicable Space Lease (including any claim that Trustor may have by reason of a termination, rejection, or disaffirmance of such Space Lease pursuant to any Bankruptcy Law) and (B) the use and occupancy of the premises demised, whether or not pursuant to the applicable Space Lease (including any claim for use and occupancy arising under landlord-tenant law of the State of Nevada or any Bankruptcy Law). Permission is hereby given to Trustor, so long as no Event of Default has occurred and is continuing hereunder, to collect and use the Rents, as they become due and payable, but not more than one (1) month in advance thereof. Upon the occurrence of an Event of Default, the permission hereby given to Trustor to collect the Rents shall automatically terminate, but such permission shall be reinstated upon a cure or waiver of such Event of Default. Beneficiary shall have the right, at any time and from time to time, to notify any Space Lessee of the rights of Beneficiary as provided by this section;

Notwithstanding anything to the contrary contained herein, the foregoing provisions of this Paragraph (G) shall not constitute an assignment for purposes of security but shall constitute an absolute and present assignment of the Rents to Beneficiary, subject, however, to the conditional license given

to Trustor to collect and use the Rents as hereinabove provided; and the existence or exercise of such right of Trustor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Trustor;

(H) TOGETHER WITH all of Trustor's right, title and interest in and to any and all Plans and Specifications and all maps, plans, specifications, surveys, studies, tests, reports, data and drawings relating to the development of the Site or the Project and the construction of the Improvements, including, without limitation, all marketing plans, feasibility studies, soils tests, design contracts and all contracts and agreements of Trustor relating thereto including, without limitation, architectural, structural, mechanical and engineering plans and specifications, studies, data and drawings prepared for or relating to the development of the Site or the Project or the construction, renovation or restoration of any of the Improvements or the extraction of minerals, sand, gravel or other valuable substances from the Site and purchase contracts or any agreement granting Trustor a right to acquire any land situated within Clark County, Nevada;

(I) TOGETHER WITH, to the extent permitted by applicable law, all of Trustor's right, title, and interest in and to any and all licenses, permits, variances, special permits, franchises, certificates, rulings, certifications, validations, exemptions, filings, registrations, authorizations,

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consents, approvals, waivers, orders, rights and agreements (including, without limitation, options, option rights, contract rights now or hereafter obtained by Trustor from any Governmental Authority having or claiming jurisdiction over the Land, the FF&E, the Project, or any other element of the Trust Estate or providing access thereto, or the operation of any business on, at, or from the Site including, without limitation, any liquor or Nevada Gaming Licenses (except for any registrations, licenses, findings of suitability or approvals issued by the Nevada Gaming Authorities or any other liquor or gaming licenses which are non-assignable); provided, that upon an Event of Default hereunder or under the Credit Agreement or under the Guaranty, if Beneficiary is not qualified under the Nevada Gaming Laws to hold such Nevada Gaming Licenses, then Beneficiary may designate an appropriately qualified third party to which an assignment of such Nevada Gaming Licenses can be made in compliance with the Nevada Gaming Laws;

(J) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to all water stock, water permits and other water rights relating to the Site, including, without limitation, those evidenced by _____];

(K) TOGETHER WITH all oil and gas and other mineral rights, if any, in or pertaining to the Site and all royalty, leasehold and other rights of Trustor pertaining thereto;

(L) TOGETHER WITH any and all monies and other property, real or personal, which may from time to time be subjected to the lien hereof by Trustor or by anyone on its behalf or with its consent, or which may come into the possession or be subject to the control of Trustee or Beneficiary pursuant to this Deed of Trust, the Credit Agreement, the Guaranty or any other Loan Document (including any Security Document), including, without limitation, any Protective Advances (as defined in *Section 4.2* hereof) under this Deed of Trust; and all of Trustor's right, title, and interest in and to all extensions, improvements, betterments, renewals, substitutes for and replacements of, and all additions, accessions, and appurtenances to, any of the foregoing that Trustor may subsequently acquire or obtain by any means, or construct, assemble, or otherwise place on any of the Trust Estate, and all conversions of any of the foregoing; it being the intention of Trustor that all property hereafter acquired by Trustor and required by the Credit Agreement, the Guaranty, any other Loan Document (including any Security Document) or this Deed of Trust to be subject to the lien of this Deed of Trust or intended so to be shall forthwith upon the acquisition thereof by Trustor be subject to the lien of this Deed of Trust as if such property were now owned by Trustor and were specifically described in this Deed of Trust and granted hereby or pursuant hereto, and Trustee and Beneficiary are hereby authorized, subject to Nevada Gaming Laws and other applicable laws, to receive any and all such property as and for additional security for the obligations secured or intended to be secured hereby. Trustor agrees to take any action as may reasonably be necessary to evidence and perfect such liens or security interests, including, without limitation, the execution of any documents necessary to evidence and perfect such liens or security interests;

(M) TOGETHER WITH, to the extent permitted by applicable laws, any and all Accounts Receivable and all royalties, earnings, income, proceeds, products, rents, revenues, reversions, remainders, issues, profits, avails, production payments, and other benefits directly or indirectly derived or otherwise arising from any of the foregoing, all of which are hereby assigned to Beneficiary, who, except as otherwise expressly provided in this Deed of Trust (including the provisions of *Section 1.13* hereof), is authorized to collect and receive the same, to give receipts and acquittances therefor and to apply the same to the Obligations secured hereunder, whether or not then due and payable;

(N) TOGETHER WITH Proceeds of the foregoing property described in Granting Clauses (A) through (M);

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(O) TOGETHER WITH Trustor's rights further to assign, sell, lease, encumber or otherwise transfer or dispose of the property described in Granting Clauses (A) through (N) inclusive, above, for debt or otherwise;

(P) [TOGETHER WITH any right of Trustor to elect to terminate the Subject Leases or remain in possession of the Leased Premises pursuant to 11 U.S.C. section 365(h)(1) or any similar provision of applicable law and any possessory rights of Trustor in the Leased Premises pursuant to 11 U.S.C. section 365(h)(2) or any other similar provision of applicable law]; and

(Q) EXPRESSLY EXCLUDING, HOWEVER, any assets expressly excluded from the definition of "Collateral" in the Credit Agreement.

Trustor, for itself and its successors and assigns, covenants and agrees to and with Trustee that, at the time or times of the execution of and delivery of these presents or any instrument of further assurance with respect thereto, Trustor has good right, full power and lawful authority to assign, grant, convey, warrant, transfer, bargain or sell its interests in the Trust Estate in the manner and form as aforesaid, and that the Trust Estate is free and clear of all liens and encumbrances whatsoever, except Permitted Liens, and Trustor shall warrant and forever defend the above-bargained property in the quiet and peaceable possession of Trustee and its successors and assigns against all and every person or persons lawfully or otherwise claiming or to claim the whole or any part thereof, except for Permitted Liens. Trustor agrees that any greater title to the Trust Estate hereafter acquired by Trustor during the term hereof shall be automatically subject hereto.

ARTICLE ONE
COVENANTS OF TRUSTOR

The Beneficiary and the Banks have been induced to enter into the Credit Agreement, the Guaranty and the other Loan Documents and to make advances of loans to Borrower thereunder on the basis of the following material covenants, all agreed to by Trustor:

1.1 Performance of Loan Documents. Trustor shall perform, observe and comply with each and every provision hereof, and with each and every provision contained in the Guaranty and the other Loan Documents and shall promptly pay to the Administrative Agent or the Disbursement Agent, as applicable, when payment shall become due, the principal with interest thereon and all other sums required to be paid by Trustor under this Deed of Trust, the Guaranty and the other Loan Documents.

1.2 General Representations, Covenants and Warranties. Trustor represents, covenants and warrants that: (a) Trustor has good and marketable title to an indefeasible fee estate in the Site [(other than the Leased Premises) and a valid leasehold interest in the Leased Premises], free and clear of all encumbrances except Permitted Encumbrances, and that it has the right to hold, occupy and enjoy its interest in the Trust Estate, and has good right, full power and lawful authority to subject the Trust Estate to the Lien of this Deed of Trust and pledge the same as provided herein and Beneficiary may at all times peaceably and quietly enter upon, hold, occupy and enjoy the entire Trust Estate in accordance with the terms hereof; (b) Trustor is not Insolvent and no bankruptcy or insolvency proceedings are pending or contemplated by or, to the best of Trustor's knowledge, threatened against Trustor; (c) all costs arising from construction of any Improvements, the performance of any labor and the purchase of all Tangible Collateral and Improvements have been or shall be paid when due (subject to the provisions of the Disbursement Agreement, the Credit Agreement, the Guaranty and this Deed of Trust); (d) the Land has frontage on, and direct access for ingress and egress to dedicated street(s); (e) Trustor shall at all times conduct and operate the Trust Estate in a manner so as not to lose, or permit its affiliate to lose, the right to conduct gaming activities at the Project; (f) no material part of the Trust Estate has been damaged, destroyed, condemned or abandoned, other than those portions of the Trust Estate that (i) have been the subject of condemnation proceedings that have resulted in the conveyance of such portion of the Trust Estate to the Trustor or (ii) have been demolished in

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furtherance of the development of the Project as contemplated under the Disbursement Agreement; (g) as of the date hereof, no part of the Trust Estate is the subject of condemnation proceedings[, other than condemnation proceedings to convey Land to the Trustor,] and Trustor has no knowledge of any contemplated or pending condemnation proceeding with respect to any portion of the Trust Estate [other than condemnation proceedings to convey Land to the Trustor]; and (h) Trustor acknowledges and agrees that it presently may use, and in the past may have used, one or more of the trade or fictitious names, "Le Reve", " " , " " and " " and in each case variations thereof (collectively, the "**Enumerated Names**") in connection with the operation of the business at the Trust Estate, and Trustor further represents and warrants that the Enumerated Names are the only such trade or fictitious names Trustor has so used. For all purposes under this Deed of Trust it shall be deemed that the term "Trustor" includes all trade or fictitious names that (or any successor or assign thereof) now or hereafter uses, or has in the past used, including, without limitation, the Enumerated Names, with the same force and effect as if this Deed of Trust had been executed in all such names (in addition to " ").

1.3 Compliance with Legal Requirements. Except as provided in the Guaranty, Trustor shall promptly, fully, and faithfully comply in all material respects with all Legal Requirements and shall cause all portions of the Trust Estate and its use and occupancy to fully comply in all material respects with Legal Requirements at all times, whether or not such compliance requires work or remedial measures that are ordinary or extraordinary, foreseen or unforeseen, structural or nonstructural, or that interfere with the use or enjoyment of the Trust Estate.

1.4 Taxes. Except as otherwise permitted by the Credit Agreement and the Disbursement Agreement, (a) Trustor shall pay all Impositions as they become due and payable and shall deliver to Beneficiary promptly upon Beneficiary's request, evidence satisfactory to Beneficiary that the Impositions have been paid or are not delinquent; (b) Trustor shall not suffer to exist, permit or initiate the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Land as a single lien, except as may be required by law; and (c) in the event of the passage of any law deducting from the value of real property for the purposes of taxation any lien thereon, or changing in any way the taxation of deeds of trust or obligations secured thereby for state or local purposes, or the manner of collecting such taxes and imposing a tax, either directly or indirectly, on this Deed of Trust, the Notes, the Guaranty or the other Loan Documents, Trustor shall pay all such taxes.

1.5 Insurance.

(a) Hazard Insurance Requirements and Proceeds.

(1) **Hazard Insurance.** Trustor shall at its sole expense obtain for, deliver to, assign and maintain for the benefit of Beneficiary, during the term of this Deed of Trust, insurance policies insuring the Trust Estate and liability insurance policies, all in accordance with the requirements of the Guaranty. Trustor shall pay promptly when due any premiums on such insurance policies and on any renewals thereof. In the event of the foreclosure of this Deed of Trust or any other transfer of title to the Trust Estate in partial or complete extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of Beneficiary in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

(2) **Handling of Proceeds.** All Proceeds from any insurance policies shall be collected, held, handled and disbursed in accordance with the provisions of the Credit Agreement, the Guaranty and the Disbursement Agreement (while in effect). All proceeds of insurance allocable to Trustor, as owner [or lessee] of the Site, and attributable to business interruption insurance shall be collected, held, handled and disbursed in accordance with the provisions of

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the Credit Agreement, the Guaranty and the Disbursement Agreement. Any such proceeds disbursed to Beneficiary shall be applied to pay amounts then due and payable under this Deed of Trust. The balance shall be retained by Beneficiary or its designee in an interest bearing or other investment account approved by Beneficiary, which account Trustor hereby pledges to Beneficiary to secure the Obligations. Disbursements shall

be permitted from such account to pay expenses reasonably incurred by Trustor in owning and operating the Trust Estate, as reasonably approved by Beneficiary.

(b) **Compliance with Insurance Policies.** Trustor shall not violate or permit to be violated any of the conditions or provisions of any policy of insurance required by the Guaranty or this Deed of Trust and Trustor shall so perform and satisfy the requirements of the companies writing such policies that, at all times, companies of good standing shall be willing to write and/or continue such insurance. Trustor further covenants to promptly send to Beneficiary all notices relating to any violation of such policies or otherwise affecting Trustor's insurance coverage or ability to obtain and maintain such insurance coverage.

1.6 **Condemnation.** Beneficiary is hereby authorized, at its option, to commence, appear in and prosecute in its own or Trustor's name any action or proceeding relating to any condemnation and to settle or compromise any claim in connection therewith, and Trustor hereby appoints Beneficiary as its attorney-in-fact to take any action in Trustor's name pursuant to Beneficiary's rights hereunder. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Trust Estate or any portion thereof, Trustor shall notify the Trustee and Beneficiary of the pendency of such proceedings. Trustor from time to time shall execute and deliver to Beneficiary all instruments requested by it to permit such participation; provided, however, that such instruments shall be deemed as supplemental to the foregoing grant of permission to Trustee and Beneficiary, and unless otherwise required, the foregoing permission shall, without more, be deemed sufficient to permit Trustee and/or Beneficiary to participate in such proceedings on behalf of Trustor. All such compensation awards, damages, claims, rights of action and Proceeds, and any other payments or relief, and the right thereto, are, whether paid to Beneficiary or Trustor or a third party trustee, included in the Trust Estate. Beneficiary, after deducting therefrom all its expenses, including reasonable attorneys fees, shall apply all Proceeds paid directly to it in accordance with the provisions of the Credit Agreement and the Guaranty. All Proceeds paid directly to the Trustor shall be applied, if received by Trustor prior to the Final Completion Date, in accordance with the Disbursement Agreement and, if received on or after the Final Completion Date, in accordance with the Credit Agreement and the Guaranty. To the extent that any condemnation proceeds are not required to be applied towards restoration of the improvements upon the Site, then Beneficiary shall have the right to apply said condemnation proceeds towards repayment of the Obligations. Trustor hereby waives any rights it may have under NRS 37.115, as amended or recodified from time to time.

1.7 **Care of Trust Estate.**

(a) Trustor shall preserve and maintain the Trust Estate in good condition and repair. Trustor shall not permit, commit or suffer to exist any waste, impairment or deterioration of the Trust Estate or of any part thereof that in any manner materially impairs Beneficiary's security hereunder and shall not take any action which will increase the risk of fire or other hazard to the Trust Estate or to any part thereof.

(b) Except for Permitted Dispositions, no material part of the Improvements or Tangible Collateral that are part of the Trust Estate shall be removed, demolished or materially altered, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld or delayed. Trustor shall have the right, without such consent, to remove and dispose of free from the lien of this Deed of Trust any part of the Improvements or Tangible Collateral that are part of the Trust Estate as from time to time may become worn out or obsolete or otherwise not useful in

connection with the operation of the Trust Estate, provided that either (i) such removal or disposition does not materially affect the value of the Trust Estate or (ii) prior to or promptly following such removal, any such property shall be replaced with other property of substantially equal utility and of a value at least substantially equal to that of the replaced property when first acquired and free from any security interest of any other person (subject only to Permitted Liens), and by such removal and replacement Trustor shall be deemed to have subjected such replacement property to the lien of this Deed of Trust.

(c) Notwithstanding the foregoing provisions of this *Section 1.7*, the Trustor may develop the Project in the manner contemplated by the Disbursement Agreement, the Credit Agreement, the Guaranty and the other Loan Documents.

1.8 **Leases.**

(a) Trustor represents, warrants and covenants that:

(i) as of the date hereof, Trustor has not entered into any Space Leases;

(ii) except for the assignment effected hereby and in the other Financing Agreements, Trustor has not executed any assignment or pledge of any of the Space Leases, the Rents, or of Trustor's right, title and interest in the same; and

(iii) this Deed of Trust does not and will not constitute a violation or default under any Space Lease, and is and shall at all times constitute a valid lien on Trustor's interests in the Space Leases.

(b) Trustor shall not enter into any Space Lease or any modifications or amendments to any Space Lease, either orally or in writing, unless such Space Lease complies with the requirements of the Credit Agreement and the Guaranty.

(c) After an Event of Default, upon the request of Administrative Agent Trustor shall deliver to Beneficiary executed copies of all Space Leases.

1.9 **Further Encumbrance.**

(a) Trustor covenants that at all times prior to the discharge of the Obligations, except for Permitted Liens and Permitted Dispositions, Trustor shall neither make nor suffer to exist, nor enter into any agreement for, any sale, assignment, exchange, mortgage, transfer, Lien, hypothecation or encumbrance of all or any part of the Trust Estate, including, without limitation, the Rents. As used herein, "transfer" includes the actual transfer or other disposition, whether voluntary or involuntary, by law, or otherwise, except those transfers specifically permitted herein, provided, however, that "transfer" shall not include the granting of utility or other beneficial easements with respect to the Trust Estate which have been or are granted by Trustor and are reasonably necessary to the construction, maintenance or operation of the Project.

(b) Any Permitted Lien consisting of the lien of a deed of trust which is junior to the lien of the Loan Documents (including the Security Documents) (a "Subordinate Deed of Trust") shall be permitted hereunder so long as there shall have been delivered to Beneficiary, not less than thirty (30) days prior to the date thereof, a copy thereof which shall contain express covenants in form and substance satisfactory to Beneficiary to the effect that: (i) the Subordinate Deed of Trust is in all respects subject and subordinate to this Deed of Trust; (ii) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Trust Estate shall be named as a party defendant nor shall any action be taken with respect to the Trust Estate which would terminate any occupancy or tenancy of the Trust Estate, or any portion thereof, without the consent of Beneficiary; (iii) any Rents, if collected through a receiver or by

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the holder of the Subordinate Deed of Trust, shall be applied first to the obligations secured by this Deed of Trust, including principal and interest due and owing on or to become due and owing on the Notes, the Guaranty or the other Loan Documents, and then to the payment of maintenance expenses, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operation, and maintenance of the Trust Estate; and (iv) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust, prompt notice of the commencement thereof shall be given to Beneficiary.

(c) Trustor agrees that in the event the ownership of the Trust Estate or any part thereof becomes vested in a person other than Trustor, Beneficiary may, without notice to Trustor, deal in any way with such successor or successors in interest with reference to this Deed of Trust, the Notes, the Guaranty, the other Loan Documents and other Obligations hereby secured without in any way vitiating or discharging Trustor's or any guarantor's, surety's or endorser's liability hereunder or upon the obligations hereby secured. No sale of the Trust Estate and no forbearance to any person with respect to this Deed of Trust and no extension to any person of the time for payment of the Obligations, and other sums hereby secured given by Beneficiary shall operate to release, discharge, modify, change or affect the original liability of Trustor, or such guarantor, surety or endorser either in whole or in part.

(d) If Trustor shall fail to make any payment required to be made by it under any FF&E Financing Agreement, except where Trustor is contesting such payment in good faith, then the Beneficiary shall be entitled to make such payment on Trustor's behalf and any and all sums so expended by the Beneficiary shall be secured by this Deed of Trust and shall be repaid by Trustor upon demand, together with interest thereon at the interest at the rate applicable to overdue principal set forth in the Credit Agreement from the date of advance.

1.10 *Partial Releases of Trust Estate.*

(a) Trustor may from time to time make a Permitted Disposition including, but not limited to, (i) transferring a portion of the Trust Estate (including any temporary taking) to any person legally empowered to exercise the power of eminent domain, or pursuant to dedication agreements that are now in effect or entered into in the future in connection with the development of the Project, (ii) granting utility easements reasonably necessary or desirable for the construction and/or operation of the Project, which grant or transfer is for the benefit of the Trust Estate, or (iii) transferring all or a portion of the Trust Estate as permitted pursuant to the Disbursement Agreement or the other Loan Documents. In each such case, Beneficiary shall execute and deliver any instruments necessary or appropriate to effectuate or confirm any such transfer or grant, free from the lien of this Deed of Trust, *provided, however*, that Beneficiary shall execute a lien release or subordination agreement, as appropriate, for matters described in clauses (i) and (iii) above only if:

(A) Such transfer, grant or release is not prohibited by the Credit Agreement or the Guaranty and all conditions precedent contained in the Credit Agreement and the Guaranty for such transfer, grant or release, if any, shall have been satisfied; and

(B) Beneficiary and Trustee shall have received a counterpart of the instrument pursuant to which such transfer, grant or release is to be made, and each instrument which Beneficiary or Trustee is requested to execute in order to effectuate or confirm such transfer, grant or release.

(b) Any consideration received for a transfer to any person empowered to exercise the right of eminent domain shall be subject to *Section 1.6* hereof.

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1.11 *Further Assurances.*

(a) At its sole cost and without expense to Trustee or Beneficiary, and subject in all events to compliance with the Nevada Gaming Laws and other applicable Legal Requirements, Trustor shall do, execute, acknowledge and deliver any and all such further acts, deeds, conveyances, notices, requests for notices, financing statements, continuation statements, certificates, assignments, notices of assignments, agreements, instruments and further assurances, and shall mark any chattel paper, deliver any chattel paper or instruments to Beneficiary and take any other actions that are necessary, prudent, or reasonably requested by Beneficiary or Trustee to perfect or continue the perfection and first priority of Beneficiary's security interest in the Trust Estate, to protect the Trust Estate against the rights, claims, or interests of third persons other than holders of Permitted Liens or to effect the purposes of this Deed of Trust, including the security agreement and the absolute assignment of Rents contained herein, or for the filing, registering or recording thereof.

(b) Trustor shall forthwith upon the execution and delivery of this Deed of Trust, and thereafter from time to time, cause this Deed of Trust and each instrument of further assurance to be filed, indexed, registered, recorded, given or delivered in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the title of Trustee and/or Beneficiary to, the Trust Estate.

(c) [Upon any modification of the boundaries of the Leased Premises (or any portion thereof), Trustor, at Trustor's expense, shall notify Beneficiary and amend this Deed of Trust to reflect an accurate description of the Leased Premises (or such portion thereof). In connection therewith, Trustor shall provide Beneficiary with such title insurance endorsements to Beneficiary's ALTA extended coverage Lender's Policy(ies) of Title Insurance as Beneficiary may reasonably request.]

1.12 *Security Agreement and Financing Statements.* Trustor (as debtor) hereby grants to Beneficiary (as creditor and secured party) a present and future security interest in all Tangible Collateral, Intangible Collateral, FF&E, Improvements, all other personal property now or hereafter owned or leased by Trustor or in which Trustor has or will have any interest, to the extent that such property constitutes a part of the Trust Estate (whether or not such items are stored on the premises or elsewhere), Proceeds of the foregoing comprising a portion of the Trust Estate and all products, substitutions, and accessions therefor and thereto, subject to Beneficiary's rights to treat such property as real property as herein provided (collectively, the "**Personal Property**"). Trustor shall execute and/or

deliver any and all documents and writings, including without limitation financing statements pursuant to the UCC, as may be necessary or prudent to preserve and maintain the priority of the security interest granted hereby on property which may be deemed subject to the foregoing security agreement or as Beneficiary may reasonably request, and shall pay to Beneficiary on demand any reasonable expenses incurred by Beneficiary in connection with the preparation, execution and filing of any such documents. Trustor hereby authorizes and empowers Beneficiary to file, on Trustor's behalf, all financing statements and refiling and continuations thereof as advisable to create, preserve and protect said security interest. Trustor acknowledges and agrees that it is not authorized to, and will not, authenticate or file, or authorize the filing of, any financing statements or other record with respect to the Personal Property (including any amendments thereto, or continuation or termination statements thereof), except as permitted by the Guaranty. Trustor approves and ratifies any filing or recording of records made by or on behalf of Beneficiary in connection with the perfection of the security interest in favor of Beneficiary hereunder. This Deed of Trust constitutes both a real property deed of trust and a "security agreement," within the meaning of the UCC, and the Trust Estate includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Trust Estate. Trustor by executing and delivering this Deed of Trust has granted to Beneficiary, as security of the Obligations, a security interest in the Trust Estate.

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(a) **Fixture Filing.** Without in any way limiting the generality of the immediately preceding paragraph or of the definition of the Trust Estate, this Deed of Trust constitutes a fixture filing under Sections 9-334 and 9-502 of the UCC (NRS 104.9334 and 104.9502). For such purposes, (i) the "debtor" is Trustor and its address is the address given for it in the initial paragraph of this Deed of Trust; (ii) the "secured party" is Beneficiary, and its address for the purpose of obtaining information is the address given for it in the initial paragraph of this Deed of Trust; (iii) the real estate to which the fixtures are or are to become attached is Trustor's interest in the Site; and (iv) the record owner of such real estate or interests therein is Trustor [(with respect to the Land and as the lessor under the Subject Leases)].

(b) **Remedies.** This Deed of Trust shall be deemed a security agreement as defined in the UCC and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall include any or all of (i) those prescribed herein, and (ii) those available under applicable law, and (iii) those available under the UCC, all at Beneficiary's sole election. In addition, a photographic or other reproduction of this Deed of Trust shall be sufficient as a financing statement for filing wherever filing may be necessary to perfect or continue the security interest granted herein.

(c) **Derogation of Real Property.** It is the intention of the parties that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in anyway derogating from or impairing the express declaration and intention of the parties hereto as hereinabove stated that everything used in connection with the production of income from the Trust Estate and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real property encumbered by this Deed of Trust irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. It is the intention of the parties that the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Trustor's interest as lessors in any present or future Space Lease or rights to Rents, shall never be construed as in anyway altering any of the rights of Beneficiary as determined by this Deed of Trust or impugning the priority of Beneficiary's real property lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of Beneficiary in the event any court or judge shall at any time hold with respect to the matters set forth in the foregoing clauses (1), (2) and (3) that notice of Beneficiary's priority of interest to be effective against a particular class of persons, including but not limited to, the federal government and any subdivisions or entity of the federal government, must be filed in the UCC records.

(d) **Priority; Permitted Financing of Tangible Collateral.** All Personal Property of any nature whatsoever which is subject to the provisions of this security agreement shall be purchased or obtained by Trustor in its name and free and clear of any lien or encumbrance, except for Permitted Liens and the lien hereof, for use only in connection with the business and operation of the Project, and shall be and at all times remain free and clear of any lease or similar arrangement, chattel financing, installment sale agreement, security agreement and any encumbrance of like kind, so that Beneficiary's security interest shall attach to and vest in Trustor for the benefit of Beneficiary, with the priority herein specified, immediately upon the installation or use of the Personal Property at the Site and Trustor warrants and represents that Beneficiary's security interest in the Personal Property is a validly attached and binding security interest, properly perfected and prior to all other security interests therein except as otherwise permitted in

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this Deed of Trust. The foregoing shall not be construed as limiting Trustor's rights to transfer Personal Property pursuant to Permitted Dispositions or to obtain releases of Personal Property from the Lien of this Deed of Trust pursuant to *Section 1.10* hereof.

(e) **Preservation of Contractual Rights of Collateral.** Trustor shall, prior to delinquency, default, or forfeiture, perform all obligations and satisfy all material conditions required on its part to be satisfied to preserve its rights and privileges under any contract, lease, license, permit, or other authorization (i) under which it holds any Tangible Collateral or (ii) which constitutes part of the Intangible Collateral, except where Trustor is contesting such obligations in good faith.

(f) **Removal of Collateral.** Except for damaged or obsolete Tangible Collateral which is either no longer usable or which is removed temporarily for repair or improvement or removed for replacement on the Trust Estate with Tangible Collateral of similar function or as otherwise permitted herein, none of the Tangible Collateral shall be removed from the Trust Estate without Beneficiary's prior written consent.

(g) **Change of Name.** Trustor shall not change its corporate (or other entity) or business name, or do business within the State of Nevada under any name other than such name, or any trade name(s) other than those as to which Trustor gives prior written notice to Beneficiary of its intent to use such trade names, or any other business names (if any) specified in the financing statements delivered to Beneficiary for filing in connection with the execution hereof, without, in each case, providing Beneficiary with the additional financing statement(s) and any other similar documents deemed reasonably necessary by Beneficiary to assure that its security interest remains perfected and of undiminished priority in all such Personal Property notwithstanding such name change.

1.13 **Assignment of Leases and Rents.** Subject to Nevada Gaming Laws and other applicable Legal Requirements, the assignment of Leases and Rents set out above in Granting Clause (G) shall constitute an absolute and present assignment to Beneficiary, subject to the license herein given to Trustor to collect the

Rents, and shall be fully operative without any further action on the part of any party, and specifically Beneficiary shall be entitled upon the occurrence of an Event of Default hereunder to all Rents and to enter upon the Site and the Improvements to collect such Rents, provided, however, that Beneficiary shall not be obligated to take possession of the Trust Estate, or any portion thereof. The absolute assignment contained in Granting Clause (G) shall not be deemed to impose upon Beneficiary any of the obligations or duties of Trustor provided in any such Space Lease (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease in the event that any lessee shall have been joined as a party defendant in any action to foreclose this Deed of Trust and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Trust Estate or any part thereof).

1.14 *Expenses.*

(a) Trustor shall pay when due and payable all out-of-pocket costs, including without limitation, those reasonable appraisal fees, recording fees, taxes, abstract fees, title policy fees, escrow fees, attorneys' and paralegal fees, travel expenses, fees for inspecting architect(s) and engineer(s) and all other costs and expenses of every character which may hereafter be incurred by Beneficiary or any assignee of Beneficiary in connection with the preparation and execution of the Guaranty and the other Loan Documents (including the Security Documents) to which Trustor is a party or instruments, agreements or documents of further assurance, the funding of the indebtedness secured hereby, and the enforcement of the Guaranty or any Loan Document (including any Security Document) to which Trustor is a party. Other than costs associated with the enforcement of any Loan Document, all such costs shall be itemized in reasonable detail; and

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(b) Trustor shall, upon demand by Beneficiary, reimburse Beneficiary or any assignee of Beneficiary for all such reasonable expenses which have been incurred or which shall be incurred by it; and

(c) Trustor shall indemnify Beneficiary with respect to any transaction or matter in any way connected with any portion of the Trust Estate, this Deed of Trust, including any occurrence at, in, on, upon or about the Trust Estate (including any personal injury, loss of life, or property damage), or Trustor's use, occupancy, or operation of the Trust Estate, or the filing or enforcement of any mechanic's lien, or otherwise caused in whole or in part by any act, omission or negligence occurring on or at the Trust Estate, including failure to comply with any Legal Requirement or with any requirement of this Deed of Trust that applies to Trustor, except to the extent resulting from the gross negligence, fraud or willful misconduct of Trustee or Beneficiary. If Beneficiary is a party to any litigation as to which either Trustor is required to indemnify Beneficiary (or is made a defendant in any action of any kind against Trustor or relating directly or indirectly to any portion of the Trust Estate) then, at Beneficiary's option, Trustor shall undertake Beneficiary's defense, using counsel reasonably satisfactory to Beneficiary (and any settlement shall be subject to Beneficiary's consent, which consent shall not be unreasonably withheld), and in any case shall indemnify Beneficiary against such litigation. Trustor shall pay all reasonable costs and expenses, including reasonable legal costs, that Beneficiary pays or incurs in connection with any such litigation. Any amount payable under any indemnity in this Deed of Trust shall be a demand obligation, shall be added to, and become a part of, the secured obligations under this Deed of Trust, shall be secured by this Deed of Trust and, if not paid promptly following demand therefor (which demand shall, unless associated with Loan Document enforcement actions, set forth in reasonable detail an itemization of the amount so demanded) shall bear interest at the interest rate specified in the Credit Agreement. Such indemnity shall survive any release of this Deed of Trust and any foreclosure.

1.15 ***Beneficiary's Cure of Trustor's Default.*** If Trustor defaults hereunder in the payment of any tax, assessment, lien, encumbrance or other Imposition, in its obligation to furnish insurance hereunder, or in the performance or observance of any other covenant, condition or term of this Deed of Trust or any other Financing Agreement or any FF&E Financing Agreement, Beneficiary may, but is not obligated to, to preserve its interest in the Trust Estate, perform or observe the same, and all payments made (whether such payments are regular or accelerated payments) and reasonable costs and expenses incurred or paid by Beneficiary in connection therewith shall become due and payable immediately. The amounts so incurred or paid by Beneficiary, together with interest thereon at the interest rate applicable to overdue principal set forth in the Credit Agreement, from the date incurred until paid by Trustor, shall be added to the indebtedness and secured by the lien of this Deed of Trust. Beneficiary, is hereby empowered to enter and to authorize others to enter upon the Site or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Trustor or any person in possession holding under Trustor. No exercise of any rights under this Section 1.15 by Beneficiary shall cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

1.16 ***Use of Land.*** Trustor covenants that the Trust Estate shall be used and operated in a manner consistent with the requirements of the Loan Documents.

1.17 ***Compliance with Permitted Lien Agreements.*** Trustor shall comply with each and every material obligation contained in any agreement pertaining to a Permitted Lien.

1.18 ***Defense of Actions.*** Trustor shall appear in and defend any action or proceeding affecting or purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and shall pay all costs and expenses, including cost of title search and insurance or other evidence of title,

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preparation of survey, and reasonable attorneys' fees in any such action or proceeding in which Beneficiary or Trustee may appear or may be joined as a party and in any suit brought by Beneficiary based upon or in connection with this Deed of Trust, the Guaranty or any Loan Document to which Trustor is a party. Nothing contained in this section shall, however, limit the right of Beneficiary to appear in such action or proceeding with counsel of its own choice, either on its own behalf or on behalf of Trustor.

1.19 *Affiliates.*

(a) **Subject to Trust Deed.** Subject to compliance with the requirements of applicable Nevada Gaming Laws, Trustor shall cause all of its Affiliates in any way involved with the operation of the Trust Estate or the Project to observe the covenants and conditions of this Deed of Trust to the extent necessary to give the full intended effect to such covenants and conditions and to protect and preserve the security of Beneficiary hereunder.

(b) **Restriction on Use of Subsidiary or Affiliate.** Except as permitted under the Credit Agreement, the Notes, the Guaranty or the other Loan Documents (including any Security Document), Trustor shall not use any Affiliate in the operation of the Trust Estate or the Project if such use would in

any way impair the security for the Obligations or circumvent any covenant or condition of this Deed of Trust, the Guaranty or of any other Loan Document.

1.20 **Title Insurance.** On or promptly after the effective date of this Deed of Trust, Trustor shall cause to be delivered to Trustee at Trustor's expense, one or more ALTA extended coverage Lender's Policies of Title Insurance showing fee title to the real property situated in the County of Clark, State of Nevada, more specifically described in Schedule A attached hereto, vested in Trustor and the lien of this Deed of Trust to be a perfected lien, prior to any and all encumbrances other than Permitted Encumbrances (excluding, however, any such non-Permitted Encumbrances for which the Title Insurer has agreed to provide an endorsement or affirmative coverage protecting the lien of this Deed of Trust against such non-Permitted Encumbrances).

1.21 **[Leasehold Estates.** Trustor represents, covenants and warrants: (a) that the Subject Leases are in full force and effect and unmodified; (b) Trustor will defend the leasehold estate under each Subject Lease for the entire remainder of the term set forth in each of the said Subject Leases against all and every Person or Persons lawfully claiming, or who may claim the same or any part thereof, subject to the payment of the rents in the Subject Leases reserved and subject to the performance and observance of all of the terms, covenants, conditions and warranties thereof; and (c) that there is no uncured default under any Subject Lease or in the performance of any of the terms, covenants, conditions or warranties thereof on the part of the lessor or the lessee to be observed and performed and that no state of facts exist under a Subject Lease which, with the lapse of time or giving of notice or both would constitute a default thereunder.]

1.22 **[Payment of Subject Leases Expenses.** The Trustor shall pay or cause to be paid on or prior to the date due all rents, additional rents and other charges and Impositions payable by the lessor or the lessee under the Subject Leases for which provision has not been made hereinbefore, when and as often as the same shall become due and payable.]

1.23 **[Trustor's Covenants with Respect to Subject Leases.**

(a) Trustor shall at all times promptly and faithfully keep and perform, or cause to be kept and performed, all the covenants and conditions contained in the Subject Leases to be kept and performed by it under the Subject Leases and in all respects conform to and comply with the terms and conditions of the Subject Leases. Trustor shall, within ten days after written demand from Beneficiary, deliver to Beneficiary proof of payment of all items that are required to be paid by Trustor under the Subject Leases, including, without limitation, rent, taxes, operating expenses and other charges. Trustor shall promptly deliver to Beneficiary copies of all notices given with

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respect to or which affect the Subject Leases including pleadings or notices of default given under the Subject Leases. Trustor further covenants that it shall not do or permit anything to occur or fail to occur which will impair or tend to impair the security of this Deed of Trust or will be grounds for declaring a forfeiture or termination of either Subject Lease, and upon any such failure as aforesaid, Trustor shall be subject to all of the rights and remedies granted Beneficiary in this Deed of Trust.

(b) Except as otherwise permitted in the Loan Documents, Trustor shall not modify, extend or in any way alter the terms of the Subject Leases or cancel or surrender said Subject Leases or reject the Subject Leases in a case pending under the Bankruptcy Code, or waive, execute, condone or in anyway release or discharge the lessor thereunder of or from the obligations, covenants, conditions and agreements by said lessor to be done and performed; and Trustor does expressly release, relinquish and surrender unto Beneficiary all of its rights, power and authority to cancel, surrender, amend, modify or alter in any way the terms and provisions of the Subject Leases and any attempt on the part of Trustor to exercise any such right without the written approval and consent of Beneficiary thereto being first had and obtained shall constitute an Event of Default under the terms hereof and the other Loan Documents Documents and all Obligations and other sums secured hereby shall, at the option of Beneficiary, become due and payable forthwith. If Trustor becomes a debtor under the Bankruptcy Code, Trustor shall assume and assign the Subject Leases to Beneficiary, and it further agrees that it shall not object to any request by Beneficiary that the Subject Leases not be rejected, or that Beneficiary be authorized to assume Trustor's rights under the Subject Leases.

(c) Trustor shall deliver to Beneficiary an original executed copy of each Subject Lease, an estoppel certificate from the Lessor within ten (10) days of request by Beneficiary and in such form and content as shall be satisfactory to Beneficiary, as well as any and all documentary evidence received by it showing compliance by Trustor with the provisions of the Subject Leases.

(d) Trustor does hereby authorize and irrevocably appoint and constitute Beneficiary as its true and lawful attorney-in-fact, which appointment is coupled with an interest, in its name, place and stead, to, upon the occurrence and during the continuance of an Event of Default, take any and all actions deemed necessary or desirable by Beneficiary to perform and comply with all the obligations of Trustor under the Subject Leases, and to do and take upon the occurrence and during continuation of an Event of Default, but without any obligation so to do or take, any action which Beneficiary deems reasonably necessary to prevent or cure any default by Trustor under the Subject Leases, to enter into and upon the Site, the Project or the Improvements or any part thereof as provided in the Loan Documents in order to prevent or cure any default of Trustor pursuant thereto, to the end that the rights of Trustor in and to the leasehold estate created by the Subject Leases shall be kept free from default.

(e) In the event of any failure by Trustor to perform or cause the performance of any covenant on the part of lessor or lessee to be observed and performed under the Subject Leases, the performance by Beneficiary on behalf of Trustor of the applicable Subject Lease covenant shall not remove or waive, as between Trustor and Beneficiary, the corresponding Event of Default under the terms hereof and any amount so advanced by Beneficiary or any costs incurred in connection therewith, with interest thereon at the interest rate applicable to overdue principal under the Credit Agreement, shall constitute additional Obligations secured hereby and be immediately due and payable.

(f) To the extent permitted by law, the price payable by Trustor, or by any other party so entitled, in the exercise of the right of redemption, if any, shall include all rents paid and other sums advanced by Beneficiary, on behalf of Trustor, as lessee under the Subject Leases.

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(g) Trustor shall use all reasonable efforts to enforce the obligations of the lessor under the Subject Leases in a commercially reasonable manner.

(h) No release or forbearance of any of Trustor's obligations under the Subject Leases by the lessor thereunder, shall release Trustor from any of its obligations under this Deed of Trust.

(i) The lien of this Deed of Trust shall attach to all of Trustor's rights and remedies at any time arising under or pursuant to section 365(h) of the Bankruptcy Law, including, without limitation, all of Trustor's rights to remain in possession of the Leased Premises. Trustor shall not elect to treat the Subject Leases as terminated under section 365(h)(1) of the Bankruptcy Law, and any such election shall be void.

(i) If pursuant to section 365(h)(2) of the Bankruptcy Law, Trustor shall seek to offset against the rent reserved in the Subject Leases the amount of any damages caused by the nonperformance by the lessor or any other party of any of their respective obligations thereunder after the rejection by the lessor or such other party of the Subject Leases under the Bankruptcy Law, then Trustor shall, prior to effecting such offset, notify Beneficiary of its intent to do so, setting forth the amount proposed to be so offset and the basis therefor. Beneficiary shall have the right to object to all or any part of such offset that, in the reasonable judgment of Beneficiary, would constitute a breach of the Subject Leases, and in the event of such objection, Trustor shall not effect any offset of the amounts found objectionable by Beneficiary. Neither Beneficiary's failure to object as aforesaid nor any objection relating to such offset shall constitute an approval of any such offset by Beneficiary.

(ii) If any action, proceeding, motion or notice shall be commenced or filed in respect of the lessor under the Subject Leases or any other party or in respect of the Subject Leases in connection with any case under the Bankruptcy Law, then Beneficiary shall have the option to intervene in any such litigation with counsel of Beneficiary's choice. Beneficiary may proceed in its own name in connection with any such litigation, and Trustor agrees to execute any and all powers, authorizations, consents or other documents required by Beneficiary in connection therewith.

(iii) Trustor shall, after obtaining knowledge thereof, promptly notify Beneficiary of any filing by or against the lessor or any other party with an interest in the Leased Premises of a petition under the Bankruptcy Law. Trustor shall promptly deliver to Beneficiary, following receipt, copies of any and all notices, summonses, pleadings, applications and other documents received by Trustor in connection with any such petition and any proceedings relating thereto.

(iv) If there shall be filed by or against Trustor a petition under the Bankruptcy Law, and Trustor, as lessee under the Subject Leases, shall determine to reject the Subject Leases pursuant to section 365(a) of the Bankruptcy Law, then Trustor shall give Beneficiary a notice of the date on which Trustor shall apply to the bankruptcy court for authority to reject the Subject Leases (such notice to be no later than twenty (20) days prior to such date). Beneficiary shall have the right, but not the obligation, to serve upon Trustor at any time prior to the date on which Trustor shall so apply to the bankruptcy court a notice stating that Beneficiary demands that Trustor assume and assign the Subject Leases to Beneficiary pursuant to section 365 of the Bankruptcy Law. If Beneficiary shall serve upon Trustor the notice described in the preceding sentence, to the extent permitted by law Trustor shall not seek to reject the Subject Leases and shall comply with the demand provided for in the preceding sentence. In addition, effective upon the entry of an order for relief with respect to Trustor under the Bankruptcy Law, Trustor hereby assigns and transfers to Beneficiary a non-exclusive right to apply to the bankruptcy court under section 365(d)(4) of the Bankruptcy Law for an order extending the period during which the Subject Leases may be rejected or assumed; and shall (a) promptly notify Beneficiary of any default by Trustor in the

performance or observance of any of the terms, covenants or conditions on the part of Trustor to be performed or observed under the Subject Leases and of the giving of any written notice by the lessor thereunder to Trustor of any such default, and (b) promptly cause a copy of each written notice given to Trustor by the lessor under the Subject Leases to be delivered to Beneficiary. Beneficiary may rely on any notice received by it from any such lessor of any default by Trustor under the Subject Leases and may take such action as may be permitted by law to cure such default even though the existence of such default or the nature thereof shall be questioned or denied by Trustor or by any Person on its behalf.

(k) Beneficiary shall have the right upon notice to Trustor to participate in the adjustment and settlement of any insurance proceeds and in the determination of any condemnation award under the Subject Leases to the extent and in the manner provided in the Subject Leases.]

1.24 **Rejection of Subject Leases.** [To the extent applicable, if the lessor under the Subject Leases rejects or disaffirms the Subject Leases or purports or seeks to disaffirm the Subject Leases pursuant to any Bankruptcy Law, then:

(a) To the extent permitted by law, Trustor shall remain in possession of the Leased Premises demised under the Subject Leases and shall perform all acts reasonably necessary for Trustor to remain in such possession for the unexpired term of such Subject Leases (including all renewals), whether the then existing terms and provisions of such Subject Leases require such acts or otherwise; and

(b) All the terms and provisions of this Deed of Trust and the Lien created by this Deed of Trust shall remain in full force and effect and shall extend automatically to all of Trustor's rights and remedies arising at any time under, or pursuant to, Section 365(h) of the Bankruptcy Code, including all of Trustor's rights to remain in possession of the Leased Premises.]

ARTICLE TWO CREDIT AGREEMENT PROVISIONS

2.1 **Interaction with the Guaranty**

(a) **Incorporation by Reference.** All terms, covenants, conditions, provisions and requirements of the Guaranty are incorporated by reference in this Deed of Trust.

(b) **Conflicts.** In the event of any conflict or inconsistency between the provisions of this Deed of Trust and those of the Guaranty, the Credit Agreement or the Disbursement Agreement, the provisions of the Guaranty, the Credit Agreement or the Disbursement Agreement, as applicable, shall govern.

2.2 **Other Collateral.** This Deed of Trust is one of a number of security agreements to secure the debt delivered by or on behalf of Trustor and other Persons pursuant to the Credit Agreement and the other Loan Documents (including the Security Documents) and securing the Obligations secured hereunder. All

potential junior Lien claimants are placed on notice that, under any of the Loan Documents (including the Security Documents) (including a separate future unrecorded agreement between Trustor and Beneficiary), other collateral for the Obligations secured hereunder (*i.e.*, collateral other than the Trust Estate) may, under certain circumstances, be released without a corresponding reduction in the total principal amount secured by this Deed of Trust. Such a release would decrease the amount of collateral securing the same indebtedness, thereby increasing the burden on the remaining Trust Estate created and continued by this Deed of Trust. No such release shall impair the priority of the lien of this Deed of Trust. By accepting its interest in the Trust Estate, each and every junior Lien claimant shall be deemed to have acknowledged the possibility of, and consented to, any such release. Nothing in this paragraph shall impose any obligation upon Beneficiary.

ARTICLE THREE
DEFAULTS

3.1 **Event of Default.** The term "Event of Default," wherever used in this Deed of Trust, shall mean any of (i) one or more of the events of default listed in the Credit Agreement (ii) so long as the Disbursement Agreement is in effect, one or more of the events of default listed in the Disbursement Agreement (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) or (iii) if any "borrower" (as that term is defined in NRS 106.310) who may send a notice pursuant to NRS 106.380(1), (x) delivers, sends by mail or otherwise gives, or purports to deliver, send by mail or otherwise give, to a beneficiary under this Deeds of Trust (A) any notice of an election to terminate the operation of this Deed of Trust as security for any secured obligation, including, without limitation, any obligation to repay any "future advance" (as defined in NRS 106.320) of "principal" (as defined in NRS 106.345), or (B) any other notice pursuant to NRS 106.380(1), (y) records a statement pursuant to NRS 106.380(3), or (z) causes this Deed of Trust, any secured obligation, or any Secured Party to be subject to NRS 106.380(2), 106.380(3) or 106.400.

ARTICLE FOUR
REMEDIES

4.1 **Acceleration of Maturity.** If an Event of Default occurs, Beneficiary may (except that such acceleration shall be automatic if the Event of Default is caused by Borrower's or Trustor's Bankruptcy), in accordance with the Loan Documents, declare the Obligations to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become due and payable without demand, presentment, notice or other requirements of any kind (all of which Trustor waives) notwithstanding anything in this Deed of Trust or any Loan Document or applicable law to the contrary.

4.2 **Protective Advances.** If the Borrower or Trustor fails to make any payment or perform any other obligation under the Notes, Credit Agreement, the Guaranty or any other Financing Agreement, then without thereby limiting Beneficiary's other rights or remedies, waiving or releasing any of Trustor's obligations, or imposing any obligation on Beneficiary, Beneficiary may either advance any amount owing or perform any or all actions that Beneficiary considers necessary or appropriate to cure such default. All such advances shall constitute "Protective Advances" and shall bear interest thereon at the interest rate applicable to overdue principal set forth in the Credit Agreement from the date incurred until paid by Trustor. No sums advanced or performance rendered by Beneficiary shall cure, or be deemed a waiver of any Event of Default.

4.3 **Institution of Equity Proceedings.** If an Event of Default occurs, Beneficiary may institute an action, suit or proceeding in equity for specific performance of this Deed of Trust, the Notes, the Guaranty or any other Loan Document (including any Security Document), all of which shall be specifically enforceable by injunction or other equitable remedy. Trustor waives any defense based on laches or any applicable statute of limitations.

4.4 **Beneficiary's Power of Enforcement.**

(a) If an Event of Default occurs, Beneficiary shall be entitled, at its option and in its sole and absolute discretion, to prepare and record on its own behalf, or to deliver to Trustee for recording, if appropriate, written declaration of default and demand for sale and written Notice of Breach and Election to Sell (NRS 107.080(3)) (or other statutory notice) to cause the Trust Estate to be sold to satisfy the obligations hereof, and in the case of delivery to Trustee, Trustee shall cause said notice to be filed for record.

(b) After the lapse of such time as may then be required by law following the recordation of said Notice of Breach and Election to Sell, and notice of sale having been given as then required by law, including compliance with any applicable Nevada Gaming Laws, Trustee without demand on Trustor, shall sell the Trust Estate or any portion thereof at the time and place fixed by it in said notice, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder, of cash in lawful money of the United States payable at the time of sale. Trustee may, for any cause it deems expedient, postpone the sale of all or any portion of said property until it shall be completed and, in every case, notice of postponement shall be given by public announcement thereof at the time and place last appointed for the sale and from time to time thereafter Trustee may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall execute and deliver to the purchaser its Deed, Bill of Sale, or other instrument conveying said property so sold, but without any covenant or warranty, express or implied. The recitals in such instrument of conveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale.

(c) After deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including, without limitation, costs of evidence of title and reasonable attorneys' fees and other legal expenses of Trustee or Beneficiary in connection with a sale, Trustee shall apply the proceeds of such sale to payment of all sums expended under the terms hereof not then repaid, with accrued interest at the rate applicable to overdue principal set forth in the Credit Agreement to the payment of all other sums then secured hereby and the remainder, if any, to the person or persons legally entitled thereto as provided in NRS 40.462.

(d) Subject to compliance with applicable Nevada Gaming Laws, if any Event of Default occurs, Beneficiary may, either with or without entry or taking possession of the Trust Estate, and without regard to whether or not the indebtedness and other sums secured hereby shall be due and without prejudice to the right of Beneficiary thereafter to bring an action or proceeding to foreclose or any other action for any default existing at the time such earlier action was commenced, proceed by any appropriate action or proceeding: (1) to enforce payment of the Obligations, to the extent permitted by law, or the performance of any term hereof or any other right; (2) to foreclose this Deed of Trust in any manner provided by law for the foreclosure of mortgages or deeds of trust on real property and to sell, as an entirety or in separate lots or parcels, the Trust Estate or any portion thereof pursuant to the laws of the State of Nevada or under the judgment or decree of a court or courts of competent jurisdiction, and Beneficiary shall be entitled to recover in

any such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees in such amount as shall be awarded by the court; (3) to exercise any or all of the rights and remedies available to it under the Loan Documents; and (4) to pursue any other remedy available to it. Beneficiary shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Beneficiary may determine.

(e) The remedies described in this *Section 4.4* may be exercised with respect to all or any portion of the Personal Property, either simultaneously with the sale of any real property encumbered hereby or independent thereof. Beneficiary shall at any time be permitted to proceed with respect to all or any portion of the Personal Property in any manner permitted by the UCC. Trustor agrees that Beneficiary's inclusion of all or any portion of the Personal Property (and all personal property that is subject to a security interest in favor, or for the benefit, of Beneficiary) in a sale or other remedy exercised with respect to the real property encumbered hereby, as permitted by the UCC, is a commercially reasonable disposition of such property.

4.5 *Beneficiary's Right to Enter and Take Possession, Operate and Apply Income.*

(a) Subject to compliance with applicable Nevada Gaming Laws, if an Event of Default occurs, (i) Trustor, upon demand of Beneficiary, shall forthwith surrender to Beneficiary the actual possession and, if and to the extent permitted by law, Beneficiary itself, or by such officers or agents as it may appoint, may enter and take possession of all the Trust Estate including the Personal Property, without liability for trespass, damages or otherwise, and may exclude Trustor and its agents and employees wholly therefrom and may have joint access with Trustor to the books, papers and accounts of Trustor; and (ii) Trustor shall pay monthly in advance to Beneficiary on Beneficiary's entry into possession, or to any receiver appointed to collect the Rents, all Rents then due and payable.

(b) If Trustor shall for any reason fail to surrender or deliver the Trust Estate, the Personal Property or any part thereof after Beneficiary's demand, Beneficiary may obtain a judgment or decree conferring on Beneficiary or Trustee the right to immediate possession or requiring Trustor to deliver immediate possession of all or part of such property to Beneficiary or Trustee and Trustor hereby specifically consents to the entry of such judgment or decree. Trustor shall pay to Beneficiary or Trustee, upon demand, all reasonable costs and expenses of obtaining such judgment or decree and reasonable compensation to Beneficiary or Trustee, their attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Deed of Trust.

(c) Subject to compliance with applicable Nevada Gaming Laws, upon every such entering upon or taking of possession, Beneficiary or Trustee may hold, store, use, operate, manage and control the Trust Estate and conduct the business thereof, and, from time to time in its sole and absolute discretion and without being under any duty to so act:

- (1) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;
- (2) insure or keep the Trust Estate insured;
- (3) manage and operate the Trust Estate and exercise all the rights and powers of Trustor in their name or otherwise with respect to the same;
- (4) enter into agreements with others to exercise the powers herein granted Beneficiary or Trustee, all as Beneficiary or Trustee from time to time may determine; and, subject to the absolute assignment of the Leases and Rents to Beneficiary, Beneficiary or Trustee may collect and receive all the Rents, including those past due as well as those accruing thereafter; and shall apply the monies so received by Beneficiary or Trustee in such priority as Beneficiary may determine to (1) the payment of interest and principal due and payable on the Notes or the other Loan Documents, (2) the deposits for taxes and assessments and insurance premiums due, (3) the cost of insurance, taxes, assessments and other proper charges upon the Trust Estate or any part thereof; (4) the compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary or Trustee; and (5) any other charges or costs required to be paid by Trustor under the terms hereof; and
- (5) rent or sublet the Trust Estate or any portion thereof for any purpose permitted by this Deed of Trust.

Beneficiary or Trustee shall surrender possession of the Trust Estate and the Personal Property to Trustor only when all that is due upon such interest and principal, tax and insurance deposits, and all amounts under any of the terms of the Credit Agreement or this Deed of Trust, shall have been paid

and all defaults made good. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.6 **Leases.** Beneficiary is authorized to foreclose this Deed of Trust subject to the rights of any tenants of the Trust Estate, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights shall not be, nor be asserted by Trustor to be, a defense to any proceedings instituted by Beneficiary to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Trust Estate, or any portion thereof. Unless otherwise agreed by Beneficiary in writing, all Space Leases executed subsequent to the date hereof, or any part thereof, shall be subordinate and inferior to the lien of this Deed of Trust; provided, however that (i) in accordance with the terms of the Loan Documents, Beneficiary may be required to execute a non-disturbance and attornment agreement in connection with certain Space Leases; and (ii) from time to time Beneficiary may execute and record among the land records of the jurisdiction where this Deed of Trust is recorded, subordination statements with respect to such of said Space Leases as Beneficiary may designate in its sole discretion, whereby the Space Leases so designated by Beneficiary shall be made superior to the lien of this Deed of Trust for the term set forth in such subordination statement. From and after the recordation of such subordination statements, and for the respective periods as may be set forth therein, the Space Leases therein referred to shall be superior to the lien of this Deed of Trust and shall not be affected by any foreclosure hereof. All such Space Leases shall contain a provision to the effect that the Trustor and Space Lessee recognize the right of Beneficiary to elect and to effect such subordination of this Deed of Trust and consents thereto.

4.7 **Purchase by Beneficiary.** Upon any foreclosure sale (whether judicial or nonjudicial), Beneficiary may bid for and purchase the property subject to such sale and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further

accountability.

4.8 Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws. Trustor agrees to the full extent permitted by law that if an Event of Default occurs, neither Trustor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust or the absolute sale of the Trust Estate or any portion thereof or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof, and Trustor for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Trust Estate marshalled upon any foreclosure of the lien hereof and agrees that Trustee or any court having jurisdiction to foreclose such lien may sell the Trust Estate in part or as an entirety.

4.9 Receiver. If an Event of Default occurs, Beneficiary, to the extent permitted by law and subject to compliance with all applicable Nevada Gaming Laws, and without regard to the value, adequacy or occupancy of the security for the indebtedness and other sums secured hereby, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Trust Estate and to collect all Rents and apply the same as the court may direct, and such receiver may be appointed by any court of competent jurisdiction upon application by Beneficiary. Beneficiary may have a receiver appointed without notice to Trustor or any third party, and Beneficiary may waive any requirement that the receiver post a bond. Beneficiary shall have the power to designate and select the Person who shall serve as the receiver and to negotiate all terms and conditions under which such receiver shall serve. Any receiver appointed on Beneficiary's behalf may be an Affiliate of Beneficiary. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Deed of Trust. The right to enter and take possession of and to manage and operate the Trust Estate and to collect all Rents,

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whether by a receiver or otherwise, shall be cumulative to any other right or remedy available to Beneficiary under this Deed of Trust, the Guaranty or the other Loan Documents or otherwise available to Beneficiary and may be exercised concurrently therewith or independently thereof. Beneficiary shall be liable to account only for such Rents (including, without limitation, security deposits) actually received by Beneficiary, whether received pursuant to this section or any other provision hereof. Notwithstanding the appointment of any receiver or other custodian, Beneficiary shall be entitled as pledgee to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Deed of Trust to, Beneficiary.

4.10 Suits to Protect the Trust Estate. Beneficiary shall have the power and authority to institute and maintain any suits and proceedings as Beneficiary, in its sole and absolute discretion, may deem advisable (a) to prevent any impairment of the Trust Estate by any acts which may be unlawful or in violation of this Deed of Trust, (b) to preserve or protect its interest in the Trust Estate, or (c) to restrain the enforcement of or compliance with any legislation or other Legal Requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Beneficiary's interest.

4.11 Proofs of Claim. In the case of any receivership, Insolvency, Bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Trustor, or, to the extent the same would result in an Event of Default hereunder, any Subsidiary, or any guarantor, co-maker or endorser of any of Trustor's obligations, its creditors or its property, Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim or other documents as it may deem to be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Trustor under the Loan Document, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Trustor after such date.

4.12 Trustor to Pay the Obligations on Any Default in Payment; Application of Monies by Beneficiary.

(a) In case of a foreclosure sale of all or any part of the Trust Estate and of the application of the proceeds of sale to the payment of the sums secured hereby, Beneficiary shall be entitled to enforce payment from Trustor of any additional amounts then remaining due and unpaid with respect to the Obligations and to recover judgment against Trustor for any portion thereof remaining unpaid, with interest at the rate applicable to overdue principal as set forth in the Credit Agreement.

(b) Trustor hereby agrees to the extent permitted by law, that no recovery of any judgment by Beneficiary or other action by Beneficiary and no attachment or levy of any execution upon any Property of Trustor by Beneficiary (other than a foreclosure of the entire Trust Estate hereunder) shall in any way affect the Lien and security interest of this Deed of Trust upon the Trust Estate or any part thereof or any Lien, rights, powers or remedies of Beneficiary hereunder, but such Lien, rights, powers and remedies shall continue unimpaired as before.

(c) Any monies collected or received by Beneficiary under this *Section 4.12* shall be first applied to the payment of reasonable compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary, and the balance remaining shall be applied to the Obligations.

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(d) The provisions of this section shall not be deemed to limit or otherwise modify the provisions of any guaranty of the indebtedness evidenced by the Notes or the other Loan Documents.

4.13 Delay or Omission; No Waiver. No delay or omission of Beneficiary or any Bank to exercise any right, power or remedy upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Beneficiary whether contained herein or in the other Loan Documents or otherwise available to Beneficiary may be exercised from time to time and as often as may be deemed expedient by Beneficiary.

4.14 No Waiver of One Default to Affect Another. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If Beneficiary or the required percentage of the Banks (as determined pursuant to the Credit Agreement), to the extent applicable under the Credit Agreement, (a) grants forbearance or an extension of time for the

payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Notes, the Credit Agreement, this Deed of Trust, the Guaranty, the Disbursement Agreement or any other Loan Document (including any Security Document); (d) releases any part of the Trust Estate from the lien or security interest of this Deed of Trust or any other instrument securing the Obligations; (e) consents to the filing of any map, plat or replat of the Site (to the extent such consent is required); (f) consents to the granting of any easement on the Site (to the extent such consent is required); or (g) makes or consents to any agreement changing the terms of this Deed of Trust or any other Loan Document subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability of Trustor under the Guaranty, this Deed of Trust or any other Loan Document (including any Security Document) or otherwise, or any subsequent purchaser of the Trust Estate or any part thereof or any maker, co-signer, surety or guarantor. No such act or omission shall preclude Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by Beneficiary, shall the lien or security interest of this Deed of Trust be altered thereby, except to the extent expressly provided in any releases, maps, easements or subordinations described in clause (d), (e), (f) or (g) above of this Section 4.14. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Trust Estate, Beneficiary, without notice to any person, firm or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Trust Estate or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder, or waiving its right to declare such sale or transfer an Event of Default as provided herein. Notwithstanding anything to the contrary contained in this Deed of Trust or any other Loan Document (including any Security Document), (i) in the case of any non-monetary Event of Default, Beneficiary may continue to accept payments due or secured hereunder without thereby waiving the existence of such or any other Event of Default and (ii) in the case of any monetary Event of Default, Beneficiary may accept partial payments of any sums due or secured hereunder without thereby waiving the existence of such Event of Default if the partial payment is not sufficient to completely cure such Event of Default.

4.15 Discontinuance of Proceedings; Position of Parties Restored. If Beneficiary shall have proceeded to enforce any right or remedy under this Deed of Trust by foreclosure, entry of judgment or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Beneficiary, then and in every such case Trustor and Beneficiary shall be restored to their former positions and rights hereunder, and all

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rights, powers and remedies of Beneficiary shall continue as if no such proceedings had occurred or had been taken.

4.16 Remedies Cumulative. No right, power or remedy, including without limitation remedies with respect to any security for the Obligations, conferred upon or reserved to Beneficiary by this Deed of Trust or any other Loan Document (including any Security Document) is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or any other Loan Document (including any Security Document), now or hereafter existing at law, in equity or by statute, and Beneficiary shall be entitled to resort to such rights, powers, remedies or security as Beneficiary shall in its sole and absolute discretion deem advisable.

4.17 Interest After Event of Default. If an Event of Default shall have occurred and is continuing, all sums outstanding and unpaid under the Obligations shall, at Beneficiary's option, bear interest at the rate applicable to overdue principal set forth in the Credit Agreement until such Event of Default has been cured. Trustor's obligation to pay such interest shall be secured by this Deed of Trust.

4.18 Foreclosure; Expenses of Litigation. If Trustee forecloses, reasonable attorneys' fees for services in the supervision of said foreclosure proceeding shall be allowed to the Trustee and Beneficiary as part of the foreclosure costs. In the event of foreclosure of the lien hereof, there shall be allowed and included as additional indebtedness all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after foreclosure sale or entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and guarantees, and similar data and assurances with respect to title as Beneficiary may deem reasonably advisable either to prosecute such suit or to evidence to a bidder at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Trust Estate or any portion thereof. All expenditures and expenses of the nature in this section mentioned, and such expenses and fees as may be incurred in the protection of the Trust Estate and the maintenance of the lien and security interest of this Deed of Trust, including the fees of any attorney employed by Beneficiary in any litigation or proceeding affecting this Deed of Trust, the Guaranty or any other Loan Document (including any Security Document), the Trust Estate or any portion thereof, including, without limitation, civil, probate, appellate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Trustor, with interest thereon at the rate applicable to overdue principal set forth in the Credit Agreement, and shall be secured by this Deed of Trust. Trustee waives its right to any statutory fee in connection with any judicial or nonjudicial foreclosure of the lien hereof and agrees to accept a reasonable fee for such services.

4.19 Deficiency Judgments. If after foreclosure of this Deed of Trust or Trustee's sale hereunder, there shall remain any deficiency with respect to any Obligations, and Beneficiary shall institute any proceedings to recover such deficiency or deficiencies, all such amounts shall continue to bear interest at the rate applicable to overdue principal set forth in the Credit Agreement. Trustor waives any defense to Beneficiary's recovery against Trustor of any deficiency after any foreclosure sale of the Trust Estate. Trustor expressly waives any defense or benefits that may be derived from any statute granting Trustor any defense to any such recovery by Beneficiary. In addition, Beneficiary and Trustee shall be entitled to recovery of all of their reasonable costs and expenditures (including without limitation any court imposed costs) in connection with such proceedings, including their reasonable attorneys' fees, appraisal fees and the other costs, fees and expenditures referred to in Section 4.18 above. This provision shall survive any foreclosure or sale of the Trust Estate, any portion thereof and/or the extinguishment of the lien hereof.

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4.20 Waiver of Jury Trial. Beneficiary and Trustor each waive any right to have a jury participate in resolving any dispute whether sounding in contract, tort or otherwise arising out of, connected with, related to or incidental to the relationship established between them in connection with the Obligations. Any such disputes shall be resolved in a bench trial without a jury.

4.21 Exculpation of Beneficiary. The acceptance by Beneficiary of the assignment contained herein with all of the rights, powers, privileges and authority created hereby shall not, prior to entry upon and taking possession of the Trust Estate by Beneficiary, be deemed or construed to make Beneficiary a

"mortgagee in possession"; nor thereafter or at any time or in any event obligate Beneficiary to appear in or defend any action or proceeding relating to the Space Leases, the Rents or the Trust Estate, or to take any action hereunder or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under any Space Lease or to assume any obligation or responsibility for any security deposits or other deposits except to the extent such deposits are actually received by Beneficiary, nor shall Beneficiary, prior to such entry and taking, be liable in any way for any injury or damage to person or property sustained by any Person in or about the Trust Estate.

ARTICLE FIVE
RIGHTS AND RESPONSIBILITIES OF TRUSTEE;
OTHER PROVISIONS RELATING TO TRUSTEE

Notwithstanding anything to the contrary in this Deed of Trust, Trustor and Beneficiary agree as follows.

5.1 **Exercise of Remedies by Trustee.** To the extent that this Deed of Trust or applicable law, including all applicable Nevada Gaming Laws, authorizes or empowers, or does not require approval for, Beneficiary to exercise any remedies set forth in Article Four hereof or otherwise, or perform any acts in connection therewith, Trustee (but not to the exclusion of Beneficiary unless so required under the law of the State of Nevada) shall have the power to exercise any or all such remedies, and to perform any acts provided for in this Deed of Trust in connection therewith, all for the benefit of Beneficiary and on Beneficiary's behalf in accordance with applicable law of the State of Nevada. In connection therewith, Trustee: (a) shall not exercise, or waive the exercise of, any of Beneficiary's remedies (other than any rights of Trustee to any indemnity or reimbursement), except at Beneficiary's request, and (b) shall exercise, or waive the exercise of, any or all of Beneficiary's remedies at Beneficiary's request, and in accordance with Beneficiary's directions as to the manner of such exercise or waiver. Trustee may, however, decline to follow Beneficiary's request or direction if Trustee shall be advised by counsel that the action or proceeding, or manner thereof, so directed may not lawfully be taken or waived.

5.2 **Rights and Privileges of Trustee.** To the extent that this Deed of Trust requires Trustor to indemnify Beneficiary or reimburse Beneficiary for any expenditures Beneficiary may incur, Trustee shall be entitled to the same indemnity and the same rights to reimbursement of expenses as Beneficiary, subject to such limitations and conditions as would apply in the case of Beneficiary. To the extent that this Deed of Trust negates or limits Beneficiary's liability as to any matter, Trustee shall be entitled to the same negation or limitation of liability. To the extent that Trustor, pursuant to this Deed of Trust, appoints Beneficiary as Trustor's attorney in fact for any purpose, Beneficiary or (when so instructed by Beneficiary) Trustee shall be entitled to act on Trustor's behalf without joinder or confirmation by the other.

5.3 **Resignation or Replacement of Trustee.** Trustee may resign by an instrument in writing addressed to Beneficiary, and Trustee may be removed at any time with or without cause (i.e., in Beneficiary's sole and absolute discretion) by an instrument in writing executed by Beneficiary. In case of the death, resignation, removal or disqualification of Trustee or if for any reason Beneficiary shall

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deem it desirable to appoint a substitute, successor or replacement Trustee to act instead of Trustee originally named (or in place of any substitute, successor or replacement Trustee), then Beneficiary shall have the right and is hereby authorized and empowered to appoint a successor, substitute or replacement Trustee, without any formality other than appointment and designation in writing executed by Beneficiary, which instrument shall be recorded in the Office of the Recorder of Clark County, Nevada. The law of the State of Nevada (including, without limitation, the Nevada Gaming Laws) shall govern the qualifications of any Trustee. The authority conferred upon Trustee by this Deed of Trust shall automatically extend to any and all other successor, substitute and replacement Trustee(s) successively until the obligations secured hereunder have been paid in full or the Trust Estate has been sold hereunder or released in accordance with the provisions of the Guaranty and the other Loan Documents (including the Security Documents). Beneficiary's written appointment and designation of any Trustee shall be full evidence of Beneficiary's right and authority to make the same and of all facts therein recited. No confirmation, authorization, approval or other action by Trustor shall be required in connection with any resignation or other replacement of Trustee.

5.4 **Authority of Beneficiary.** If Beneficiary is a banking corporation, state banking corporation or a national banking association and the instrument of appointment of any successor or replacement Trustee is executed on Beneficiary's behalf by an officer of such corporation, state banking corporation or national banking association, then such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of Beneficiary.

5.5 **Effect of Appointment of Successor Trustee.** Upon the appointment and designation of any successor, substitute or replacement Trustee, and subject to compliance with applicable Nevada Gaming Laws and other applicable laws, Trustee's entire estate and title in the Trust Estate shall vest in the designated successor, substitute or replacement Trustee. Such successor, substitute or replacement Trustee shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon Trustee. All references herein to Trustee shall be deemed to refer to Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder.

5.6 **Confirmation of Transfer and Succession.** Upon the written request of Beneficiary or of any successor, substitute or replacement Trustee, any former Trustee ceasing to act shall execute and deliver an instrument transferring to such successor, substitute or replacement Trustee all of the right, title, estate and interest in the Trust Estate of Trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon Trustee, and shall duly assign, transfer and deliver all properties and moneys held by said Trustee hereunder to said successor, substitute or replacement Trustee.

5.7 **Exculpation.** Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or otherwise be responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence, willful misconduct or knowing violation of law. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law). Trustee shall be under no liability for interest on any moneys received by it hereunder.

5.8 **Endorsement and Execution of Documents.** Upon Beneficiary's written request, Trustee shall, without liability or notice to Trustor, execute, consent to, or join in any instrument or agreement in connection with or necessary to effectuate the purposes of the Guaranty and the other Loan Documents (including the Security Documents). Trustor hereby irrevocably designates Trustee as its

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attorney in fact to execute, acknowledge and deliver, on Trustor's behalf and in Trustor's name, all instruments or agreements necessary to implement any provision(s) of this Deed of Trust or to further perfect the lien created by this Deed of Trust on the Trust Estate. This power of attorney shall be deemed to be coupled with an interest and shall survive any disability of Trustor.

5.9 **Multiple Trustees.** If Beneficiary appoints multiple trustees, then any Trustee, individually, may exercise all powers granted to Trustee under this instrument, without the need for action by any other Trustee(s).

5.10 **Terms of Trustee's Acceptance.** Trustee accepts the trust created by this Deed of Trust upon the following terms and conditions:

(a) **Delegation.** Trustee may exercise any of its powers through appointment of attorney(s) in fact or agents.

(b) **Counsel.** Trustee may select and employ legal counsel (including any law firm representing Beneficiary). Trustor shall reimburse all reasonable legal fees and expenses that Trustee may thereby incur.

(c) **Security.** Trustee shall be under no obligation to take any action upon any Event of Default unless furnished security or indemnity, in form satisfactory to Trustee, against costs, expenses, and liabilities that Trustee may incur.

(d) **Costs and Expenses.** Trustor shall reimburse Trustee, as part of the Obligations secured hereunder, for all reasonable disbursements and expenses (including reasonable legal fees and expenses) incurred by reason of and as provided for in this Deed of Trust, including any of the foregoing incurred in Trustee's administering and executing the trust created by this Deed of Trust, in complying with all applicable Nevada Gaming Laws and performing Trustee's duties and exercising Trustee's powers under this Deed of Trust.

(e) **Release.** Upon full and indefeasible payment and performance of the Obligations secured hereunder, Beneficiary shall request that Trustee release this Deed of Trust. Upon receipt of such request Trustee shall release this Deed of Trust to Trustor. Trustor shall pay all costs of recordation, if any.

**ARTICLE SIX
MISCELLANEOUS PROVISIONS**

6.1 **Heirs, Successors and Assigns Included in Parties.** Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included, and subject to the limitations set forth in Section 1.9, all covenants and agreements contained in this Deed of Trust, by or on behalf of Trustor or Beneficiary shall bind and inure to the benefit of its heirs, successors and assigns, whether so expressed or not.

6.2 **Addresses for Notices, Etc.** Any notice, report, demand or other instrument authorized or required to be given or furnished under this Deed of Trust to Trustor or Beneficiary shall be deemed given or furnished (i) when addressed to the party intended to receive the same, at the address of such party set forth below, and delivered by hand at such address or (ii) three (3) days after the same is

deposited in the United States mail as first class certified mail, return receipt requested, postage paid, whether or not the same is actually received by such party:

Beneficiary: Deutsche Bank Trust Company Americas
31 West 52nd Street, 7th Floor
New York, New York 10019
Attn: Jeff Baevsky

With a copy to: Latham & Watkins
701 B. Street, Suite 2100
San Diego, California 92101
Attn: Sony Ben-Moshe, Esq.

Trustor:

Attn: Legal Department

With a copy to: Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Attn: C. Kevin McGeehan

Trustee: Nevada Title Company
2500 North Buffalo, Suite 150
Las Vegas, Nevada 89128
Attn: Robbie Graham

6.3 **Change of Notice Address.** Any Person may change the address to which any such notice, report, demand or other instrument is to be delivered or mailed to that person, by furnishing written notice of such change to the other parties, but no such notice of change shall be effective unless and until received by such other parties.

6.4 **Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Deed of Trust are for convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

6.5 **Invalid Provisions to Affect No Others.** In the event that any of the covenants, agreements, terms or provisions contained herein or in the Notes, the Credit Agreement, the Guaranty or any other Loan Document (including the Security Documents) shall be invalid, illegal or unenforceable in any respect, the validity of the lien hereof and the remaining covenants, agreements, terms or provisions contained herein or in the Notes, the Credit Agreement, the Guaranty or any other Loan Document (including the Security Documents) shall be in no way affected, prejudiced or disturbed thereby. To the extent permitted by law, Trustor waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

6.6 **Changes and Priority Over Intervening Liens.** Neither this Deed of Trust nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Trustor and Beneficiary relating to this Deed of Trust shall be superior to the rights of the holder of any intervening lien or encumbrance.

6.7 **Estoppel Certificates.** Within ten (10) Business Days after Beneficiary's written request, Trustor shall from time to time execute a certificate, in recordable form (an "Estoppel Certificate"), stating, except to the extent it would be inaccurate to so state: (a) the current amount of the Obligations secured hereunder and all elements thereof, including principal, interest, and all other elements; (b) that Trustor has no defense, offset, claim, counterclaim, right of recoupment, deduction, or reduction against any of the Obligations secured hereunder; (c) that neither the Guaranty, this Deed of Trust nor any other Loan Documents (including the Security Documents) to which it is a party have been amended, whether orally or in writing; (d) that Trustor has no claims against Beneficiary of any kind; (e) that any power of attorney granted to Beneficiary is in full force and effect; and (f) such other matters relating to this Deed of Trust, the Guaranty or any other Loan Document (including any Security Document) to which it is a party and the relationship of Trustor and Beneficiary as Beneficiary shall request. In addition, the Estoppel Certificate shall set forth the reasons why it would be inaccurate to make any of the foregoing assurances.

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6.8 **Waiver of Setoff and Counterclaim; Other Waivers.** All Obligations shall be payable without setoff, counterclaim or any deduction whatsoever. Trustor hereby waives the right to assert a counterclaim (other than a compulsory counterclaim) in any action or proceeding brought against it by Beneficiary and/or any Bank under the Loan Documents, or arising out of or in any way connected with this Deed of Trust or the other Loan Documents (including the Security Documents) or the Obligations.

6.9 **Governing Law.** The Credit Agreement, the Guaranty and the Notes provide that they are governed by, and construed and enforced in accordance with, the laws of the State of New York. This Deed of Trust shall also be construed under and governed by the laws of the State of New York; provided, however, that (i) the terms and provisions of this Deed of Trust pertaining to the priority, perfection, enforcement or realization by Beneficiary of its respective rights and remedies under this Deed of Trust with respect to the Trust Estate shall be governed and construed and enforced in accordance with the internal laws of the State of Nevada (the "State") without giving effect to the conflicts-of-law rules and principles of the State; (ii) Trustor agrees that to the extent deficiency judgments are available under the laws of the State after a foreclosure (judicial or nonjudicial) of the Trust Estate, or any portion thereof, or any other realization thereon by Beneficiary or any Bank under the Loan Documents, Beneficiary or such Bank, as the case may be, shall have the right to seek such a deficiency judgment against Trustor in the State; and (iii) Trustor agrees that if Beneficiary or any Bank under the Loan Documents obtains a deficiency judgment in another state against Trustor, then Beneficiary or such Bank, as the case may be, shall have the right to enforce such judgment in the State to the extent permitted under the laws of the State, as well as in other states.

6.10 **Required Notices.** Trustor shall notify Beneficiary promptly of the occurrence of any of the following and shall immediately provide Beneficiary a copy of the notice or documents referred to: (i) receipt of notice from any Governmental Authority relating to all or any material part of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (ii) receipt of any notice from any tenant leasing all or any material portion of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iii) receipt of notice from the holder of any Permitted Lien relating to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iv) the commencement of any proceedings or the entry of any judgment, decree or order materially affecting all or any portion of the Trust Estate or which involve the potential liability of Trustor or its Affiliates in an amount in excess of \$25,000,000 (other than for personal injury actions and related property damage suits which are covered by such insurance); or (v) commencement of any judicial or administrative proceedings or the entry of any judgment, decree or order by or against or otherwise affecting Trustor or any Affiliate of Trustor, a material portion of the Trust Estate, or a material portion of the Personal Property, or any other action by any creditor or lessor thereof as a result of any default under the terms of any lease.

6.11 **Reconveyance.** Upon written request of Trustor when the Obligations secured hereby have been satisfied in full, Beneficiary shall cause Trustee to reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

6.12 **Attorneys' Fees.** Without limiting any other provision contained herein, Trustor agrees to pay all costs of Beneficiary or Trustee incurred in connection with the enforcement of this Deed of Trust, the Guaranty or the other Loan Documents to which it is a party, including without limitation all reasonable attorneys' fees whether or not suit is commenced, and including, without limitation, fees incurred in connection with any probate, appellate, bankruptcy, deficiency or any other litigation proceedings, all of which sums shall be secured hereby.

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6.13 **Late Charges.** By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to collect any late charge thereon or interest thereon at the interest rate on the Notes or as otherwise specified in the Credit Agreement, if so *provided*, not then paid or its right either to require prompt payment when due of all other sums so secured or to declare default for failure to pay any amounts not so paid.

6.14 **Cost of Accounting.** Trustor shall pay to Beneficiary, for and on account of the preparation and rendition of any accounting, which Trustor may be entitled to require under any law or statute now or hereafter providing therefor, the reasonable costs thereof.

6.15 **Right of Entry.** Subject to compliance with applicable Nevada Gaming Laws, Beneficiary may at any reasonable time or times and on reasonable prior written notice to Trustor make or cause to be made entry upon and inspections of the Trust Estate or any part thereof in person or by agent.

6.16 **Corrections.** Trustor shall, upon request of Beneficiary or Trustee, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust (including, but not limited to, in the exhibits and schedules attached hereto) or in the execution or acknowledgement hereof, and shall execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Trustee to carry out more effectively the purposes of this Deed of Trust, to subject to the lien and security interest hereby created any of Trustor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.

6.17 **Statute of Limitations.** To the fullest extent allowed by the law, the right to plead, use or assert any statute of limitations as a plea or defense or bar of any kind, or for any purpose, to any debt, demand or obligation secured or to be secured hereby, or to any complaint or other pleading or proceeding filed, instituted or maintained for the purpose of enforcing this Deed of Trust or any rights hereunder, is hereby waived by Trustor.

6.18 **Subrogation.** Should the proceeds of any loan or advance made by Beneficiary or any Bank under the Credit Agreement, repayment of which is hereby secured, or any part thereof, or any amount paid out or advanced by Beneficiary or any Bank under the Credit Agreement, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior or superior lien or encumbrance upon the Trust Estate, or any part thereof, then, as additional security hereunder, Trustee, on behalf of Beneficiary, shall be subrogated to any and all rights, superior titles, liens, and equities owned or claimed by any owner or holder of said outstanding liens, charges, and indebtedness, however remote, regardless of whether said liens, charges, and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

6.19 **Joint and Several Liability.** All obligations of Trustor hereunder, if more than one, are joint and several. Recourse for deficiency after sale hereunder may be had against the property of Trustor, without, however, creating a present or other lien or charge thereon.

6.20 **Homestead.** Trustor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Trust Estate as against the collection of the Obligations, or any part hereof.

6.21 **Context.** In this Deed of Trust, whenever the context so requires, the neuter includes the masculine and feminine, and the singular including the plural, and vice versa.

6.22 **Time.** Time is of the essence of each and every term, covenant and condition hereof. Unless otherwise specified herein, any reference to "days" in this Deed of Trust shall be deemed to mean "calendar days."

6.23 **Interpretation.** As used in this Deed of Trust unless the context clearly requires otherwise: The terms "herein" or "hereunder" and similar terms without reference to a particular section shall

refer to the entire Deed of Trust and not just to the section in which such terms appear; the term "lien" shall also mean a security interest, and the term "security interest" shall also mean a lien.

6.24 **Effect of NRS 107.030.** To the extent not inconsistent herewith, the provisions of NRS 107.030 (1), (2) (in amounts as hereinabove provided for), (3), (4) (with interest at the default rate provided for under the Credit Agreement), (5), (6), (7) (reasonable), (8) and (9) are included herein by reference and made part of this Deed of Trust.

6.25 **Amendments.** This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought and only as permitted by the provisions of the Guaranty.

6.26 **No Conflicts.** In the event that any of the provisions contained here conflict with the Guaranty, the provisions contained in the Credit Agreement and the Guaranty shall prevail.

ARTICLE SEVEN POWER OF ATTORNEY

7.1 **Grant of Power.** Subject to compliance with applicable Nevada Gaming Laws, Trustor irrevocably appoints Beneficiary and any successor thereto as its attorney-in-fact, with full power and authority, including the power of substitution, exercisable only during the continuance of an Event of Default to act for Trustor in its name, place and stead as hereinafter provided:

7.1.1 **Possession and Completion.** To take possession of the Site and the Project, remove all employees, contractors and agents of Trustor therefrom, complete or attempt to complete the work of construction, and market, sell or lease the Site and the Project.

7.1.2 **Plans.** To make such additions, changes and corrections in the current Plans and Specifications as may be necessary or desirable, in Beneficiary's reasonable discretion, or as it deems proper to complete the Project.

7.1.3 **Employment of Others.** To employ such contractors, subcontractors, suppliers, architects, inspectors, consultants, property managers and other agents as Beneficiary, in its discretion, deems proper for the completion of the Project, for the protection or clearance of title to the Site or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.4 **Security Guards.** To employ watchmen to protect the Site and the Project from injury.

7.1.5 **Compromise Claims.** To pay, settle or compromise all bills and claims then existing or thereafter arising against Trustor, which Beneficiary, in its discretion, deems proper for the protection or clearance of title to the Site or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.6 **Legal Proceedings.** To prosecute and defend all actions and proceedings in connection with the Site or the Project.

7.2 **Other Acts.** To execute, acknowledge and deliver all other instruments and documents in the name of Trustor that are necessary or desirable, to exercise Trustor's rights under all contracts concerning the Site or the Project, including, without limitation, under any Space Leases, and to do all other acts with respect to the Site or the Project that Trustor might do on its own behalf, as Beneficiary, in its reasonable discretion, deems proper.

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IN WITNESS WHEREOF, Trustor has executed this Deed of Trust, [Leasehold Deed of Trust,] Assignment of Leases and Rents, Security Agreement and Fixture Filing as of the day and year first above written.

TRUSTOR:

_____ ,

a _____ ,

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

This instrument was acknowledged before me on _____, 200 by _____, the _____ of _____, a _____.

NOTARY PUBLIC

SCHEDULE A

DESCRIPTION OF LAND

[SCHEDULE B

DESCRIPTION OF LEASED PREMISES]

EXHIBIT F

FORM OF INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT (the "Indemnity") is entered into as of the _____ day of _____, 200 , by _____, a _____ (the "Company"), to and for the benefit of DEUTSCHE BANK TRUST COMPANY AMERICAS, as administrative agent (the "Administrative Agent") for the Lenders under the Credit Agreement (in each case as hereinafter defined), and, to the extent not otherwise referenced, the Indemnified Parties (as hereinafter defined).

WITNESSETH:

A. Pursuant to that certain Credit Agreement dated as of October 30, 2002 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement") among Wynn Las Vegas, LLC, a Nevada limited liability company (the "Borrower"), the banks and other financial institutions or entities (the "Lenders") from time to time parties thereto, the Administrative Agent, Deutsche Bank Securities Inc, as lead arranger and joint book running manager, Banc of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York and Grand Cayman Branches, as arranger and joint documentation agent, and JPMorgan Chase Bank, as joint documentation agent, the Lenders have agreed to make loans (the "Loans") to the Borrower. Capitalized terms used herein, but not otherwise defined herein, shall have the meaning assigned to such terms in the Credit Agreement.

B. The Loans are secured by, among other things, the Deed of Trust (as hereinafter defined), which Deed of Trust encumbers the real property described therein (the "Real Property"), and the improvements now or hereafter constructed thereon (which improvements, together with the Real Property, shall hereinafter be referred to as the "Property").

C. The Lenders have made it a condition of the Lenders making the Loans that this Indemnity is executed and delivered by the Company and the Lenders make the Loans in reliance on this Indemnity.

D. The obligations of the Company hereunder are secured under, among other things, the Deed of Trust.

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company covenants and agrees to and for the benefit of the Administrative Agent for the benefit of the Lenders as follows:

1. *Definitions.*

(a) "*Claims*" means any and all actual out-of-pocket costs incurred by an Indemnified Party (as defined below) including, without limitation, reasonable attorneys' fees and expenses, expenses, losses, damages, liabilities, fines, penalties, charges, injury to person, property, or natural resources, administrative and judicial proceedings and orders, injunctive relief, judgments, remedial action requirements and enforcement actions of any kind, arising directly or indirectly, in whole or in part, out of or attributable to (i) any breach or default by the Company in the performance of any of its obligations under paragraphs 3(a)-(d) hereof, or (ii) any Release (as defined below) or threatened Release, whether foreseeable or unforeseeable, arising prior to any release, reconveyance or foreclosure of the Deed of Trust (or following any such release, conveyance or foreclosure to the extent attributable to pre-existing conditions), or conveyance in lieu of foreclosure; and in each instance, regardless of when such Release, inaccuracy or breach is discovered and regardless of whether or not caused by or in the control of the Company, any

employees, agents, contractors or subcontractors of the Company or any third persons. Without limiting the generality of the foregoing and for purposes of clarification only, Claims also include:

(i) actual out-of-pocket costs reasonably incurred by an Indemnified Party in connection with (x) determining whether the Property is in compliance with all applicable Hazardous Substances Laws (as hereinafter defined), (y) taking any necessary precautions to protect against any Release or threatened Release, or (z) any removal, remediation of any kind and disposal of any Hazardous Substances (as hereinafter defined), and

(ii) any repair of any damage to the Property or any other property caused by any such precautions, removal, remediation or disposal.

The rights of the Indemnified Parties hereunder shall not be limited by any investigation or the scope of any investigation undertaken by or on behalf of the Lenders in connection with the Property prior to the date hereof. Notwithstanding the foregoing, Claims shall exclude any Release caused by or resulting from the negligence or misconduct of any of the Indemnified Parties.

(b) "*Deed of Trust*" means that certain Deed of Trust, [Leasehold Deed of Trust,] Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of _____, 200__ and made by the Company, as trustor, to _____, as trustee, for the benefit of the Administrative Agent, as beneficiary, as the same may be amended, supplemented or otherwise modified from time to time.

(c) "*Hazardous Substances*" means and includes any flammable explosives, radioactive materials or hazardous, toxic or dangerous wastes, substances or related materials or any other chemicals, materials or substances, exposure to which is prohibited, limited or regulated by any federal, state, county, regional or local authority or which, even if not so regulated, may or could pose a hazard to the health and safety of the occupants of the Property or of property adjacent to the Property, including, but not limited to, asbestos, PCBs, petroleum products and by-products (including, but not limited to, crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof), substances defined or listed as "hazardous substances," "hazardous materials," "hazardous wastes" or "toxic substances" or similarly identified in, pursuant to, or for purposes of, any of the Hazardous Substances Laws, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, as now or hereafter amended (42 U.S.C. Section 9601, *et seq*); the Hazardous Materials Transportation Act, as now or hereafter amended (49 U.S.C. Section 1801, *et seq*); the Resource Conservation and Recovery Act, as now or hereafter amended (42 U.S.C. Section 6901, *et seq*); any so-called "Superfund" or "Superlien" law; or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material; or any substances or mixture regulated under the Toxic Substance Control Act of 1976, as now or hereafter amended (15 U.S.C. Section 2601 *et seq*); and any "pollutant" under the Clean Water Act, as now or hereafter amended (33 U.S.C. Section 1251 *et seq*); and any hazardous air pollutant under the Clean Air Act (42 U.S.C. Section 7901 *et seq*), in each case as now or hereafter amended.

(d) "*Hazardous Substances Laws*" means all federal, state and local environmental, health or safety laws, ordinances, regulations, rules of common law or policies regulating Hazardous Substances, including, without limitation, those governing the generation, use, refinement, handling, treatment, removal, storage, production, manufacture, transportation or disposal of Hazardous Substances, as such laws, ordinances, regulations, rules and policies may be in effect from time to time and be applicable to the Property.

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(e) "*Indemnified Parties*" means each Agent, Manager, Arranger and Lender in its individual capacity and each of their respective directors, officers, shareholders, agents, employees, participants, successors and assigns and shall also include any purchasers of all or any portion of the Property at any foreclosure sale and the initial purchaser following the consummation of any deed in lieu of foreclosure, but not including any other purchasers of the Property.

(f) "*Proceedings*" means the institution of, or threat of, any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration against or affecting the Company or any property of the Company, in each case with respect to Hazardous Substance Laws, Hazardous Substances or Releases.

(g) "*Release*" means any presence, use, generating, storing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Hazardous Substances into the environment, or about, on, from, under, within or affecting the Property, or transported to or from the Property, including continuing migration of Hazardous Substances into or through soil, surface water or groundwater.

2. *Environmental Indemnification by the Company.*

(a) The Company hereby agrees to defend (with counsel reasonably approved by the Administrative Agent), indemnify and hold the Indemnified Parties harmless from and against, and shall reimburse the Indemnified Parties for, any and all Claims.

(b) The Indemnified Parties shall have the right to employ independent counsel reasonably satisfactory to the Company to represent it in any action or proceeding to which this Indemnity is applicable if and to the extent that the Indemnified Parties determine in good faith that their rights and interests may be compromised or not fully and adequately represented by legal counsel acting for the Company, whether on account of any potential defenses that

the Company may have to its obligations under this Indemnity or otherwise, and in such event the reasonable fees and expenses of the Indemnified Parties' independent counsel shall be paid by the Company.

(c) Subject to the last sentence of Section 1(a) above, the Company's obligations hereunder shall not be diminished or affected in any respect as a result of any notice or disclosure, if any, to, or other knowledge, if any, by, any Indemnified Party of any Release or threatened Release, or as a result of any other matter related to the Company's obligations hereunder, nor shall any Indemnified Party be deemed to have permitted or acquiesced in any Release or any breach of the Company's other obligations hereunder, solely because any Indemnified Party had notice, disclosure or knowledge thereof, whether at the time this Indemnity is delivered or at any time thereafter.

(d) This Indemnity shall not be limited by any representation, warranty or indemnity of the Company made herein or in connection with any indebtedness secured by the Deed of Trust, irrespective of whether the Company has knowledge as of the date of the Deed of Trust, or during the term of the Deed of Trust, of the matters to which such representation, warranty or indemnity relates.

3. *Environmental Covenants.*

(a) The Company shall not, and shall use commercially reasonable efforts to not permit any tenants or other occupants of the Property to, at any time in the future, cause or permit a Release, except in compliance with applicable Hazardous Substances Laws.

(b) Upon becoming aware thereof, the Company shall give prompt written notice to the Administrative Agent of any pending Claims or of any Proceedings.

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(c) The Company shall give prompt written notice to the Administrative Agent of the Company's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Substances Laws including, without limitation, the Company's discovery of any occurrence or condition on the Property or on any real property adjoining or in the vicinity of the Property that could cause the Property to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Substances Laws.

(d) In the event that any investigation, site monitoring, containment, cleanup, removal, restoration, precautionary actions or other remedial work of any kind or nature (hereinafter, "*Remedial Work*") is required under any applicable Hazardous Substances Law as a result of, or in connection with, any Release, suspected Release, or threatened Release, the Company shall within thirty (30) days after receipt of information that such Remedial Work is or may be required (or such shorter period of time as may be required under applicable law, regulation, order or agreement), commence the performance of, or cause to be commenced, and thereafter diligently prosecute to completion, the performance of all such Remedial Work in compliance with all applicable Hazardous Substances Laws. All Remedial Work shall be performed by one or more contractors, approved in advance in writing by the Administrative Agent, and under the supervision of a consulting engineer approved in advance in writing by the Administrative Agent, which consent shall not be unreasonably withheld, delayed or conditioned. All costs and expenses of such Remedial Work shall be paid by the Company, including, without limitation, the charges of such contractor(s) and/or the consulting engineer, and the Indemnified Parties' reasonable attorneys' fees and costs, including, without limitation, fees and costs incurred in connection with monitoring or review of such Remedial Work. In the event the Company shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, the performance of such Remedial Work, the Administrative Agent or any other Indemnified Party may, but shall not be required to, cause such Remedial Work to be performed and all costs and expenses thereof, or incurred in connection therewith, shall be deemed Claims hereunder.

4. *Liability.*

(a) Notwithstanding any other provisions of this Indemnity or any of the Loan Documents, any liability of the Company hereunder shall be its personal liability (but such personal liability shall not be deemed to incorporate personal liability of its directors, officers, employees or agents), and may be asserted against its interest in the Property as well as against any and all of its other assets.

(b) Without limiting the foregoing, the obligations of the Company hereunder shall survive the following events, to the maximum extent permitted by law: (i) repayment of the Obligations and any judicial or nonjudicial foreclosure under the Deed of Trust or conveyance in lieu of such foreclosure, notwithstanding that all or any portion of any obligations secured by the Deed of Trust shall have been discharged thereby, (ii) any election by any Indemnified Party to purchase all or any portion of the Property at a foreclosure sale by crediting all or any portion of the obligations secured by the Deed of Trust against the purchase price therefor (except to the extent and only to the extent that such Indemnified Party has specifically elected in writing in its sole discretion to credit against the purchase price any Claims hereunder which were liquidated in amount at the time of such foreclosure sale, it being presumed for these purposes that the obligations secured by the Deed of Trust shall be discharged by any such crediting in the order set forth in the Deed of Trust), (iii) any release or reconveyance of the Deed of Trust, any waiver of the lien of the Deed of Trust, or any release or waiver of any other security for the Obligations, and (iv) any termination, cancellation or modification of any Loan Document. Upon and following the occurrence of any of the foregoing, the obligations of the Company hereunder shall remain

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unsecured obligations, and shall be enforceable against the Company to the fullest extent permitted by applicable law.

(c) The obligations of the Company hereunder are not intended to be the obligations of a surety or guarantor. The liability of the Company under this Indemnity shall in no way be limited or impaired by (i) any extensions of time for performance required by the Loan Documents; (ii) the accuracy or inaccuracy of any representations and warranties made by the Company in any of the Loan Documents; or (iii) the release of any person or entity from performance or observance of any of the agreements, covenants, terms, or conditions contained in any of the Loan Documents by operation of law or otherwise.

(d) The rights and remedies of the Indemnified Parties under this Indemnity (i) shall be in addition to any other rights and remedies of such Indemnified Parties under any Loan Document or at law or in equity, and (ii) may be enforced by any of the Indemnified Parties, to the maximum extent permitted by law, without regard to or affecting any rights and remedies that such Indemnified Party may have under any Loan Document or at law or in equity, and without regard to any limitations on such Indemnified Party's recourse for recovery of the indebtedness represented by the Obligations as may be provided in any Loan Document.

5. *Site Visits, Observation and Testing.* The Administrative Agent and any of the other Indemnified Parties and their respective agents and representatives shall have the right at any reasonable time, and upon reasonable prior notice, but subject to the rights of tenants under their leases, to enter and visit the Property to make such inspections and inquiries as they shall deem appropriate, including inspections for violations of any of the terms of this Indemnity and for determining the existence, nature and magnitude of any past or present Release or threatened Release, and they shall also have the right, following any Event of Default, or where the Administrative Agent has a reasonable basis upon which to believe that the Property may be harmed, unsafe or contaminated, and upon reasonable prior notice, to enter and visit the Property to make such tests (including, without limitation, taking and removing soil or groundwater samples) as they shall deem appropriate. Neither the Administrative Agent nor any of the other Indemnified Parties have any duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by the Administrative Agent or any other Indemnified Party shall impose any liability on the Administrative Agent or such other Indemnified Party. In no event shall any site visit, observation or testing by the Administrative Agent or any other Indemnified Party be a representation that Hazardous Substances are or are not present in, on or under the Property, or that there has been or shall be compliance with any Hazardous Substances Laws or any other applicable governmental law. Neither the Company nor any other party is entitled to rely on any site visit, observation or testing by the Administrative Agent or any other Indemnified Party. Neither the Administrative Agent nor any of the other Indemnified Parties owe any duty of care to protect the Company or any other party against, or to inform the Company or any other party of, any Hazardous Substances or any other adverse condition affecting the Property. The Administrative Agent and any other Indemnified Party shall give the Company reasonable notice before entering the Property, and shall make reasonable efforts to avoid interfering with the Company's use of the Property in exercising any rights provided in this paragraph 5.

6. *Interest Accrued.* Any amount owed hereunder to an Indemnified Party not paid within thirty (30) days after written demand from such Indemnified Party with an explanation of the amounts claimed shall bear interest at a rate per annum equal to the maximum interest rate applicable to overdue principal set forth in the Credit Agreement.

7. *Subrogation of Indemnity Rights.* If the Company fails to fully perform its obligations hereunder, any Indemnified Party shall be entitled to pursue any rights or claims that the Company may have against any present, future or former owners, tenants or other occupants or users of the

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Property, any portion thereof or any adjacent or proximate properties, relating to any Claim or the performance of Remedial Work (to the extent of performance by such Indemnified Party), and the Company hereby assigns all of such rights and claims to the Indemnified Parties under such circumstances and shall take all actions required by the Indemnified Parties to cooperate with such Indemnified Parties in enforcing such rights and claims under such circumstances.

8. *Reliance.* The Company acknowledges that it is making and giving the indemnities and representations and covenants contained in this Indemnity with the knowledge that the Administrative Agent and the Lenders are relying on such indemnities and representations and covenants in entering into the Loan Documents and making the Loans to the Company.

9. *Successors and Assigns.* This Indemnity shall inure to the benefit of each Indemnified Party's successors and assigns, and shall be binding upon the heirs, successors, and assigns of the Company. The Company shall not assign any rights or obligations under this Indemnity without first obtaining the written consent of the Administrative Agent, which may be given or withheld in the sole discretion of the Administrative Agent. Notwithstanding any other provision of this Indemnity to the contrary, the Company shall not be released from its obligations hereunder without obtaining the written consent of the Administrative Agent, which consent may be given or withheld in the sole discretion of the Administrative Agent. Nothing herein shall be deemed to be a consent to the transfer of the Property which transfer would be otherwise prohibited by any Loan Document.

10. *Miscellaneous.* This Indemnity shall be governed by and construed in accordance with the laws of the State of Nevada. If this Indemnity is executed by more than one person or entity, the liability of the undersigned hereunder shall be joint and several. Separate and successive actions may be brought hereunder to enforce any of the provisions hereof at any time and from time to time. No action hereunder shall preclude any subsequent action, and the Company hereby waives and covenants not to assert any defense in the nature of splitting of causes of action or merger of judgments. In no event shall any provision of this Indemnity be deemed to be a waiver of or to be in lieu of any right or claim, including, without limitation, any right of contribution or other right of recovery, that any party to this Indemnity might otherwise have against any other party to this Indemnity under any Hazardous Substances Laws. If any term of this Indemnity or any application thereof shall be invalid, illegal or unenforceable, the remainder of this Indemnity and any other application of such term shall not be affected thereby. No delay or omission in exercising any right hereunder shall operate as a waiver of such right or any other right.

11. *Notices.* All notices expressly provided hereunder to be given by the Company to the Administrative Agent and all notices and demands of any kind or nature whatsoever which the Company may be required or may desire to give to or serve on the Administrative Agent shall be in

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writing and shall be served by certified mail, return receipt requested, or by a reputable commercial overnight carrier that provides a receipt, such as Federal Express. Notice shall be addressed as follows:

Administrative Agent: Deutsche Bank Trust Company Americas
31 West 52nd Street
New York, New York 10019
Attn.: George Reynolds
Telecopy No.: (646) 324-7450
Telephone No.: (646) 324-2112

with a copy to: Latham & Watkins

701 "B" Street, Suite 2100
San Diego, California 92101
Attn.: Sony Ben-Moshe, Esq.
Telecopy No.: (619) 696-7419
Telephone No.: (619) 236-1234

The Company:

Attn.:
Telecopy No.: ()
Telephone No.: ()

with a copy to:

Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Attn.: C. Kevin McGeehan, Esq.
Telecopy No.: (310) 282-5610
Telephone No.: (310) 203-7110

12. *Attorneys' Fees and Expenses.* If the Administrative Agent or any Lender refers this Indemnity or any of the other Loan Documents to an attorney to enforce, construe or defend the same, as a consequence of any Event of Default, with or without the filing of any legal action or proceeding, the Company shall pay to the Administrative Agent, immediately upon demand, the amount of all costs incurred by the Administrative Agent in connection therewith (including, without limitation, reasonable attorneys' fees), together with interest thereon from the date of award at the maximum interest rate applicable to overdue principal set forth in the Credit Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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IN WITNESS WHEREOF, this Indemnity is executed as of the day and year first above written.

_____,
a _____
By: _____
Name: _____
Title: _____

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EXHIBIT G-1

FORM OF TERM NOTE

THIS NOTE AND THE OBLIGATIONS REPRESENTED HEREBY MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS AND PROVISIONS OF THE CREDIT AGREEMENT REFERRED TO BELOW. TRANSFERS OF THIS NOTE AND THE OBLIGATIONS REPRESENTED HEREBY MUST BE RECORDED IN THE REGISTER MAINTAINED BY THE ADMINISTRATIVE AGENT PURSUANT TO THE TERMS OF SUCH CREDIT AGREEMENT.

\$ _____
No. _____ New York, New York
_____, 200

FOR VALUE RECEIVED, the undersigned, WYNN LAS VEGAS, LLC, a Nevada limited liability company (the "*Borrower*"), hereby unconditionally promises to pay to _____ (the "*Lender*") or its registered assigns at the Payment Office specified in the Credit Agreement (as hereinafter defined) in lawful money of the United States and in immediately available funds, the principal amount of (a) _____ DOLLARS (\$ _____), or, if less, (b) the unpaid principal amount of the Term Loans made by the Lender pursuant to the Credit Agreement. The principal amount shall be paid in the amounts and on the dates specified in Section 2.2 of the Credit Agreement. The Borrower further agrees to pay interest in like money at such office on the unpaid principal amount hereof from time to time outstanding at the rates and on the dates specified in Section 2.15 of the Credit Agreement.

The holder of this Note is authorized to endorse on the schedules annexed hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof the date, Type and amount of the Term Loans and the date and amount of each payment or prepayment of principal with respect thereto, each conversion of all or a portion thereof to another Type, each continuation of all or a portion thereof as the same Type and, in the case of Eurodollar Loans, the length of each Interest Period with respect thereto. Each such endorsement shall constitute *prima facie* evidence of the accuracy of the information endorsed. The failure to make any such endorsement or any error in any such endorsement shall not affect the obligations of the Borrower in respect of the Term Loans.

This Note (a) is one of the Term Notes referred to in the Credit Agreement dated as of October 30, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "*Credit Agreement*"), among the Borrower, the Lender, the several banks and other financial institutions or entities from time to time parties thereto, Deutsche Bank Securities Inc., as lead arranger and joint book running manager, Deutsche Bank Trust Company Americas, as administrative agent and swing line lender, Banc of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York and Grand Cayman Branches, as arranger and joint documentation agent, and JPMorgan Chase Bank, as joint documentation agent, (b) is subject to the provisions of the Credit Agreement and (c) is subject to optional and mandatory prepayment in whole or in part as provided in the Credit Agreement. This Note is secured and guaranteed as provided in the Loan Documents. Reference is hereby made to the Loan Documents for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and the guarantees, the terms and conditions upon which the security interests and each guarantee were granted and the rights of the holder of this Note in respect thereof.

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Upon the occurrence of any one or more of the Events of Default, all principal and all accrued interest then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided in the Credit Agreement.

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN OR IN THE CREDIT AGREEMENT, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AND IN ACCORDANCE WITH THE REGISTRATION AND OTHER PROVISIONS OF SECTION 10.6 OF THE CREDIT AGREEMENT.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

WYNN LAS VEGAS, LLC,
a Nevada limited liability company,
as the Borrower

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: _____

Name: _____

Title: _____

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**Schedule A
to Term Note**

LOANS, CONVERSIONS AND REPAYMENTS OF BASE RATE LOANS

| <u>Date</u> | <u>Amount of Base Rate Loans</u> | <u>Amount Converted to Base Rate Loans</u> | <u>Amount of Principal of Base Rate Loans Repaid</u> | <u>Amount of Base Rate Loans Converted to Eurodollar Loans</u> | <u>Unpaid Principal Balance of Base Rate Loans</u> | <u>Notation Made By</u> |
|-------------|----------------------------------|--|--|--|--|-------------------------|
|-------------|----------------------------------|--|--|--|--|-------------------------|

LOANS, CONTINUATIONS, CONVERSIONS AND REPAYMENTS OF EURODOLLAR LOANS

| Date | Amount of Eurodollar Loans | Amount Converted to Eurodollar Loans | Interest Period and Eurodollar Rate with Respect Thereto | Amount of Principal of Eurodollar Loans Repaid | Amount of Eurodollar Loans Converted to Base Rate Loans | Unpaid Principal Balance of Eurodollar Loans | Notation Made By |
|------|----------------------------|--------------------------------------|--|--|---|--|------------------|
|------|----------------------------|--------------------------------------|--|--|---|--|------------------|

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EXHIBIT G-2

FORM OF REVOLVING CREDIT NOTE

THIS NOTE AND THE OBLIGATIONS REPRESENTED HEREBY MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS AND PROVISIONS OF THE CREDIT AGREEMENT REFERRED TO BELOW. TRANSFERS OF THIS NOTE AND THE OBLIGATIONS REPRESENTED HEREBY MUST BE RECORDED IN THE REGISTER MAINTAINED BY THE ADMINISTRATIVE AGENT PURSUANT TO THE TERMS OF SUCH CREDIT AGREEMENT.

\$
No.

New York, New York
, 200

FOR VALUE RECEIVED, the undersigned, WYNN LAS VEGAS, LLC, a Nevada limited liability company (the "*Borrower*"), hereby unconditionally promises to pay to (the "*Lender*") or its registered assigns at the Payment Office specified in the Credit Agreement (as hereinafter defined) in lawful money of the United States and in immediately available funds, on the Revolving Credit Termination Date the principal amount of (a) DOLLARS (\$), or, if less, (b) the aggregate unpaid principal amount of all Revolving Credit Loans made by the Lender to the Borrower pursuant to the Credit Agreement. The Borrower further agrees to pay interest in like money at such Payment Office on the unpaid principal amount hereof from time to time outstanding at the rates and on the dates specified in Section 2.15 of the Credit Agreement.

The holder of this Note is authorized to endorse on the schedules annexed hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof the date, Type and amount of each Revolving Credit Loan made pursuant to the Credit Agreement and the date and amount of each payment or prepayment of principal thereof, each continuation of all or a portion thereof as the same Type, each conversion of all or a portion thereof to another Type and, in the case of Eurodollar Loans, the length of each Interest Period with respect thereto. Each such endorsement shall constitute *prima facie* evidence of the accuracy of the information endorsed. The failure to make any such endorsement or any error in any such endorsement shall not affect the obligations of the Borrower in respect of any Revolving Credit Loan.

This Note (a) is one of the Revolving Credit Notes referred to in the Credit Agreement dated as of October 30, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "*Credit Agreement*"), among the Borrower, the Lender, the several banks and other financial institutions or entities from time to time parties thereto, Deutsche Bank Securities Inc., as lead arranger and joint book running manager, Deutsche Bank Trust Company Americas, as administrative agent and swing line lender, Banc of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York and Grand Cayman Branches, as arranger and joint documentation agent, and JPMorgan Chase Bank, as joint documentation agent, (b) is subject to the provisions of the Credit Agreement and (c) is subject to optional and mandatory prepayment in whole or in part as provided in the Credit Agreement. This Note is secured and guaranteed as provided in the Loan Documents. Reference is hereby made to the Loan Documents for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and the guarantees, the terms and conditions upon which the security interests and each guarantee were granted and the rights of the holder of this Note in respect thereof.

Upon the occurrence of any one or more of the Events of Default, all principal and all accrued interest then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided in the Credit Agreement.

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All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN OR IN THE CREDIT AGREEMENT, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AND IN ACCORDANCE WITH THE REGISTRATION AND OTHER PROVISIONS OF SECTION 10.6 OF THE CREDIT AGREEMENT.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

WYNN LAS VEGAS, LLC,

a Nevada limited liability company,
as the Borrower

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: _____

Name: _____

Title: _____

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**Schedule A
to Revolving Credit Note**

LOANS, CONVERSIONS AND REPAYMENTS OF BASE RATE LOANS

| Date | Amount Converted to Base Rate Loans | Amount of Principal of Base Rate Loans Repaid | Amount of Base Rate Loans Converted to Eurodollar Loans | Unpaid Principal Balance of Base Rate Loans | Notation Made By |
|------|---|--|---|--|------------------|
|------|---|--|---|--|------------------|

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**Schedule B
to Revolving Credit Note**

LOANS, CONTINUATIONS, CONVERSIONS AND REPAYMENTS OF EURODOLLAR LOANS

| Date | Amount Converted to Eurodollar Loans | Interest Period and Eurodollar Rate with Respect Thereto | Amount of Principal of Eurodollar Loans Repaid | Amount of Eurodollar Loans Converted to Base Rate Loans | Unpaid Principal Balance of Eurodollar Loans | Notation Made By |
|------|--|--|--|---|--|---------------------|
|------|--|--|--|---|--|---------------------|

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EXHIBIT G-3

FORM OF SWING LINE NOTE

THIS NOTE AND THE OBLIGATIONS REPRESENTED HEREBY MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS AND PROVISIONS OF THE CREDIT AGREEMENT REFERRED TO BELOW. TRANSFERS OF THIS NOTE AND THE OBLIGATIONS REPRESENTED HEREBY MUST BE RECORDED IN THE REGISTER MAINTAINED BY THE ADMINISTRATIVE AGENT PURSUANT TO THE TERMS OF SUCH CREDIT AGREEMENT.

\$
No.

NEW YORK, NEW YORK
, 200

FOR VALUE RECEIVED, the undersigned, WYNN LAS VEGAS, LLC, a Nevada limited liability company (the "*Borrower*"), hereby unconditionally promises to pay (the "*Swing Line Lender*") or its registered assigns at the Payment Office specified in the Credit Agreement (as herein defined) in lawful money of the United States and in immediately available funds, on the Revolving Credit Termination Date the principal amount of (a) dollars (\$), or, if less, (b) the aggregate unpaid principal amount of all Swing Line Loans made by the Swing Line Lender to the Borrower pursuant to the Credit Agreement, as hereinafter defined. The Borrower further agrees to pay interest in like money at such office on the unpaid principal amount hereof from time to time outstanding at the rates and on the dates specified in Section 2.15 of such Credit Agreement.

The holder of this Note is authorized to endorse on the schedules annexed hereto and made a part hereto or on a continuation thereof which shall be attached hereto and made a part hereof the date and amount of each Swing Line Loan made pursuant to the Credit Agreement and the date and amount of each payment or

prepayment of principal thereof. Each such endorsement shall constitute *prima facie* evidence of the accuracy of the information endorsed. The failure to make any such endorsement or any error in any such endorsement shall not affect the obligations of the Borrower in respect of any Swing Line Loan.

This Note (a) is one of the Swing Line Notes referred to in the Credit Agreement dated as of October 30, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "*Credit Agreement*"), among the Borrower, the Swing Line Lender, the several banks and other financial institutions or entities from time to time parties thereto, Deutsche Bank Securities Inc., as lead arranger and joint book running manager, Deutsche Bank Trust Company Americas, as administrative agent and swing line lender, Banc of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York and Grand Cayman Branches, as arranger and joint documentation agent, and JPMorgan Chase Bank, as joint documentation agent, (b) is subject to the provisions of the Credit Agreement and (c) is subject to optional and mandatory prepayment in whole or in part as provided in the Credit Agreement. This Note is secured and guaranteed as provided in the Loan Documents. Reference is hereby made to the Loan Documents for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and the guarantees, the terms and conditions upon which the security interests and each guarantee were granted and the rights of the holder of this Note in respect thereof.

Upon the occurrence of any one or more of the Events of Default, all principal and all accrued interest then remaining unpaid on this note shall become, or may be declared to be, immediately due and payable, all as provided in the Credit Agreement.

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All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN OR IN THE CREDIT AGREEMENT, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AND IN ACCORDANCE WITH THE REGISTRATION AND OTHER PROVISIONS OF SECTION 10.6 OF THE CREDIT AGREEMENT.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

WYNN LAS VEGAS, LLC,
a Nevada limited liability company,
as the Borrower

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: _____

Name: _____

Title: _____

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**Schedule A
to Swing Line Note**

LOANS AND REPAYMENTS OF SWING LINE LOANS

| <u>Date</u> | <u>Amount of Swing Line Loans</u> | <u>Amount of Principal of Swing Line Loans Repaid</u> | <u>Unpaid Principal Balance of Swing Line Loans</u> | <u>Notation Made By</u> |
|-------------|-----------------------------------|---|---|-------------------------|
|-------------|-----------------------------------|---|---|-------------------------|

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REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this "*Agreement*") is entered into this 30th day of October, 2002, by and between WYNN RESORTS, LIMITED, a Nevada corporation (the "*Company*"), and Stephen A. Wynn, an individual ("*Wynn*" and, collectively with the Company, the "*Parties*").

A. Wynn, the Company, Aruze USA, Inc. (together, with any other entity owned or controlled by Aruze Corp. and/or Kazuo Okada to which any or all of the Aruze Shares (as defined below) may be transferred, collectively, "*Aruze*"), Kazuo Okada and Aruze Corp. have entered into that certain Buy-Sell Agreement dated as of June 13, 2002 (as amended by that certain Purchase Agreement dated October 30, 2002 between Aruze USA, Inc. and the Company and as such Buy-Sell Agreement may be amended further from time to time, the "*Buy-Sell Agreement*") pursuant to which Wynn or his designee has the option (the "*Purchase Option*"), under certain circumstances, to purchase some or all of Aruze's capital stock of the Company (such Shares so purchased by Wynn or his designees, the "*Aruze Shares*") on the terms and conditions contained therein;

B. The Company and Wynn have entered into that certain Agreement dated as of June 13, 2002 pursuant to which the Company may, under certain circumstances, require Wynn or his designee to exercise the Purchase Option under the Buy-Sell Agreement;

C. The Company and Wynn desire to set forth the respective rights of the Company and Wynn with respect to the registration of a resale of the Aruze Shares after an exercise of the Purchase Option.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises contained herein, the Parties agree as follows:

1. *Definitions.*

1.1 As used in this Agreement, the following capitalized terms shall have the following meanings:

Controlling Person: Shall have the meaning set forth in Section 7.1 hereof.

Demand Notice: Shall have the meaning set forth in Section 2.1(a) hereof.

Exchange Act: The Securities Exchange Act of 1934, as amended from time to time (including the rules and regulations promulgated thereunder).

Form S-3: Such form under the Securities Act as is in effect on the date hereof or any successor registration form under the Securities Act subsequently adopted by the SEC which permits inclusion or incorporation of substantial information by reference to other documents filed by the Company with the SEC.

Holder: Wynn and any Person to which Registrable Securities are transferred and to which the registration rights set forth in this Agreement are assigned pursuant to Section 10 of this Agreement.

Indemnified Parties: Shall have the meaning set forth in Section 7.1 hereof.

Majority Selling Holders: Selling Holders who hold a majority of the Registrable Securities to be included under a Registration Statement.

Person: An individual; a corporation; a general, limited or limited liability partnership; a limited liability company; a trust; an unincorporated organization or other legal entity; or a government or any agency or political subdivision thereof.

Prospectus: The definitive prospectus, included in any Registration Statement, as amended or supplemented by any prospectus supplement with respect to the terms of the offering of any portion of the Registrable Securities covered by the Registration Statement and by all other amendments and supplements to the prospectus, including post-effective amendments and all material incorporated by reference in such prospectus.

Registrable Securities: The Aruze Shares owned of record or beneficially by the Holders, plus any Shares (as defined below) received with respect to or in replacement of the Aruze Shares by reason of splits, dividends and recapitalizations and other changes in the Company's capital structure; *provided, however,* that such Shares shall cease to be Registrable Securities when (i) a Registration Statement covering such Registrable Securities has been declared effective and such Registrable Securities have been disposed of pursuant to such effective Registration Statement, or (ii) such Registrable Securities are distributed to the public pursuant to Rule 144 of the Securities Act.

Registration Demand: Shall have the meaning set forth in Section 2.1(a) hereof.

Registration Expenses: Shall have the meaning set forth in Section 6.1 hereof.

Registration Statement: Any registration statement of the Company filed under the Securities Act which covers Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus, amendments and supplements to such Registration Statement (including all post-effective amendments, all exhibits and all material incorporated by reference in such Registration Statement).

SEC: The Securities and Exchange Commission.

Securities Act: The Securities Act of 1933, as amended from time to time (including the rules and regulations promulgated thereunder).

Selling Holders: Holders of Registrable Securities who seek to sell such securities under any Registration Statement.

Shares: The shares of common stock, par value \$.01 per share, of the Company or any securities of the Company or any other Person received in respect of or in replacement of such shares, including by reason of splits, dividends, recapitalizations, reorganizations, mergers, exchange offers, business combinations or other changes in the Company's or its successors' capital structure.

2. Registration Rights.

2.1 Registration Upon Request.

(a) At any time beginning on the date that is 180 days after the closing date of the Company's initial public offering, Holders holding an aggregate of at least thirty-three and one-third percent ($33\frac{1}{3}\%$) of the then-outstanding Registrable Securities, from time to time, shall be entitled (subject to Section 12 hereof) to make a written request (a "*Demand Notice*") to the Company requesting that the Company effect the registration under the Securities Act of a number of Registrable Securities with a market value of at least twenty million dollars (\$20,000,000) on the date of such request, stating the intended method of disposition of such Registrable Securities; *provided, however*, that such a demand (a "*Registration Demand*") may not be made more than four (4) times in the aggregate and may not be made more than once in any twelve-month period; and *provided further*, the Registration Demand shall not be deemed made if (i) the Registration Statement does not become effective under the Securities Act (including without limitation if the Selling Holders withdraw the Registration Statement, *provided* that a Registration Demand will be deemed made by the Selling Holders if the Registration Statement was withdrawn due to a material adverse change in general market

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conditions or in the Company's business of which the Holder(s) that provided the Demand Notice were aware at the time the Demand Notice was provided), (ii) a stop order, injunction or other order interferes with or prevents the contemplated method of distribution or (iii) the number of Registrable Securities requested to be included in the registration is reduced by 25% or more pursuant to Section 2.1(c), and, in each case, the Registration Expenses (other than Indirect Expenses) are paid by the Holders. Within five (5) business days after receipt of a Demand Notice, the Company shall notify all other Holders and offer to them the opportunity to include their Registrable Securities in such registration, so long as such other Holders notify the Company in writing of the amount of Registrable Securities that they wish to register within fifteen (15) business days of the date of such notice. A Registration Demand made by any Holder is deemed to be made by all Holders for purposes of tabulating the number of Registration Demands that may be made in any twelve month period or in total.

(b) Upon receipt of a Registration Demand, the Company shall, as soon as is reasonably practicable (but in any event within 60 days of the date of the Demand Notice), prepare and file a Registration Statement with the SEC on an appropriate form under the Securities Act with respect to all of the Registrable Securities that Holders of such securities have requested that the Company register, and use its reasonable best efforts to cause such Registration Statement to become effective as soon as is reasonably practicable.

(c) In connection with any Registration Statement filed in response to a Demand Notice, the Company, at its option, may include a primary offering of additional shares of Common Stock and/or may include shares to be sold by other stockholders of the Company; *provided, however*, that if the managing underwriter of such offering determines in good faith and so advises the Company that the number of Shares otherwise to be included in the Registration Statement is such that the success of the underwritten offering may be materially and adversely affected (in terms of the offering price of the offering), then the total number of shares to be included in the Registration Statement shall be reduced to the amount recommended by such underwriter and (i) unless the Registration Statement includes all of the Registrable Securities designated for sale by all Selling Holders participating in the demand registration pursuant to Section 2.1(a), the Registration Statement shall not include any shares to be offered by the Company or sold by other stockholders (including other Holders exercising incidental registration rights pursuant to Section 2.2), and (ii) if the Registration Statement does not include all of the Registrable Securities designated for sale by such Selling Holders, the number of Registrable Securities included in the Registration Statement shall be allocated among such Selling Holders pro rata (based on the number of Registrable Securities held by each).

(d) Notwithstanding the foregoing, if, at the time a Demand Notice is received, the Company (i) is contemplating filing a registration statement in connection with the offering of its securities (a "*Company Offering*") within 90 days of the date of delivery of the Demand Notice; or (ii) determines in good faith that a registration pursuant to the Demand Notice might have a material adverse effect on the Company or interfere with or adversely affect the negotiations or completion of any transaction that is being contemplated by the Company at that time, the Company shall be entitled, upon delivery of written notice no later than twenty (20) days after delivery of the Demand Notice to the person(s) who delivered the Demand Notice, to postpone filing of the Registration Statement and/or withhold efforts to cause the Registration Statement to become effective for a reasonable period of time (not to exceed the shorter of 120 days or the Company's termination of consideration of a Company Offering, or completion or other resolution of the events described in clause (ii) of this Section 1.1(d); *provided, however*, that such deferral may not be utilized more than once in any twelve (12) month period.

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2.2 Incidental Registration.

(a) If at any time after the date hereof the Company proposes to register any shares of Common Stock under the Securities Act solely for cash (except pursuant to a registration statement (i) on Form S-8, Form S-4 or comparable forms, or (ii) with respect to an employee benefit plan, (iii) solely in connection with a Rule 145 transaction under the Securities Act or (iv) which does not include substantially the same information as would be required to be included in a Registration Statement covering the sale of Registrable Securities, or pursuant to a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities which are also being registered), or if any other stockholder is being afforded an opportunity to register shares of Common Stock (including pursuant to Section 2.1(a)), the Company will at each such time give written notice to the Holders (other than Holders participating in a demand registration pursuant to Section 2.1(a)) as provided in Section 13.4 hereof of its intention to do so. Within fifteen (15) business days after receipt of such notice, such Holders may request that the Company register all or part of the Registrable Securities, stating in such request the intended method of distribution of such securities (the "*Designated Securities*"). Upon receipt of such request, the Company shall use its reasonable best efforts to effect the registration of the Designated Securities by including the Designated Securities in such Registration Statement.

(b) In the event that securities of the same class as the Registrable Securities are being registered by the Company in such Registration Statement and such securities as well as any of the Designated Securities are to be distributed in an underwritten offering, such Designated Securities shall be included in such underwritten offering on the same terms and conditions as the securities being issued by the Company for distribution pursuant to such underwritten offering; *provided, however*, that if the managing underwriter of such underwritten offering determines in good faith and so advises the Company that the inclusion in such underwritten offering of all the Designated Securities may materially and adversely affect the success of the underwritten offering (in terms of the offering price of the offering), then the number of Designated Securities to be included in the Registration Statement shall be reduced to the amount recommended in good faith by such managing underwriter, it being understood that the Designated Securities will be excluded entirely before any securities to be included in the Registration Statement by the Company or any stockholder exercising demand registration rights are excluded; and *provided, further*, that as to the Selling Holders exercising incidental registration rights pursuant to this Section 2.2, such reduction shall be pro rata (based on the number of Shares held by each) with respect to the Designated Securities with other Persons holding contractual incidental or "piggy-back" registration rights in such underwritten offering.

(c) No registration effected under this Section 2.2 shall relieve the Company of its obligations to effect registrations at the request of the Holders under Section 2.1.

2.3 *Marketing.* The Company shall make representative members of its officers and management available, upon reasonable notice and to the extent reasonably requested by the managing underwriter for the offering or the Selling Holders, to participate in efforts to market Registrable Securities offered in an underwritten public offering pursuant to Section 2.1 hereof (including, without limitation, participating in "roadshow" meetings with prospective investors) that would be customary for underwritten primary offerings of a comparable amount of equity securities by the Company.

3. *Hold-Back Agreements.*

3.1 *Restrictions on Public Sale by Holders.* During the period of duration specified by the Company and an underwriter of common stock or other securities of the Company convertible into common stock, following the effective date of a registration statement of the Company filed under

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the Securities Act, the Holder(s) shall not, to the extent requested by the Company and/or such underwriter, directly or indirectly sell, offer to sell, contract to sell (including, without limitation, any short sale), grant any option to purchase or otherwise transfer or dispose of (other than to donees who agree to be similarly bound) any Registrable Securities held by it at any time during such period, except Registrable Securities included in such registration; *provided, however*, that such hold-back time period shall not exceed 90 days (180 days in connection with the Company's initial public offering of its Common Stock). The Holder(s) agree to provide to the underwriters of any public offering of the Company such further agreements as such underwriters may reasonably request in connection with the hold-back agreement provided for in this Section 3.1; *provided* that the terms of such agreements are substantially consistent with the provisions of this Section 3.1. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to the Registrable Securities until the end of such period. Notwithstanding the foregoing, the obligations described in this Section 3.1 shall not apply to a registration relating solely to employee benefit plans on Form S-1 or Form S-8 or similar forms which may be promulgated in the future, or a registration relating solely to a Rule 145 transaction.

3.2 *Restrictions on Public Sale by the Company and Others.* The Company agrees not to effect any public sale or distribution of its Common Stock, during a period, not to exceed 45 days, beginning on the closing date of an underwritten offering made pursuant to a Registration Statement filed under Section 2 hereof if the marketing of such securities would materially harm the prospects of the offering of Registrable Securities under the Registration Statement and to the extent timely notified in writing by one or more of the Selling Holders or the managing underwriters (except as part of such underwritten registration or pursuant to registrations on Forms S-4 or S-8 or any successor form to such Forms).

4. *Registration Procedures.* In connection with the Company's registration obligations pursuant to Section 2 hereof, the Company will use its reasonable best efforts to effect such registration to permit the sale of such Registrable Securities in accordance with the intended method or methods of disposition thereof, and pursuant thereto the Company will:

4.1 *Preparation of Registration Statement.* Prepare and file with the SEC, within the time periods specified in Section 2, a Registration Statement on such form as may be appropriate under the Securities Act, and use its reasonable best efforts to cause such Registration Statement to become effective.

4.2 *Maintaining Effectiveness.* Promptly prepare and file with the SEC such amendments to the Registration Statement as may be necessary to keep such Registration Statement effective for a period of not more than 10 business days, or such shorter period that will terminate when the distribution of all Registrable Securities covered by such Registration Statement has been completed.

4.3 *Notification.* Immediately notify the Selling Holders and the managing underwriters, if any, and (if requested by any such Person) confirm such notice in writing, (i) when a Prospectus or any Prospectus supplement or post-effective amendment has been filed, and, with respect to a Registration Statement or any post-effective amendment, when the same has become effective, (ii) of the issuance by the SEC of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceeding for that purpose, (iii) of the receipt by the Company of any notification with respect to the suspension of the qualification of any of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose, and (iv) of the happening of any event which makes any statement made in the Registration Statement, the Prospectus or any document incorporated therein by reference untrue or which requires the making of any changes in the Registration Statement, the Prospectus, or any document incorporated therein by reference so that they will not contain any untrue statement of a

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material fact or omit to state any material fact required to be stated therein or necessary to make the statement therein not misleading.

4.4 *Stop Orders.* Make every reasonable best effort to obtain the withdrawal of any order suspending the effectiveness of a Registration Statement or the qualification of any Registrable Securities for sale in any jurisdiction at the earliest possible moment.

4.5 *Consultation with Holders.* Prior to the filing of any Registration Statement or amendment thereto, provide copies of such document to the Selling Holders and to the managing underwriters, if any, make the Company's representatives and the Company's counsel available for discussion of such document and make such changes in such document relating to the Selling Holders prior to the filing thereof as such Selling Holders, counsel for such Selling Holders, or underwriters may reasonably request.

4.6 *Copies of Registration Statements.* Furnish to each Selling Holder and each managing underwriter, if any, without charge, at least one originally executed copy of the Registration Statement and any post-effective amendment thereto, including financial statements and schedules, all materials incorporated therein by reference and all exhibits (including those incorporated by reference).

4.7 *Prospectuses.* Deliver to each Selling Holder and the underwriters, if any, without charge, as many copies of the Prospectus (and each preliminary prospectus) and any amendment or supplement thereto as such Persons may reasonably request so long as the Registration Statement to which such Prospectus or any amendment or supplement thereto relates is effective.

4.8 *Blue Sky Laws.* Prior to any public offering of Registrable Securities, use its reasonable best efforts to register or qualify or cooperate with the Selling Holders, the underwriters, if any, and their respective counsel in connection with the registration or qualification of such Registrable Securities for offer and sale under the securities or blue sky laws of such jurisdictions within the United States as any Selling Holder or underwriter reasonably requests, and do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of the Registrable Securities covered by the Registration Statement; *provided, however*, that the Company will not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or to take any action which would subject it to general service of process or taxation in any such jurisdiction where it is not then so subject.

4.9 *Amendments Upon Changes.* Upon the occurrence of any event contemplated by Sections 4.3(ii), (iii) or (iv) or 4.4 above, prepare, as promptly as practicable, a supplement or post-effective amendment to the Registration Statement or related Prospectus or any document incorporated therein by reference, or file any other required document so that, as thereafter delivered to the purchasers of the Registrable Securities being sold thereunder, such Prospectus will not contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading.

4.10 *Underwriting Agreements.* In the event of an underwritten public offering effected pursuant to Section 2.1, enter into such customary agreements (including, at the request of the Selling Holders, an underwriting agreement containing customary indemnification provisions) and take all such other actions reasonably required in connection therewith in order to expedite or facilitate the disposition of such Registrable Securities, including, but not limited to, cooperating with the Selling Holders, the underwriters participating in the offering and their counsel in any due diligence investigation reasonably requested by the Selling Holders or the underwriters in connection therewith.

4.11 *Compliance with Laws; Section 11(a).* Otherwise use its best efforts to comply with all applicable federal and state securities laws (including without limitation the rules and regulations

of the SEC), and make generally available to its security holders earning statements satisfying the provisions of Section 11(a) of the Securities Act no later than 45 days after the end of each 12-month period (or within 90 days after the end of a fiscal year).

4.12 *Opinions.* At the request of any Selling Holder, use its reasonable best efforts to furnish on the date that the Registrable Securities are delivered to that Selling Holder and any underwriter for sale in connection with a registration pursuant to this Agreement (i) an opinion of the counsel representing the Company for the purposes of such registration, and (ii) a letter from the independent certified public accountants of the Company, each dated such date and in form and substance as is customarily given by counsel and independent certified public accountants to underwriters in an underwritten public offering, addressed to any Selling Holders' underwriter and to the Selling Holders.

4.13 *Listing.* Cause all Registrable Securities registered hereunder to be listed on each securities exchange on which the same class of securities of the Company are then listed.

4.14 *Transfer Agent, Registrar and CUSIP Number.* Provide a transfer agent and registrar for Registrable Securities registered hereunder and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration.

Notwithstanding anything to the contrary contained in this Agreement, the Company may at any time suspend or terminate any of its efforts with respect to a Registration Statement filed by it other than pursuant to Section 2.1 of this Agreement, including by suspending or terminating (as applicable) the preparation, filing or effectiveness of such Registration, without any liability of any kind to any Holder.

5. *Selling Holders' Obligations.*

5.1 *Provision of Information.* The Company may require each Selling Holder of Registrable Securities as to which any registration is being effected to furnish to the Company such information regarding the distribution of such securities by, and such other information relevant to, the Selling Holder for inclusion in such Registration Statement, as the Company may from time to time reasonably request in writing. The Company shall not be obligated to include in any Registration Statement any securities owned by a Holder that does not comply with its obligations under this Agreement. In addition, the Company shall have no obligation with respect to any registration requested pursuant to Section 2.1 if, due to the operation of this Section 5.1, the anticipated aggregate offering price of the Registrable Securities to be included in the registration does not equal or exceed the anticipated aggregate offering price required to originally trigger the Company's obligation to initiate such registration as specified in Section 2.1.

5.2 *Discontinued Use of Prospectus.* Each Holder of Registrable Securities agrees by execution of this Agreement that, upon receipt of any written notice from the Company of the happening of any event of the kind described in clauses (ii), (iii) or (iv) of Section 4.3 or Section 4.4 hereof, such Holder will forthwith discontinue disposition of Registrable Securities until such Holder's receipt of the copies of the supplemented or amended Prospectus contemplated by Section 4.9 hereof, or until it is advised in writing (the "Advice") by the Company that the use of the Prospectus may be resumed, and has received copies of any additional or supplemental filings which are incorporated by reference in such Prospectus, and, if so directed by the Company, such Holder will deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in such Holder's

possession, of the Prospectus covering such Registrable Securities current at the time of receipt of such notice. In the event the Company shall give any such notice, the time period mentioned in Section 4.2 hereof shall be extended by the number of days during the period from and including the date of the giving of such notice to and including the date when each Selling Holder shall have received the copies of the supplemental or amended Prospectus contemplated by Section 4.9 hereof or the Advice.

5.3 *Underwriting Agreement.* Each Selling Holder participating in an underwritten offering pursuant to Section 2.1 or 2.2 agrees to enter into a customary underwriting agreement on terms reasonably satisfactory to the managing underwriter.

5.4 *Delay of Registration.* No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Agreement.

6. *Registration Expenses.*

6.1 *Demand Registrations.* The Selling Holders shall bear all expenses incurred in connection with any Registration Statement (the "*Registration Expenses*") initiated pursuant to Section 2.1 hereof, including without limitation all registration and filing fees; all underwriting discounts, commissions, fees and disbursements; fees with respect to any filings required to be made with the National Association of Securities Dealers; listing fees relative to any stock exchange or national market system; fees and expenses of compliance with state securities or blue sky laws (including reasonable fees and expenses of counsel for the underwriters in connection therewith); printing expenses, fees and disbursements of counsel for the Company and for Selling Holders; fees and disbursements of accounting or financing professionals; fees and disbursements of all independent public accountants of the Company; any transfer taxes with respect to the Registrable Securities sold by the Selling Holders; and all other expenses incidental to the sale and delivery of the Registrable Securities, *provided, however,* that such Registration Expenses shall not include any portion of the compensation paid by the Company or its affiliates to the directors, officers or employees of the Company or its affiliates ("*Indirect Expenses*"). Each Selling Holder shall bear his, her or its share of the Registration Expenses pro rata based upon the number of Registrable Securities offered by such Selling Holders pursuant to such Registration Statement.

6.2 *Incidental Registrations.* The Company shall bear all Registration Expenses, including Indirect Expenses but excluding Selling Holder Expenses (as defined below), incurred in connection with any Registration Statement other than a Registration Statement initiated pursuant to Section 2.1 hereof. Each Selling Holder shall bear his, her or its share of any Selling Holder Expenses based upon the number of Registrable Securities offered by such Selling Holders pursuant to such Registration Statement. "*Selling Holder Expenses*" shall consist of and be limited to (i) the Selling Holder's legal costs, including the fees and expenses of any counsel selected by the Selling Holder to represent him, her or it, and (ii) the proportionate share of brokerage or underwriting commissions attributable to the Selling Holder's shares.

7. *Indemnification.*

7.1 *Indemnification by the Company.* The Company agrees to indemnify and hold harmless, to the full extent permitted by law, each Holder of Registrable Securities, each Person who controls such Holder (within the meaning of the Securities Act or the Exchange Act) (a "*Controlling Person*"), and each officer, director, employee and agent of such Holder and each Controlling Person and each underwriter or selling agent (the "*Indemnified Parties*") from and against all losses, claims, damages, liabilities and expenses caused by any untrue or alleged untrue statement of a material fact contained in any Registration Statement, Prospectus or preliminary prospectus or any amendment or supplement thereto or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as (i) the Company has demonstrated that the same are caused by or contained in any information furnished in writing to the Company by such Holder, expressly for use therein, or (ii) the Company has advised such Holders' Representative in writing of a Section 4.3(iv) event and the Holder has sold Registrable Securities notwithstanding receipt of such notice prior to receipt of a supplement or amended Prospectus pursuant to Section 4.9 herein; *provided, however,* that the Company shall not be liable in any such case to the extent that any

such loss, claim, damage, liability or expense arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in any preliminary prospectus if (i) such Holder failed to send or deliver a copy of the Prospectus with or prior to the delivery of written confirmation of the sale of Registrable Securities and (ii) the Prospectus would have corrected such untrue statement or omission; *provided, further,* that the Company shall not be liable in any such case to the extent that any such loss, claim, damage, liability or expense arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission in the Prospectus, if such untrue statement or alleged untrue statement, omission or alleged omission is corrected in an amendment or supplement to the Prospectus and if, having previously been furnished by or on behalf of the Company with copies of the Prospectus as so amended or supplemented, such Holder thereafter fails to deliver such Prospectus as so amended or supplemented, prior to or concurrently with the sale of Registrable Securities to the Person asserting such loss, claim, damage, liability or expense who purchased such Registrable Securities that are the subject thereof from such Holder. The indemnity provided herein shall remain in full force and effect regardless of any investigation made by or on behalf of an Indemnified Party and shall survive the transfer of Registrable Securities by the Selling Holder. The Company shall be obligated to give to, and shall be entitled to receive from, underwriters, selling brokers, dealer managers and similar securities industry professionals participating in the distribution customary indemnities.

7.2 *Indemnification by Holders.* In connection with the Registration Statements hereunder, each Selling Holder agrees to indemnify and hold harmless, to the full extent permitted by law, the Company, and each Person who controls the Company (within the meaning of the Securities Act or the Exchange Act) and each manager, director, officer, employee and agent of each such Person from and against any losses, claims, damages, liabilities and expenses caused by any untrue or alleged untrue statement of a material fact or any omission of a material fact required to be stated in any Registration Statement or Prospectus or preliminary prospectus or necessary to make the statements therein not misleading, to the extent, but only to the extent, that the Company has demonstrated that such untrue statement or omission is contained in any information or affidavit so furnished by such Holder to the Company specifically for inclusion in such Registration Statement or Prospectus. In no event, however, shall the liability of any Selling Holder hereunder be greater in amount than the dollar amount of the proceeds (net of underwriters' discounts and commissions) received by such Holder upon the sale of the Registrable Securities giving rise to such indemnification obligation.

7.3 *Conduct of Indemnification Proceedings.* Any Person entitled to indemnification hereunder will (i) give prompt notice to the indemnifying party of any claim with respect to which it seeks indemnification and (ii) permit such indemnifying party to assume the defense of such claim with

counsel reasonably satisfactory to the Indemnified Party; *provided, however*, that any person entitled to indemnification hereunder shall have the right to employ separate counsel and to participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such Person unless (a) the indemnifying party has agreed to pay such fees or expenses, or (b) the indemnifying party shall have failed to assume within a reasonable period of time the defense of such claim and employ counsel reasonably satisfactory to such person or (c) in the reasonable judgment of any such Person, based upon written advice of its counsel, a conflict of interest exists between such Person and the indemnifying party with respect to such claims or such Person has separate or additional defenses, in either case such as would make the representation of such Person by the same counsel as the indemnifying party improper under applicable standards of professional conduct (in which case, if the Person notifies the indemnifying party in writing that such Person elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such claim on behalf of such Person). If such defense is not assumed by the indemnifying party, the indemnifying party will not

be subject to any liability for any settlement made without its consent (but such consent will not be unreasonably withheld). No indemnifying party will consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation. An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim will not be obligated to pay the fees and expenses of more than one principal and one local counsel for all Indemnified Parties who are indemnified by such indemnifying party with respect to such claim.

7.4 Contribution. If the indemnification provided for in Sections 7.1 or 7.2 is unavailable to the Indemnified Parties in respect of any losses, claims, damages or liabilities referred to herein, then each such indemnifying party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such losses, claims, damages or liabilities (i) as between the Company and the Selling Holders on the one hand and the underwriters on the other hand, in such proportion as is appropriate to reflect the relative benefits received by the Company and the Selling Holders on the one hand and the underwriters on the other hand from the offering of all of the securities sold in the offering, or if such allocation is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits but also the relative fault of the Company and the Selling Holders on the one hand and of the underwriters on the other hand in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations and (ii) as between the Company on the one hand and each Selling Holder on the other hand, in such proportion as is appropriate to reflect the relative fault of the Company and of each Selling Holder in connection with such statements or omissions, as well as any other relevant equitable considerations. The relative benefits received by the Company and the Selling Holders on the one hand and the underwriters on the other hand shall be deemed to be in the same proportion as the total proceeds from the offering (net of underwriting discounts and commissions but before deducting expenses) received by the Company and the Selling Holders bear to the total underwriting discounts and commissions received by the underwriters, in each case as set forth in the table on the cover page of the Prospectus. The relative fault of the Company and the Selling Holders on the one hand and of the underwriters on the other hand shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company and the Selling Holders or by the underwriters. The relative fault of the Company on the one hand and of each Selling Holder on the other hand shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by such party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Selling Holders agree that it would not be just and equitable if contribution pursuant to this Section 7.4 were determined by pro rata allocation (even if the underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an Indemnified Party as a result of the losses, claims, damages or liabilities referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 7.4, no Selling Holder shall be required to contribute any amount in excess of the amount by which the total price at which the securities of such Selling Holder were offered to the public exceeds the amount of any damages which such Selling Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person

guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Selling Holders' obligations to contribute pursuant to this Section 7.4 are several in proportion to the proceeds of the offering received by each Selling Holder bears to the total proceeds of the offering received by all the Selling Holders and not joint.

7.5 Underwriting Agreement Controls. Notwithstanding the foregoing provisions of this Section 7, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with an underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

7.6 Survival. The obligations of the Company and the Holders under this Section 7 shall survive the completion of any offering of Registrable Securities in a Registration Statement under this Agreement or otherwise.

8. Selection of Underwriters. The determination of whether an offering of Registrable Securities made pursuant to Section 2.1 will be underwritten shall be made by the Majority Selling Holders. Such Majority Selling Holders shall have the right to select the investment bankers and managing underwriters to administer an underwritten offering of Registrable Securities made pursuant to Section 2.1, *provided, however*, that such investment bankers and managing underwriters shall be subject to approval by the Company, which approval shall not be unreasonably withheld. If requested, the Company shall enter into a customary underwriting agreement with an investment banking firm, as set forth under Section 4.10 above. For any offering of Registrable Securities pursuant to a Registration Statement, the selection of counsel for Selling Holders shall be determined by the Majority Selling Holders.

9. Reports Under Securities Exchange Act of 1934. With a view to making available to the Holders the benefits of Rule 144 promulgated under the Securities Act and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144 promulgated under the Securities Act, at all times after ninety (90) days after the effective date of the first registration statement filed by the Company for the offering of its securities to the general public;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act; and

(d) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request (i) a written statement by the Company that it has complied with the reporting requirements of Rule 144 promulgated under the Securities Act (at any time after ninety (90) days after the effective date of the first registration statement filed by the Company), the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after it so qualifies), (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company (if the Company is subject to the reporting obligations of the Exchange Act), and (iii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC which permits the selling of any such securities without registration or pursuant to such form.

10. *Transfer of Registration Rights.* The right to cause the Company to register Registrable Securities pursuant to this Agreement may be assigned by a Holder to (i) a transferee or assignee of Registrable Securities who acquires pursuant to such transfer, not less than 25% of the aggregate

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number of Registrable Securities originally acquired by Wynn or his designee(s) under the Buy-Sell Agreement (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like), (ii) a subsidiary, parent or other affiliate, member, shareholder, officer, general partner, limited partner or former or retired partner of a Holder, (iii) a Holder's family member, family partnership or trust for the benefit of an individual Holder or any family member or (iv) by Wynn to his designee(s) under the Buy-Sell Agreement who acquires some or all of the Aruze Shares pursuant to the Purchase Option; *provided, however*, that such assignment shall be effective only if (a) the transferee agrees in writing to be bound by and subject to the terms and conditions of this Agreement, including, but not limited to, the provisions of Section 3.1 above, (b) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being transferred and (c) such transfer of any Registrable Securities is lawful under all applicable securities laws.

11. *Termination of Registration Rights.* The right of any Holder to request registration or to include Registrable Securities in any registration pursuant to this Agreement shall terminate one year after the payment in full of the promissory note(s) that Wynn or his designee(s) may use to pay the purchase price for the Aruze Shares pursuant to the Buy-Sell Agreement.

12. *Exercise of Demand Registration Rights.* Notwithstanding anything to the contrary contained in this Agreement, a Demand Notice may be delivered pursuant to Section 2.1 hereof only by Wynn or, if he is deceased, by his spouse or by his estate, on behalf of the Holders of the requisite percentage and market value of Registrable Securities.

13. *Miscellaneous.*

13.1 *Remedies.* In the event of a breach by the Company of its obligations under this Agreement, each Holder of Registrable Securities, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Agreement, subject to Section 5.4 hereof. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of any of the provisions of this Agreement and hereby waives the defense in any action for specific performance that a remedy at law would be adequate.

13.2 *No Inconsistent Agreements.* The Company will not on or after the date of this Agreement enter into any agreement with respect to its securities which is inconsistent with or limits or impairs the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof.

13.3 *Adjustments Affecting Registrable Securities.* The Company will not take any action, or permit any change to occur, with respect to the Registrable Securities which would adversely affect the ability of the Holders of Registrable Securities to include such Registrable Securities in a registration undertaken pursuant to this Agreement.

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13.4 *Notices.* All notices or other communications hereunder shall be in writing and shall be given by (i) personal delivery, (ii) courier or other same day or overnight delivery service which obtains a receipt evidencing delivery, (iii) registered or certified mail (postage prepaid and return receipt requested), or (iv) facsimile or similar electronic device, to such address as may be designated from time to time by the relevant party, and which shall initially be:

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| If to the Company: | Wynn Resorts, Limited 3145 Las Vegas Boulevard South Las Vegas, Nevada 89109 Facsimile: 702.733.4596 Attention: Legal department. |
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|-------------|--|
| If to Wynn: | Stephen A. Wynn c/o Wynn Resorts, Limited 3145 Las Vegas Boulevard South Las Vegas, Nevada 89109 Facsimile: 702.791.0167 |
|-------------|--|

All notices and other communications shall be deemed to have been given (i) if delivered by the United States mail, three business days after mailing (five business days if delivered to an address outside of the United States), (ii) if delivered by a courier or other delivery service, one business day after dispatch (two business days if delivered to an address outside of the United States), and (iii) if personally delivered or sent by facsimile or similar electronic device, upon receipt by the recipient or its agent or employee (which, in the case of a notice sent by facsimile or similar electronic device, shall be the time and date indicated on the transmission confirmation receipt). No objection may be made by a party to the manner of delivery of any notice actually received in writing by an authorized agent of such party.

13.5 *Complete Agreement; Modifications.* This Agreement and any documents referred to herein or executed contemporaneously herewith constitute the Parties' entire agreement with respect to the subject matter hereof and supersede all agreements, representations, warranties, statements, promises and understandings, whether oral or written, with respect to the subject matter hereof. This Agreement may be amended, altered or modified only by a writing signed by the Company and Holders of a majority of the Registrable Securities then held by all Holders.

13.6 *Calculation of Registrable Securities.* For the purposes of this Agreement, if the Aruze Shares consist of common stock and another class of securities convertible into common stock, then the calculation of the number of Registrable Securities shall include any shares of common stock acquired or which may be acquired by the Holders upon conversion of any such convertible securities comprising Aruze Shares.

13.7 *Successors and Assigns.* Except as provided herein to the contrary, this Agreement shall be binding upon and inure to the benefit of the Parties, their respective successors and permitted assigns, including, without limitation and without the need for an express assignment, subsequent Holders of Registrable Securities who are assigned registration rights pursuant to Section 10 hereof.

13.8 *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada, without regard to the choice of law provisions thereof.

13.9 *Attorneys' Fees.* Should any litigation be commenced (including any proceedings in a bankruptcy court) between the Parties or their representatives concerning any provision of this Agreement or the rights and duties of any Person or entity hereunder, the party or parties prevailing in such proceeding shall be entitled, in addition to such other relief as may be granted, to the reasonable attorneys' fees and court costs incurred by reason of such litigation.

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13.10 *Headings.* The Article and Section headings in this Agreement are inserted only as a matter of convenience, and in no way define, limit, extend or interpret the scope of this Agreement or of any particular Article or Section.

13.11 *Severability.* If any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; furthermore, the remaining provisions of this Agreement shall remain in full force and effect, and, in place of such illegal, invalid or unenforceable provision, there automatically shall be added as a part of this Agreement a provision as similar to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

13.12 *Gender.* Throughout this Agreement, as the context may require, the masculine gender includes the feminine and neuter; and the neuter gender includes the masculine and feminine.

13.13 *Counterparts.* This Agreement may be executed in any number of counterparts and by the Parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

[Remainder of this page intentionally left blank.]

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SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth hereinabove.

WYNN RESORTS, LIMITED

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein
Title: *Senior Vice President, General Counsel and Secretary*

By: /s/ STEPHEN A. WYNN

Stephen A. Wynn

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MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (this "Agreement") is made as of October 30, 2002, by and among Wynn Las Vegas, LLC, a Nevada limited liability company (the "Company") and its subsidiaries and affiliates listed on *Exhibit A* hereto (and together with the Company, the "Wynn Entities"), and Wynn Resorts, Limited, a Nevada corporation (the "Manager") with reference to the following:

WHEREAS, the Company together with the Wynn Entities propose to develop, construct and operate the Le Rêve Casino Resort, a hotel and casino resort, with related parking structure and golf course facilities, as part of the redevelopment of the site of the former Desert Inn in Las Vegas, Nevada (the "Business");

WHEREAS, the other Wynn Entities will lease property and/or provide services to the Company in connection with the Business; and

WHEREAS, the Company and the Wynn Entities desire to engage the Manager to provide the management and advisory services for the Business and the Manager desires to accept such engagement to provide such services, all upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. *Retention of the Manager.* The Company and each of the Wynn Entities hereby appoints the Manager as manager for the Business, and the Manager hereby agrees to provide the management and advisory services described herein for the Business, in accordance with the terms and subject to the conditions hereinafter set forth.

2. *Services to be Provided by the Manager.*

(a) In accordance with the terms and subject to the conditions hereof, the Manager agrees to provide the following management and advisory services (together with services necessary or incidental thereto, "Management Services") to the Wynn Entities on an ongoing basis in connection with the ownership and operation of the Business by the Wynn Entities during the term of this Agreement.

(b) The Manager shall provide customary management and advisory services with respect to the operation of the Business, to consist of the following necessary or incidental thereto:

(i) advice concerning the hiring, termination, performance and training of personnel;

(ii) review, consultation and advice concerning personnel, operations, and other management and operating policies and procedures;

(iii) recommendations on all necessary action to keep the operation of the Business in compliance, in all material respects, with the conditions of all licenses (including gaming licenses) and all applicable rules, regulations and orders of any federal, state, county or municipal authority having jurisdiction over the Business;

(iv) development of recommendations for, and negotiate the acquisition and maintenance of, insurance coverage with respect to the Business;

(v) guidance on all marketing, sales promotions and advertising for the Business;

(vi) assistance in the financial budgeting process and the implementation of appropriate accounting, financial, administrative and managerial controls for the Business;

(vii) preparation for use by the Wynn Entities of financial reports and maintenance of books of accounts and other records reflecting the results of operation of Business (which at all times

shall be maintained in a manner which permits the assets and liabilities of the Wynn Entities to be separately identified from those of the Manager); and

(viii) advice and consultation with the Wynn Entities in connection with any and all aspects of the Business and the day to day operation thereof, and consultation with the Wynn Entities with respect to the selection of attorneys, consultants and accountants.

3. *Management Fees; Expenses.*

(a) All expenses, costs, losses, liabilities or damages incurred with respect to the ownership or operation of the Business, including, without limitation, wages, salaries and other labor costs incurred in the construction, maintenance, expansion or operation of the Business, or personnel working on special projects or services for the Wynn Entities, will be paid by the Company. To the extent that the Manager pays or incurs any obligation for any such expenses, costs, losses, liabilities or damages, the Company, subject to the limitations set forth in Section 5, will pay or reimburse the Manager therefor, as well as for any reasonable out-of-pocket expenses incurred by the Manager in the performance of its obligations under this Agreement (provided, however, that (a) in no event shall any such payments include any fee, profit or similar component benefiting the Manager, it being understood and agreed that such payments instead are intended to reimburse only actual costs and expenses, and (b) in no event shall such payments include amounts characterized as "Affiliated Overhead Expenses" under the terms of the Bank Credit Agreement (as hereinafter defined)). Subject to the payment priority provisions of this Section 3, the Company agrees to pay the Manager, as the Manager's compensation for the services to be rendered hereunder, a yearly management fee (the "Management Fee") equal to one and one-half percent (1.5%) of the "Net Revenues" (as determined in accordance with generally accepted accounting principles as applicable to companies in the gaming business) of the Company, payable semi-annually in arrears. Accrual of such Management Fee shall commence upon "Opening Date" (as defined in the Bank

Credit Agreement defined below). For so long as there is any outstanding indebtedness under the Second Mortgage Notes Indenture (as hereinafter defined), the semi-annual accrual periods shall be set to match the semi-annual interest accrual periods under the Second Mortgage Notes Indenture, and the payment date with respect to any such accrued Management Fees shall be the tenth (10th) Business Day after the date established under the Second Mortgage Notes Indenture for payment of accrued interest with respect to such semi-annual period.

(b) Notwithstanding the foregoing, the parties acknowledge and agree that the payment of the Management Fee is subject to a Management Fee Subordination Agreement of even date herewith (the "Subordination Agreement") by and among the Manager, the Company, Deutsche Bank Trust Company Americas, as "Administrative Agent" under the Bank Credit Agreement (as hereinafter defined), Wells Fargo Bank Nevada, National Association, as Collateral Agent under the "FF&E Credit Agreement" (as hereinafter defined) and Deutsche Bank Trust Company Americas, as Trustee under the Second Mortgage Notes Indenture. The parties further agree that the Management Fee due and payable as provided in this Section 3 shall not be paid at any time that such payment is not then permitted under the Bank Credit Agreement, the FF&E Credit Agreement or the Second Mortgage Notes Indenture (each as defined below). In the event any Management Fee is unpaid as a consequence of the provisions of this Section 3, the Manager nonetheless shall continue to perform hereunder and any such unpaid amounts shall be accrued as a liability of the Company and shall be payable as soon as the conditions to payment are fulfilled. The deferred portion of the Management Fees will bear interest at the rate of ten percent (10%) per annum, compounded annually, from the date otherwise due and payable until the payment thereof.

(c) For purposes of this Agreement, (i) "Bank Credit Agreement" means the Credit Agreement of even date herewith by and among the Company, Deutsche Bank Trust Company Americas, as administrative agent ("Agent"), Deutsche Bank Securities, Inc., as advisor, lead arranger and joint book running manager, Banc of America Securities LLC, as advisor, lead arranger, joint book running

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manager and syndication agent, Bear, Stearns & Co. Inc., as advisor, arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York Branch, as arranger and joint documentation agent, J. P. Morgan Securities Inc., as joint documentation agent, and the lenders party thereto, as amended, restated, supplemented or otherwise modified from time to time, (ii) "FF&E Credit Agreement" means that certain Credit Agreement of even date herewith by and among the Company, Wells Fargo Bank Nevada, National Association, as Collateral Agent, and the lenders party thereto, (iii) "Second Mortgage Notes Indenture" means the Second Mortgage Notes Indenture, of even date herewith by and among the Company, Wynn Las Vegas Capital Corp., a Nevada corporation, Deutsche Bank Trust Company Americas, as trustee (the "Trustee"), and the guarantors signatory thereto, as amended, restated, supplemented or otherwise modified from time to time, and (iv) "Senior Debt" means all amounts and obligations from time to time owing or outstanding under the Bank Credit Agreement, the FF&E Credit Agreement and/or the Second Mortgage Notes Indenture and the notes issued pursuant thereto, including interest thereon at the rates set forth therein.

(d) Notwithstanding any termination of this Agreement, the Manager shall, subject to the limitations set forth in this Section 3, remain entitled: (i) to receive the Management Fee for the remaining portion of the semi-annual period in which such termination occurred (payable in the same manner and at the same time as if the Manager were entitled to receive such fee with respect to the entire semi-annual period); and (ii) to receive payment of any deferred Management Fee at the time of such termination if, and to the extent that, payment thereof is otherwise permitted under this Section 3.

(e) The parties acknowledge that at such time, if any, that the Company is licensed by the Nevada Gaming Commission, the Manager will be subject to the requirements of Nevada Revised Statutes Section 463.162 as a result of its receipt of the Management Fee.

4. *Term of Agreement.* The term of this Agreement shall be ten (10) years, unless earlier terminated pursuant to the terms of this Agreement. This Agreement may be terminated as follows: (a) by the mutual written consent of the Company and the Manager, (b) by the Company upon 60 days prior written notice to the Manager for any reason or no reason at all, or (c) by the Company immediately upon written notice to the Manager for cause. Notwithstanding any other provision of this Agreement, the provisions of Section 5 shall survive any termination of this Agreement.

5. *Liability.* The Company shall bear any and all expenses, liabilities, losses or damages resulting from the operation of the Business, and the Manager and its officers, directors, shareholders and employees shall not, under any circumstances, be held liable therefor, except that the Manager shall be liable for any loss or damage which results from its own gross negligence or willful misconduct. Neither the Manager nor any of its officers, directors, shareholders or employees shall be held to have incurred any liability to the Company, the Business or any third party by virtue of any action not constituting gross negligence or willful misconduct taken in good faith by it in the discharge of its duties hereunder, and the Company agrees to indemnify the Manager and its shareholders, directors, officers and employees, and hold each of them harmless from and against any and all claims that may be made against any of them in respect of the foregoing (excluding claims arising out of gross negligence or willful misconduct), including, but not limited to, attorneys' fees.

6. *Miscellaneous*

(a) *Nonassignability of Agreement.* This Agreement shall not be assignable, in whole or in part, directly or indirectly, whether by operation of law or otherwise, by either party hereto without the prior written consent of the other party hereto (which consent may be withheld in the sole discretion of the party whose consent is required), and any attempt to assign any rights or obligations arising under this Agreement without such consent shall be void; *provided, however,* that (i) the provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Company and the Manager and their respective successors and permitted assigns and (ii) the rights of the Wynn Entities

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under this Agreement may be collaterally assigned to secure the obligations of the Company under the Bank Credit Agreement and the Second Mortgage Notes Indenture. The Manager further agrees that in the event of any foreclosure of the security interests encumbering this Agreement to secure the obligations under the Bank Credit Agreement or the Second Mortgage Notes Indenture, the party acquiring the rights of the Company hereunder shall have the right to terminate this Agreement without any obligation to pay any amounts then owed by the Company hereunder (it being understood that the foregoing shall not affect any rights of the Manager hereunder or under otherwise applicable laws against the Company for such amounts then owing and not paid to Manager).

(b) *Further Assurances.* Subject to the provisions hereof, each of the parties hereto shall execute, acknowledge and deliver such other documents, and take such further actions, as may be reasonably required in order to effectuate the purposes of this Agreement, to comply with all applicable laws, regulations,

orders and decrees, to obtain all required consents and approvals and to make all required filings with any governmental agency, other regulatory or administrative agency, commission or similar authority.

(c) *Waivers.* No failure or delay on the part of the Manager or any of the Wynn Entities in exercising any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, or any abandonment or discontinuance of steps to enforce such a right, preclude any other or further exercise thereof or the exercise of any other right. No waiver of any provision of this Agreement nor any consent to any departure by the Manager or the Wynn Entities therefrom shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it has been given.

(d) *Entire Agreement.* This Agreement and the Subordination Agreement set forth the entire understanding of the parties hereto with respect to the subject matter hereof, and supersede all previous agreements, negotiations, memoranda and understandings, whether written or oral respecting the subject matter hereof.

(e) *Amendments.* This Agreement may be amended only by an agreement in writing executed by each of the parties hereto, but no such amendment shall become effective if the same is prohibited by the Bank Credit Agreement, the FF&E Credit Agreement or the Second Mortgage Notes Indenture as then in effect.

(f) *Notices.* Any and all notices and demands required or desired to be given hereunder shall be in writing and shall be validly given or made if served personally, delivered by a nationally recognized overnight courier service, or deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, to the following addresses:

If to the Wynn Entities: c/o Wynn Las Vegas, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attention:
Telephone:
Facsimile:

If to the Manager: Wynn Resorts, Limited
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attention:
Telephone:
Facsimile:

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and shall become effective upon receipt. Any party hereto may change its address for the purpose of receiving notices by providing written notice to the other party hereto.

(g) *Governing Law.* The laws of the State of Nevada applicable to contracts made in that state, without giving effect to its conflict of laws rules, shall govern the validity, construction, performance and effect of this Agreement.

(h) *Invalidity.* If any term, provision, covenant or condition of this Agreement, or any application thereof, should be held by a court of competent jurisdiction or an arbitrator to be invalid, void or unenforceable, then that provision shall be deemed severable and all provisions, covenants, and conditions of this Agreement, and all applications thereof, not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

(i) *Headings.* The headings in this Agreement are included for purposes of reference only, do not constitute a part of this Agreement, and shall not be deemed to limit, characterize or in any way affect any term or provision of this Agreement.

(j) *Counterparts.* This Agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original and all of which together shall constitute one and the same instrument.

(k) *Negotiated Agreement.* This is a negotiated agreement. All parties have participated in its preparation. In the event of any dispute regarding its interpretation, it shall not be construed for or against any party based upon the grounds that this Agreement was prepared by any one of the parties hereto.

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

WYNN LAS VEGAS, LLC,
a Nevada limited liability company

By: Wynn Resorts Holdings, LLC,
 a Nevada limited liability company,
 its sole member

By: Valvino Lamore, LLC,
 a Nevada limited liability company,
 its sole member

By: Wynn Resorts, Limited,
 a Nevada corporation,
 its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

WYNN RESORTS HOLDINGS, LLC.
a Nevada limited liability company,

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

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VALVINO LAMORE, LLC,
a Nevada limited liability company,

By: Wynn Resorts, Limited
a Nevada corporation, its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

WORLD TRAVEL, LLC,
a Nevada limited liability company

By: Wynn Las Vegas, LLC,
a Nevada limited liability company

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

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LAS VEGAS JET, LLC,
a Nevada limited liability company

By: Wynn Las Vegas, LLC,
a Nevada limited liability company

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: *Chief Executive Officer*

DESERT INN IMPROVEMENT CO.,
a Nevada corporation

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: *President*

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DESERT INN WATER COMPANY, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: *Chief Executive Officer*

PALO, LLC,
a Delaware limited liability company

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: *Chief Executive Officer*

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WYNN LAS VEGAS CAPITAL CORP.,
a Nevada corporation

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: President

MANAGER:

WYNN RESORTS, LIMITED,
a Nevada corporation

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

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Exhibit A

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 2. Wynn Resorts Holdings, LLC, a Nevada limited liability company.
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 4. Desert Inn Water Company, LLC, a Nevada limited liability company.
 5. Desert Inn Improvement Co., a Nevada corporation.
 6. Wynn Capital Corp., a Nevada corporation.
 7. World Travel, LLC, a Nevada limited liability company.
 8. Las Vegas Jet, LLC, a Nevada limited liability company.
-

QuickLinks

[Exhibit 10.9](#)

[MANAGEMENT AGREEMENT](#)

[Exhibit A](#)

LOAN AGREEMENT

by and among

**WYNN LAS VEGAS, LLC,
AS BORROWER,**

**WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION,
NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY AS COLLATERAL AGENT,**

AND

**THE PERSONS LISTED ON SCHEDULE IA HERETO,
AS LENDERS**

dated as of October 30, 2002

**BANC OF AMERICA LEASING & CAPITAL, LLC
AND
DEUTSCHE BANK SECURITIES INC.,
AS JOINT LEAD ARRANGERS AND JOINT BOOK RUNNING MANAGERS**

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WYNN LAS VEGAS, LLC

LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of October 30, 2002 (as amended, supplemented or otherwise modified from time to time, this "*Loan Agreement*"), is by and among WYNN LAS VEGAS, LLC, a Nevada limited liability company (the "*Borrower*"), WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION, a national banking association, not in its individual capacity (except as specifically set forth herein), but solely as collateral agent (the "*Collateral Agent*") and the Persons listed on **Schedule IA** hereto, as Lenders (each individually, together with any permitted successors and assigns, a "*Lender*," and, collectively, the "*Lenders*").

WITNESSETH:

WHEREAS, the Lenders shall, on the terms and subject to the conditions hereinafter set forth, make loans to the Borrower on each Advance Date; and

WHEREAS, the Borrower will use the proceeds of such Loans (i) to make an intercompany loan to World Travel, (ii) to purchase, finance and/or refinance the acquisition of the Equipment and (iii) to pay Transaction Costs;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. DEFINITIONS.

Section 1.1. Use of Defined Terms. Unless the context shall otherwise require, capitalized terms used and not defined herein shall have the meanings assigned thereto in **Appendix I** hereto (whether directly or by reference) for all purposes hereof; and the rules of interpretation set forth in **Appendix I** hereto shall apply to this Loan Agreement.

SECTION 2. CONDITIONS PRECEDENT TO DOCUMENT CLOSING DATE; FUNDINGS; APPLICATION OF PAYMENTS.

Section 2.1. Effectiveness of Loan Agreement. This Loan Agreement shall be effective as of the Document Closing Date upon the satisfaction, and/or waiver by each of the Lenders, of each of the conditions precedent described in Section 3.1 of the Disbursement Agreement.

All documents and instruments required to be delivered on the Document Closing Date to any party shall be delivered at the offices of Latham & Watkins (Los Angeles, California), or at such other location as the Collateral Agent and the Borrower may agree. The release by any party of its counterparts to this Loan Agreement shall constitute conclusive evidence of its satisfaction with the form and substance of each of the items so delivered under this **Section 2.1**.

Section 2.2. [Reserved].

Section 2.3. Fundings Generally.

(a)(i) Subject to the terms and conditions of this Loan Agreement and in reliance on the representations and warranties of each of the parties hereto contained herein or made pursuant hereto, upon receipt of the initial Advance Request, on the Initial Advance Date set forth in such Advance Request, each Lender shall make an Advance to the Borrower, which Advance shall be loaned by the Borrower to World Travel pursuant to the Intercompany Note, by making available by wire transfer in accordance with the instructions set forth in such Advance Request pursuant to **Section 2.3(c)** an amount in immediately available funds on the Initial Advance Date equal to such Lender's Aircraft Commitment Percentage of the aggregate amount of such requested Advance.

(ii) Subject to the terms and conditions of this Loan Agreement and in reliance on the representations and warranties of each of the parties hereto contained herein or made pursuant hereto, upon receipt of an Advance Request, on each Advance Date (other than Initial Advance Date), each

Lender shall make an Advance to the Borrower for the payment of the Purchase Price of the Items of Equipment being acquired on such Advance Date by making available to Disbursement Agent by wire transfer in accordance with the instructions set forth in the Advance Request an amount in immediately available funds on such Advance Date equal to (A) such Lender's Gaming Commitment Percentage of the aggregate amount of the requested Advance which represents the Purchase Price of Gaming Equipment and (B) such Lender's Non-Gaming Equipment Commitment Percentage of the aggregate amount of the requested Advance which represents the Purchase Price of Non-Gaming Equipment.

(b) *Notes.* Each Lender's Commitment shall be evidenced by a note (a "Note") issued by the Borrower to such Lender and repayable in accordance with, and with Interest accruing pursuant to, the terms of this Loan Agreement.

(c) *Advances to the Borrower.* (i) Subject to **clauses (ii) and (iii)** below, any Advance required to be made by a Lender pursuant to any Operative Document shall be made by the Lenders depositing funds into the FF&E Proceeds Account (as referenced in Section 2.4.4 of the Disbursement Agreement) in the amount of such Advance to be disbursed by the Borrower or by the Disbursement Agent on behalf of the Borrower to the applicable Seller, the applicable reimbursement account or, with respect to Transaction Costs, the Persons entitled thereto. Such funding by the Lenders shall be deemed to constitute (A) the required funding from the Lenders pursuant to this Loan Agreement and the Disbursement Agreement and (B) the corresponding Advance to the Borrower.

(ii) Notwithstanding the foregoing, the Advance required to be made by the Lenders on the Initial Advance Date shall be made by the Lenders depositing funds into the account of the Collateral Agent for further distribution (A) to the lender under the Original Aircraft Financing Documents the amounts required to pay in full such lender and (B) to the Company's Funds Account (as such term is defined in the Disbursement Agreement) any amounts remaining from the funds deposited with the Collateral Agent in excess of the amounts required to pay the lender under the Original Aircraft Financing Documents. Such Funding will constitute the "refinancing of the Aircraft" and will evidence (x) the Loans by the Lenders to the Borrower, (y) the intercompany loan by the Borrower to World Travel, which loan shall be evidenced by the Intercompany Note, and (z) the repayment in full by World Travel of all amounts owing to the lender under the Original Aircraft Financing Documents.

(iii) Notwithstanding the foregoing, the Advance required to be made by the Lenders pursuant to Section 2.8 of the Disbursement Agreement and which represents the FF&E Reimbursement Advance (as defined in the Disbursement Agreement) shall be made by the Lenders depositing funds into the Company's Funds Account (as defined in the Disbursement Agreement).

(d) *Advances; Limitations and Limits.* In addition to any other provision hereof, Lenders shall not be obligated to make an Advance to the Borrower, and no Lender shall be obligated to fund any Loan to the Disbursement Agent, if, after giving effect to such Advance or Funding, (i) the aggregate outstanding amount of Loans would exceed the Aggregate Commitment Amount, (ii) the aggregate amount of funds so provided by such Lender or Funding would exceed the amount of its Commitment in the aggregate or (iii) the aggregate amount of funds so provided by such Lender or Funding would exceed the amount of its Allocated Commitment with respect to the Type of Equipment or the Aircraft to be funded with such Advance.

There shall be no more than one Advance made during any calendar month, which shall be made on the Advance Date occurring in such month. Each Advance shall be in a minimum amount not less than the lesser of \$1,000,000 or the combined available Commitment of all of the Lenders with respect to such Type of Equipment or such other amount as the Borrower and Collateral Agent shall agree. All remittances made by Lenders for the funding of any Advance (other than on the Initial Advance Date) shall be made in immediately available federal funds by wire transfer to the Collection Account for deposit not later than 12:00 p.m. New York time, on the applicable Advance Date. The Funding by each Lender to the Collection Account of its respective portion of an Advance shall constitute

authorization and direction by such party to Disbursement Agent to make an advance pursuant to the Operative Documents.

(e) *Termination of Commitments.* Notwithstanding anything in this Loan Agreement to the contrary, the Commitments shall terminate and no Lender shall be obligated to make any fundings in respect of any Advance, and no Advance Date may thereafter occur upon the occurrence of the earlier of (A) 3:00 p.m., New York time on the Commitment Termination Date and (B) a termination of the Lenders' Commitments pursuant to **Section 9.1**.

Section 2.4. Preliminary Notice Review.

(a) *Preliminary Notice.* Pursuant to the terms of Section 2.4.1(c) of the Disbursement Agreement, the Borrower and/or the Disbursement Agent, as applicable, shall deliver to Collateral Agent a copy of Appendix XI to the preliminary Advance Request and upon receipt thereof, Collateral Agent shall, on the same day, forward such copy of Appendix XI to the preliminary Advance Request to each Lender.

(b) *Review.* The Lenders shall have the right to disapprove any items of Eligible FF&E Collateral (as defined in the Disbursement Agreement) listed by the Borrower in Appendix XI to the Company's preliminary Advance Request as items to be funded in part by the Loans; *provided, however,* that any Lender's failure to so disapprove any items of Eligible FF&E Equipment identified by the Borrower on such Appendix XI within 5 Business Days from the Borrower's delivery thereof shall be deemed to constitute such Lenders' approval thereof and the items of Eligible FF&E Equipment identified on such Appendix XI shall be funded in part by the Loans.

(c) *Approval.* In the event the Collateral Agent shall have received notice of the disapproval by the Required Lenders of all or any portion of the Eligible FF&E Collateral, the Collateral Agent shall so inform the Disbursement Agent pursuant to the terms of Section 2.4.1(e) of the Disbursement Agreement.

Section 2.5. Advance Dates.

(a) *Notice and Closing.* Pursuant to the terms of Section 2.4.3 of the Disbursement Agreement (or as may otherwise be agreed to by the Lenders with respect to the Initial Advance Date), the Borrower and/or the Disbursement Agent, as applicable, shall deliver to Collateral Agent an irrevocable and final written notice substantially in the form of Exhibit C-1 to the Disbursement Agreement (an "Advance Request"), (and upon receipt thereof, Collateral Agent shall, on the same day, forward such Advance Request to each Lender) setting forth:

(i) the proposed Advance Date;

(ii) a description of the Items of Equipment to be acquired and the Purchase Price (including a detailed description of the Transaction Costs to be funded by such Advance) applicable to each such Item of Equipment;

(iii) a statement of the amount of the requested Advance;

(iv) a certification by the Borrower that (A) such Advance complies with the limitations and conditions set forth in **Section 2.3(d)**, and (B) all conditions to the making of such Advance under **Section 4** have been satisfied except to the extent previously waived; and

(v) wire transfer instructions for the disbursement of the appropriate amount of funds to the appropriate account for disbursement in the manner described in **Section 2.3**.

All documents and instruments required to be delivered on any Advance Date pursuant to the Operative Documents shall be delivered to the Collateral Agent, or at such other location as the Collateral Agent and the Borrower may agree. On the scheduled Advance Date, and subject to the satisfaction of the conditions set forth in this **Section 2.5(a)** and in **Section 4**, Lenders shall fund the

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amount of the Advance by wire transfer to the appropriate account for disbursement in the manner described in **Section 2.3**.

(b) *Commitment*. Subject to compliance by the Borrower with the terms of this Loan Agreement and the satisfaction or waiver of the conditions set forth in this **Section 2** and in **Section 4**, the Lenders shall disburse the respective amounts of their Commitments in accordance with the requirements of this Loan Agreement and the other Operative Documents.

(c) *Notes; Notations*. Each Lender is hereby authorized to record the date and amount of each funding made in respect of an Advance, each payment or repayment of principal and the length of each Payment Period with respect thereto on the grid annexed to and constituting a part of each Note issued to such Lender, and any such recordation shall constitute prima facie evidence of the accuracy of the information so recorded; *provided*, that the failure to make any such recordation or any errors in such recordation shall not affect the obligation of the Borrower to pay principal and Interest.

Section 2.6. Mutilated, Destroyed, Lost or Stolen Notes. (a) If any Note shall become mutilated, destroyed, lost or stolen, then upon the written request of the affected Lender, the Borrower shall execute and deliver to the affected Lender a new Note. Such new Note shall be: (i) recorded in the name in which such mutilated, destroyed, lost or stolen Note was recorded; (ii) in the same original face amount as such mutilated, destroyed, lost or stolen Note; and (iii) dated the date of such mutilated, destroyed, lost or stolen Note. If the Note being replaced has become mutilated, it shall be surrendered to the Borrower. If the Note being replaced has been destroyed, lost or stolen, the affected Lender shall furnish to the Borrower such security or indemnity as reasonably may be required by it to save the Borrower harmless from any loss and evidence satisfactory to the Borrower of the destruction, loss or theft of such Note and the ownership thereof. Upon request, the Collateral Agent shall advise the affected Lender of: (i) the aggregate principal amount of, and the aggregate accrued Interest on, such mutilated, destroyed, lost or stolen Note that were paid to any Lender thereof at any time prior to the delivery of such new Note; and (ii) the date to which Interest on such mutilated, destroyed, lost or stolen Note had been paid to any Lender thereof at the time of such delivery.

(b) Any duplicate Note issued pursuant to this **Section 2.6** shall constitute complete and indefeasible evidence of ownership of such Note, as if originally issued, whether or not the lost, stolen or destroyed Note shall be found at any time.

Section 2.7. Fees. The Borrower agrees to pay the fees set forth below (collectively, the "*Fees*"):

(a) on each Payment Date to each Lender, for its own account, a fee in an amount equal to (i) during the period from the Document Closing Date to, but not including, January 1, 2003, the product of 2.50% per annum *multiplied by* the amount of its Commitment that has not been funded on an Advance Date, (ii) during the period from and including January 1, 2003 to, but not including, July 1, 2003, the product of 3.00% per annum *multiplied by* the amount of its Commitment that has not been funded on an Advance Date and (iii) from and after July 1, 2003, the product of 4.00% per annum *multiplied by* the amount of its Commitment that has not been funded on an Advance Date (a "*Commitment Fee*");

(b) on the Document Closing Date, to the Collateral Agent for the benefit of each Lender, a fee in an amount as described in each Lender's respective Participation Fee Letter (the "*Participation Fee*");

(c) to Trust Company, for its own account, the fees set forth in the Collateral Agent Fee Letter, payable in the amounts and on the dates set forth therein; and

(d) on the Document Closing Date, to each Arranger, its respective Arrangement Fee.

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SECTION 3. OPTIONAL PAYMENTS; INTEREST AND PRINCIPAL PAYMENTS BY THE BORROWER.

Section 3.1. Optional Payments of Principal.

(a) *Prepayment Option*. On any Payment Date occurring after the one year anniversary of the Initial Amortization Date or on any Payment Date in connection with a prepayment following a Disposition permitted by **Section 7.5(e)** or **Section 7.5(p)**, upon at least 30 days' advance written notice from the Borrower to Collateral Agent and the Lenders, the Borrower may prepay (the "*Prepayment Option*") all, or, from time to time, any part, of the Loans, in amount not less than the Minimum Prepayment Amount in the case of a partial prepayment, at a price equal to the sum of (i) the Loan Balance to be so prepaid, *plus* (ii) all accrued but unpaid Interest thereon, *plus* (iii) the Applicable Administrative Charge, if any, *plus* (iv) any fees or other amounts owed under the Operative Documents payable by the Borrower. Except as provided in **Section 3.8**, in the case of any partial prepayment, the Loan Balance to be prepaid shall be allocated among all of the Notes at the time outstanding in proportion, as nearly as practicable, to the respective unpaid Loan Balance thereof and the Loan Balance to be prepaid with respect to any such Note shall be allocated *pro rata* by such Lender between the Allocated Aircraft Value and the Allocated Equipment Value represented by such Note in proportion, as nearly as practicable, to the respective Allocated Aircraft Value and Allocated Equipment Value represented by the unpaid Loan Balance thereof.

(b) *Bank Prepayment Option*. Pursuant solely to the terms of Section 6 of the FF&E Intercreditor Agreement, the Eligible Payor (as defined in the FF&E Intercreditor Agreement) on behalf of the Borrower, may prepay (the "*Bank Prepayment Option*") all of the Loan Balance representing the Allocated Equipment Value, at a price equal to the sum of (i) the Allocated Equipment Value, *plus* (ii) all accrued but unpaid Interest thereon, *plus* (iii) the Applicable Administrative Charge which relates to such Allocated Equipment Value, if any, *plus* (iv) any accrued but unpaid fees or other amounts owed under the Loan Documents payable by the Borrower.

(c) *Completion Prepayment Option.* In the event the Collateral Agent shall receive any remaining funds on deposit in the FF&E Proceeds Account (as defined in the Disbursement Agreement) pursuant to Section 2.9(e) of the Disbursement Agreement, the Collateral Agent shall, on behalf of the Borrower, prepay, to the extent of such remaining funds, the Loans which comprise such remaining funds, together with all accrued and unpaid Interest thereon. In the case of any such prepayment, the Loan Balance to be prepaid shall be allocated among the Notes held by the Lenders who Advanced such funds in proportion, as nearly as practicable, to the respective unpaid Loan Balance thereof.

Section 3.2. Scheduled Payments of Principal; Mandatory Prepayments.

(a) The Borrower shall pay to the Collateral Agent for the *pro rata* benefit of the Lenders the Required Prepayments, such payments to be due on each Payment Date in the amounts set forth on **Schedule II** hereto.

(b) The Borrower shall pay the unpaid principal amount of the Loans, in full, together with (i) Interest accrued thereon to the date of payment, and (ii) all other amounts then due and payable by the Borrower hereunder or under the other Operative Documents to the Lenders, including, without limitation, any Applicable Administrative Charge, on the Maturity Date.

(c) Upon the occurrence of a Casualty with respect to a portion of the Collateral that is not replaced pursuant to **Section 8.1** hereof, the Borrower shall pay, subject to the FF&E Intercreditor Agreement and **Section 3.8**, to each Lender its *pro rata* portion of the Casualty Amount of such Collateral, such payment to be due on the date specified for payment with respect to such Casualty in **Section 8.1** hereof.

Section 3.3. Interest Rates and Payment Dates.

(a) Each Loan shall bear Interest at the Interest Rate then in effect on the Loan Balance thereof.

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(b) If all or a portion of the principal amount of, or accrued Interest on, any Loan, or any other amount payable hereunder, shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall, without limiting the rights of the Lenders under any Operative Document, bear interest at the rate per annum which is the greater of (i) 2% above the applicable Interest Rate then in effect and (ii) 2% above the Base Rate (the "Overdue Rate"), in each case from the date due until payment is made. Such overdue interest shall be payable on demand.

(c) Interest on each Loan shall be payable in arrears on each Payment Date, the Maturity Date and on any other day on which the Loan Balance, or a portion thereof, is to be reduced pursuant to the terms and conditions of this Loan Agreement and the other Loan Documents; *provided* that (i) Interest accruing pursuant to **clause (b)** shall be payable from time to time on demand and (ii) each prepayment of the Loans shall be accompanied by accrued Interest to the date of such prepayment on the amount prepaid, *plus* Applicable Administrative Charge.

Section 3.4. Pro Rata Treatment and Payments. Subject to **Sections 3.1, 3.2, 3.7 and 3.8**, each payment (including, without limitation, each Required Prepayment and any payment of the Prepayment Option) by the Borrower on account of principal of and Interest on the Loans shall be made by the Borrower to Collateral Agent and allocated by the Collateral Agent *pro rata* among the Lenders according to the respective outstanding principal amounts of the Loans then held by each such Lender and to the extent such payment represents a Required Prepayment or other payment on account of principal of the Loans such payment shall be allocated *pro rata* by such Lender between the Allocated Aircraft Value and Allocated Equipment Value in proportion, as nearly as practicable, to the respective Allocated Aircraft Value and Allocated Equipment Value represented by the unpaid Loan Balance thereof. Subject to **Sections 3.7 and 3.8**, all payments (including, without limitation, each Required Prepayment and any payment of the Prepayment Option) to be made by the Borrower hereunder and under the Notes, whether on account of principal, Interest or otherwise, shall be made without setoff or counterclaim and shall be made by the Borrower to Collateral Agent, for the benefit of the Lenders, prior to 1:00 p.m. New York City time, to Collateral Agent's Payment Office (or to such other office as may be designated by Collateral Agent from time to time in a written notice pursuant to **Section 13.6**) in funds consisting of lawful currency of the United States of America which shall be immediately available on the scheduled date when such payment is due. Payments received after 1:00 p.m., New York City time, on the date due shall be deemed received on the next succeeding Business Day and shall be subject to interest at the Overdue Rate as provided in **Section 3.3(b)**.

Section 3.5. Computations; Interest Rate Determination; Conclusive Determinations.

(a) *Computations.* All computations of interest at the Base Rate shall be made on the basis of a year of 365—or 366—days, as the case may be, and actual days elapsed. All other computations of accrued amounts pursuant to the Loan Documents shall be made on the basis of actual number of days elapsed in a 360-day year with respect to any determination. The Collateral Agent shall, as soon as practicable, but in no event later than 12:00 noon New York time, one (1) Business Day prior to the effectiveness of each Interest Rate, calculate such Interest Rate and notify the Borrower and each Lender thereof; *provided* that the failure to give or receive any such notice shall not limit the Borrower's obligations under this Loan Agreement or any other Loan Document.

(b) *Interest Rate Determination.* So long as no Default or Event of Default shall have occurred and be continuing, the Borrower may, by irrevocable written notice delivered to the Collateral Agent and each of the Lenders at least three Business Days prior to the initial day of an Interest Period, specify whether the Interest Rate to be applied during such Interest Period shall be the Adjusted Eurodollar Rate or the Base Rate and in the event that the Adjusted Eurodollar Rate is to so apply, the applicable Interest Period. If the Collateral Agent and each of the Lenders shall not have received such written notice, the Borrower shall be deemed to have selected a rate per annum equal to the Base Rate. Notwithstanding the foregoing, if a Default or Event of Default shall exist at time such selection

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is to be made, the applicable Interest Rate specified by the Borrower for such Interest Period shall be deemed to be the Overdue Rate.

(c) *Conclusive Determinations.* Each calculation of the Interest Rate by the Collateral Agent pursuant to any provisions of this Loan Agreement or any of the other Loan Documents shall be prima facie evidence of the amounts owed.

Section 3.6. Highest Lawful Rate. It is the intention of the parties hereto to conform strictly to applicable usury laws and, anything herein to the contrary notwithstanding, the obligations of the Borrower to the Lenders under this Loan Agreement and the Notes shall be subject to the limitation that payments of

interest or of other amounts constituting interest under any Requirement of Law shall not be required to the extent that receipt thereof would be in excess of the Highest Lawful Rate, or otherwise contrary to provisions of law applicable to the recipient limiting rates of interest which may be charged or collected by the recipient. Accordingly, if the transactions or the amount paid or otherwise agreed to be paid for the use, forbearance or detention of money under this Loan Agreement, the Notes or any other Loan Document would exceed the Highest Lawful Rate or otherwise be usurious under any Requirement of Law (including, without limitation, the federal and state laws of the United States of America, or of any other jurisdiction whose laws may be mandatorily applicable) with respect to the recipient of any such amount, then, in that event, notwithstanding anything to the contrary in this Loan Agreement, the Notes or any other Loan Document, it is agreed as follows as to the recipient of any such amount:

- (i) the provisions of this **Section 3.6** shall govern and control over any other provision in this Loan Agreement, the Notes and any other Loan Document, and each provision set forth therein is hereby so limited;
- (ii) the aggregate of all consideration which constitutes interest under any Requirement of Law that is contracted for, charged or received under this Loan Agreement, the Notes or any other Loan Document shall under no circumstances exceed the maximum amount of interest allowed by such Requirement of Law (such maximum lawful interest rate, if any, with respect to such recipient herein called the "*Highest Lawful Rate*"), and all amounts owed under this Loan Agreement, the Notes and any other Loan Document shall be held subject to reduction and: (A) the amount of interest which would otherwise be payable to the recipient hereunder and under the Notes and any other Loan Document shall be automatically reduced to the amount allowed under such Requirement of Law, and (B) any unearned interest paid in excess of the Highest Lawful Rate shall be credited to the payor by the recipient (or, if such consideration shall have been paid in full, refunded to the payor);
- (iii) all sums paid, or agreed to be paid for the use, forbearance and detention of the money under this Loan Agreement, the Notes or any other Loan Document shall, to the extent permitted by any Requirement of Law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the actual rate of interest is uniform throughout the full term thereof; and
- (iv) if at any time the interest, together with any other fees, late charges and other sums payable pursuant to or in connection with this Loan Agreement, the Notes and any other Loan Document executed in connection herewith or therewith and deemed interest under any Requirement of Law, exceeds that amount which would have accrued at the Highest Lawful Rate, the amount of interest and any such fees, charges and sums to accrue to the recipient of such interest, fees, charges and sums pursuant to the Loan Documents shall be limited, notwithstanding anything to the contrary in the Loan Documents, to that amount which would have accrued at the Highest Lawful Rate for the recipient, but any subsequent reductions, as applicable, shall not reduce the interest to accrue pursuant to the Loan Documents below the recipient's Highest Lawful Rate until the total amount of interest payable to the recipient (including all consideration

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which constitutes interest) equals the amount of interest which would have been payable to the recipient (including all consideration which constitutes interest), plus the amount of fees which would have been received but for the effect of this **Section 3.6**.

Section 3.7. Adjustment. If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the Loan made by it in excess of its ratable share of payments on account of the Loan made by all the Lenders, such Lender shall forthwith purchase from the other Lenders such participation in the Loans owing to them as shall be necessary to cause such purchasing Lender to share the excess payment ratably, in the proportion that such Lender's Loan to which the payment applies bears to the total of all Loans to which the payment applies, *provided, however*, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be rescinded and such Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such Lender's ratable share (according to the proportion of (i) the amount of such lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount so recovered. The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this **Section 3.7** may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation.

Section 3.8. Payments and Distributions.

(a) Subject to **clauses (c) and (d)** below, upon the occurrence of a Casualty, the exercise of the Prepayment Option with the proceeds of a Disposition permitted by **Section 7.5(e)** or **Section 7.5(p)**, the exercise of the Bank Prepayment Option, or following the exercise of remedies by any Lender or by the Collateral Agent on its behalf, all payments to be made by Borrower relating thereto, all proceeds of Collateral and all related payments due and payable to the Lenders pursuant to any other Operative Document, shall, to the extent readily attributable to a Type of Equipment or the Aircraft, be distributed by the Collateral Agent as follows:

(i) first,

(A) in the case of any amount which is attributable to the Aircraft, to each of the Lenders an amount equal to such Lender's Aircraft Commitment Percentage of the aggregate amount, for application against the Allocated Aircraft Value represented by such Lender's Note until all amounts due and owing each Lender whose Loans were used to refinance the Aircraft (or to pay any portion of the purchase price of any aircraft that becomes a Replacement Aircraft under the Aircraft Security Agreement), to the extent of such Lender's Allocable Aircraft Value, have been paid in full;

(B) in the case of any amount which is attributable to the Gaming Equipment, to each of the Lenders an amount equal to such Lender's Gaming Equipment Commitment Percentage of the aggregate amount, for application against the Allocated Equipment Value represented by such Lender's Note until all amounts due and owing each Lender whose Loans were used to pay the Purchase Price of Gaming Equipment, to the extent of such Lender's Allocable Equipment Value for Gaming Equipment, have been paid in full;

(C) in the case of any amount which is attributable to the Non-Gaming Equipment, to each of the Lenders an amount equal to such Lender's Non-Gaming Equipment Commitment Percentage of the aggregate amount, for application against the Allocated Equipment Value represented by such Lender's Note until all amounts due and owing each Lender whose Loans were used to pay the Purchase Price of Non-Gaming Equipment, to the extent of such Lender's Allocable Equipment Value for Gaming Equipment, have been paid in full;

(ii) second, in the case of any amount which is attributable to the Gaming Equipment or Non-Gaming Equipment, to the remaining Lenders pro rata to the extent of such Lender's Allocable Equipment Value until all amounts due and owing each Lender, to the extent of such Lender's Allocable Equipment Value, have been paid in full;

(iii) third, to the remaining Lenders pursuant to **clause (b)** below.

(b) Any payments to be made by Borrower relating to the exercise of remedies by any Lender or by the Collateral Agent on its behalf, any proceeds of Collateral, any transfer or assignment of claim relating to the Notes in a bankruptcy and all related payments due and payable to the Lenders pursuant to any other Operative Document, which are not readily attributable to a Type of Equipment or the Aircraft, shall, to such extent, be distributed by Collateral Agent *pro rata* among the Lenders according to the respective outstanding principal amounts of the Loans then held by each such Lender and to the extent such payment represents a Required Prepayment or other payment on account of principal of the Loans such payment shall be allocated *pro rata* by such Lender between the Allocated Aircraft Value and Allocated Equipment Value in proportion, as nearly as practicable, to the respective Allocated Aircraft Value and Allocated Equipment Value represented by the unpaid Loan Balance thereof.

(c) In case moneys with respect to any Type of Equipment or the Aircraft are insufficient to pay in full the whole amount due, owing or unpaid to the Lenders whose Loans were used to pay the Purchase Price of such Type of Equipment or refinance the Aircraft, as applicable, then application shall be made first to any unpaid accrued Interest, second to any Supplemental Payments and third to the Loan Balances. Any Supplemental Payments received by Collateral Agent shall be paid by Collateral Agent to the Person to whom such Supplemental Payments are payable under the provisions of the Operative Documents.

(d) In the event that at the time of any payment or distribution of proceeds to which this **Section 3.8** applies, a Lender has not Funded its full Commitment with respect to a Type of Equipment or the Aircraft, each Lender's Commitment Percentage with respect to such Type of Equipment or Aircraft shall be adjusted to reflect the percentage amount of Credit Exposure of such Lender compared to the Credit Exposure of all Lenders whose Loans were used to pay the Purchase Price of such Type of Equipment or refinance the Aircraft, as applicable.

SECTION 4. CONDITIONS PRECEDENT TO ADVANCES.

Section 4.1. Conditions Precedent to the Initial Advance. The obligations of the Lenders to make the related Funding of their Loans on the Initial Advance Date are subject to the satisfaction or waiver on or prior to the Initial Advance Date of the following conditions precedent:

(a) *Notice.* The Borrower shall have delivered to the Collateral Agent the Advance Request and Notices of Funding Request with respect to the Loans requested on the Initial Advance Date and the Disbursement Agent shall have delivered to the Collateral Agent related Advance Confirmation Notice, in each case in the form, at the times and as required under Section 2.4.3 of the Disbursement Agreement and in accordance with the procedures specified in Section 2.4.3 thereof.

(b) *Satisfaction of Disbursement Agreement Conditions Precedent.* All conditions precedent described in Section 3.1 of the Disbursement Agreement shall have been satisfied or waived in accordance with the terms of the Disbursement Agreement.

(c) [Intentionally Omitted.]

(d) *Airworthiness.* With respect to Aircraft, the Collateral Agent shall have received a copy of a certificate of airworthiness issued by the FAA.

(e) *Filings and Recordation.* With respect to the Aircraft, there shall have been duly filed for recordation with the FAA, the Aircraft Security Agreement with respect to the Aircraft; all necessary action has been taken for the Aircraft to be duly registered with the FAA in the name of the Aircraft Trustee.

(f) *Release.* Each of the Collateral Agent and the Lenders shall have received evidence reasonably satisfactory to the Lenders and their counsel, that the Original Aircraft Financing Documents, including any Lien thereunder, have been paid in full and released.

(g) *Documents.* Each of the Collateral Agent and the Lenders shall have received copies of the fully executed and delivered Intercompany Note, Aircraft Security Agreement, Borrower Aircraft Assignment, Aircraft Trust Agreement and Aircraft Operating Agreement, and the same shall be in full force and effect.

(h) *Insurance.* Each of the Collateral Agent and the Lenders shall have received evidence reasonably satisfactory to the Lenders and their counsel, that the insurance with respect to the Aircraft required by **Section 8.2** has been obtained.

(i) *Opinions.* Each of the Collateral Agent and the Lenders shall have received favorable opinions of McAfee & Taft, special FAA counsel, substantially in the form attached hereto as **Exhibit C**.

(j) *Searches.* Each of the Collateral Agent and the Lenders shall have received copies of FAA lien searches with respect to the Aircraft or an opinion, in form and substance acceptable to the Lenders, that no liens shall then exist on the Aircraft.

(k) *Appraisal.* Each of the Collateral Agent and the Lenders shall have received a copy of an Appraisal of the Aircraft in form and substance reasonably satisfactory to the Lenders and their counsel.

(l) *Consent.* Las Vegas Jet shall have evidenced its consent to the execution and delivery of the Aircraft Security Agreement and Borrower Aircraft Assignment.

(m) *Status and Proceedings.* Each of the Collateral Agent and the Lenders shall have received certificates of existence and good standing with respect to the Aircraft Trustee and a Certificate of the Secretary or Assistant Secretary of the Aircraft Trustee, dated the Closing Date, with respect to the Aircraft Trustee's governing documents, resolutions and incumbent officers.

Section 4.2. Conditions Precedent to Each Advance. The obligations of the Lenders to make the related Fundings of their Loans on an Advance Date (other than Initial Advance Date) are subject to satisfaction or waiver on or prior to such Advance Date of the following conditions precedent:

(a) *Notice.* The Borrower shall have delivered to the Collateral Agent the Advance Requests with respect to the Loans and Notices of Funding Requests requested on such Advance Date and the Disbursement Agent shall have delivered to the Collateral Agent related Advance Confirmation Notice, in each case in the form, at the times and as required under Section 2.4.3 of the Disbursement Agreement and in accordance with the procedures specified in Section 2.4.3 thereof.

(b) *Drawdown Frequency for Loans.* No Loan shall have been previously made during such calendar month.

(c) *Satisfaction of Disbursement Agreement Conditions Precedent.* All conditions precedent described in Section 3.3 of the Disbursement Agreement shall have been satisfied or waived in accordance with the terms of the Disbursement Agreement.

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SECTION 5. REPRESENTATIONS AND WARRANTIES.

Section 5.1. Representations and Warranties of the Borrower. As of the date hereof and the Document Closing Date, the Borrower hereby represents and warrants to each of the other parties hereto as follows:

(a) *Financial Condition.* The restated audited consolidated and consolidating balance sheets of Valvino and its consolidated Subsidiaries as at December 31, 2000 and December 31, 2001 and the related consolidated and consolidating statements of income and of cash flows for the Fiscal Years ended on such dates, reported on by and accompanied by an unqualified report from Deloitte & Touche LLP, present fairly in all material respects the consolidated and consolidating financial condition of Valvino and its consolidated Subsidiaries as at such date, and the consolidated and consolidating results of its operations and its consolidated and consolidating cash flows for the respective Fiscal Years then ended. The unaudited consolidated and consolidating balance sheets of Valvino and its consolidated Subsidiaries as at June 30, 2002, and the related unaudited consolidated and consolidating statements of income and cash flows for the 6-month period ended on such date, present fairly in all material respects the consolidated and consolidating financial condition of Valvino and its consolidated Subsidiaries as at such date, and the consolidated and consolidating results of its operations and its consolidated and consolidating cash flows for the 6-month period then ended (subject to normal year-end audit adjustments). All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved (except as approved by the aforementioned firm of accountants and disclosed therein). Valvino and its Subsidiaries (other than the Excluded Entities) do not have any material Guarantee Obligations, contingent liabilities and liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including, without limitation, any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are not reflected in the most recent financial statements referred to in this paragraph or that have not otherwise been disclosed to the Collateral Agent in writing. During the period from January 1, 2002 to and including the Document Closing Date there has been no Disposition by Valvino or any of its Subsidiaries of any material part of its business or Property.

(b) *No Change.* Since December 31, 2001, there has been no developments or events that, individually or collectively, has had or could reasonably be expected to have a Material Adverse Effect.

(c) *Corporate/LLC Existence; Compliance with Law.* Each of the Loan Parties and the Completion Guarantor (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has the corporate or limited liability company power and authority, and the legal right, to own and operate its Property, to lease the Property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation or limited liability company and in good standing under the laws of each jurisdiction where its ownership, lease or operation of Property or the conduct of its business requires such qualification, except to the extent the failure to be so qualified or in good standing could not reasonably be expected to have a Material Advance Effect and (d) is in compliance with all Requirements of Law except to the extent that the failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

(d) *Corporate Power; Authorization; Enforceable Obligations.* Each Loan Party and the Completion Guarantor has the corporate or limited liability company power and authority, and the legal right, to make, deliver and perform the Loan Documents and the other Operative Documents to which it is a party and to carry out the transactions contemplated thereby and, in the case of the Borrower, to borrow hereunder. Each Loan Party and the Completion Guarantor

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has taken all necessary corporate or limited liability company action, as the case may be, to authorize the execution, delivery and performance of the Loan Documents and the other Operative Documents to which it is a party and, in the case of the Borrower and Capital Corp., to authorize the borrowings and issuances of Indebtedness on the terms and conditions of this Loan Agreement and the other Operative Documents. No consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any Person (other than a Loan Party whose written consent has been obtained) is required in connection with the borrowings hereunder or with the execution, delivery, performance, validity or enforceability of this Loan Agreement, any of the Loan Documents or any of the other Operative Documents, except (A) consents, authorizations, filings and notices described in **Schedule 4.4**, which consents, authorizations, filings and notices, unless otherwise indicated on **Schedule 4.4**, have been obtained or made and are in full force and effect and (B) the filings and actions referred to in **Section 5.1(s)**. Each Loan Document and other Operative Document has been duly executed and delivered on behalf of the Completion Guarantor and each Loan Party thereto. This Loan Agreement constitutes, and each other Loan Document, Project Document and Operative Document upon execution will constitute, a legal, valid and binding obligation of the Completion Guarantor and each Loan Party thereto, enforceable against the Completion Guarantor and each such Loan Party in accordance with its terms, except as enforceability may be

limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

(e) *No Legal Bar.* The execution, delivery and performance of this Loan Agreement, the other Loan Documents and the other Operative Documents, the borrowings hereunder and the use of the proceeds thereof will not violate any Requirement of Law or any Contractual Obligation of the Completion Guarantor or any Loan Party and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any Requirement of Law or any such Contractual Obligation (other than the Liens created by the Security Documents and the Other Security Documents). No Requirement of Law or Contractual Obligation applicable to the Completion Guarantor or any Loan Party could, individually or collectively, reasonably be expected to have a Material Adverse Effect.

(f) *No Material Litigation.* No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Borrower, threatened by or against the Completion Guarantor or any Loan Party or against any of their respective properties or revenues (a) with respect to any of the Financing Agreements or any of the transactions contemplated hereby or thereby, or (b) that could, individually or collectively, reasonably be expected to have a Material Adverse Effect.

(g) *No Default.* Neither the Completion Guarantor nor any Loan Party is in default under or with respect to any of its Contractual Obligations in any respect that could, individually or collectively, reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing.

(h) *Ownership of Property; Liens.* Each of the Loan Parties is the sole owner of, legally and beneficially, and has good, marketable and insurable title to, or a valid leasehold interest in, all its Real Estate, and good title to, or has a valid leasehold interest in, all its other Property, and none of such Property is subject to any claims, liabilities, obligations, charges or restrictions of any kind, nature or description (other than claims, liabilities, obligations, charges or restrictions that individually or in the aggregate could not reasonably be expected to materially interfere with the business or assets of any Loan Party), or to any Lien, except for Permitted Liens.

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(i) *Intellectual Property.* (i) Each Loan Party owns, or is licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted. No claim has been asserted or is pending by any Person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does the Borrower know of any valid basis for any such claim, except (a) with respect to the Intellectual Property related to or otherwise associated with the Loan Parties' use of the "Le Reve" name, such claims that, if determined adversely to a Loan Party, could not, individually or collectively, reasonably be expected to have a material adverse effect on such Loan Party's ability to use the "Le Reve" name in its Permitted Business as currently used or contemplated to be used and (b) with respect to all other Intellectual Property, as could not reasonably be expected to have a Material Adverse Effect. The use by each Loan Party (if any) of the Intellectual Property related to or otherwise associated with such Loan Party's use of the "Le Reve" name does not infringe on the rights of any Person, which infringement could reasonably be expected to have a material adverse effect on such Loan Party's ability to use the "Le Reve" name in its Permitted Business as currently used or contemplated to be used. The use by each Loan Party (if any) of Intellectual Property other than Intellectual Property related to or otherwise associated with such Loan Party's use of the "Le Reve" name, does not infringe on the rights of any Person, which infringement could reasonably be expected to have a Material Adverse Effect.

(ii) As of the Document Closing Date, **Schedule 4.9(b)** (A) identifies each of the trademarks, service marks and trade name applications and registrations currently registered by, made by or otherwise held, directly or indirectly, by each of the Loan Parties (including without limitation, any such Intellectual Property related to or otherwise associated with the Loan Parties' use of the "Le Reve" name) and identifies which such Person registered, made or otherwise holds such Intellectual Property, and (B) specifies as to each, the jurisdiction in which such Intellectual Property has been issued or registered (or, if applicable, in which an application for such issuance or registration has been filed), including the respective registration or application numbers and applicable dates of registration or application and expiration.

(iii) As of the Document Closing Date, **Schedule 4.9(c)**(A) identifies each of the material patents and patent applications currently owned by, made by or otherwise held, directly or indirectly, by each of the Loan Parties and identifies which such Person owns, made or otherwise holds such Intellectual Property, and (B) specifies as to each, the jurisdiction in which such Intellectual Property has been issued or registered (or, if applicable, in which an application for such issuance or registration has been filed), including the respective patent or application numbers and applicable dates of issuance or application and expiration.

(iv) As of the Document Closing Date, **Schedule 4.9(d)** (A) identifies each of the material copyrights and copyright applications and registrations currently registered by, made by or otherwise held, directly or indirectly, by each of the Loan Parties and identifies which such Person registered, made or otherwise holds such Intellectual Property, and (B) specifies as to each, the jurisdiction in which such Intellectual Property has been issued or registered (or, if applicable, in which an application for such issuance or registration has been filed), including the respective registration or application numbers and applicable dates of registration or application and expiration.

(v) As of the Document Closing Date, **Schedule 4.9(e)** (A) identifies, each of the material trade secrets owned by, claimed by, or otherwise held, directly or indirectly, by each of the Loan Parties and identifies which such Person owns, claims or otherwise holds such Intellectual Property, and (B) specifies as to each, the jurisdiction in which such Intellectual Property exists.

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(vi) As of the Document Closing Date, **Schedule 4.9(f)** identifies all licenses, sublicenses and other agreements relating to Intellectual Property to which each of the Loan Parties is a party that are material to the conduct of such Loan Party's Permitted Business and pursuant to which (A) any of the Loan Parties is a licensor or sub-licensor or the equivalent or (B) any other Person is authorized to use any Intellectual Property as a licensee, sub-licensee or the equivalent.

(j) *Taxes.* (i) Each of the Completion Guarantor and the Loan Parties has filed, or caused to be filed, all tax and informational returns that are required to have been filed by it in any jurisdiction, and all such tax and informational returns are correct and complete in all material respects. Each of the Completion Guarantor and the Loan Parties has paid all taxes shown to be due and payable on such returns and all other taxes and assessments payable by it, to the extent the same have become due and payable (other than (x) those taxes that it is contesting in good faith and by appropriate proceedings, and (y) taxes that are not yet due, with respect to each of which it has established reserves that are adequate for the payment thereof and as are required by GAAP).

(ii) Neither the Completion Guarantor nor any of the Loan Parties has incurred any material tax liability in connection with the Project or the other transactions contemplated by the Operative Documents which has not been disclosed in writing to the Collateral Agent (including as disclosed in the financial statements delivered to the Lenders hereunder).

(iii) There are no Liens for Taxes on any of the Properties of the Completion Guarantor or any of the Loan Parties other than Liens permitted pursuant to Section 7.3(a).

(k) *Federal Regulations.* No part of the proceeds of the Loans will be used for purchasing or carrying any "margin stock" (within the meaning of Regulation U) or for the purpose of purchasing, carrying or trading in any securities under such circumstances as to involve the Borrower in a violation of Regulation X or to involve any broker or dealer in a violation of Regulation T. No indebtedness being reduced or retired out of the proceeds of the Loans was or will be incurred for the purpose of purchasing or carrying any "margin stock" (within the meaning of Regulation U). Following application of the proceeds of the Loans, "margin stock" (within the meaning of Regulation U) does not constitute more than 25% of the value of the assets of the Borrower and its Subsidiaries. None of the transactions contemplated by this Loan Agreement (including, without limitation, the direct and indirect use of proceeds of the Loans) will violate or result in a violation of Regulation T, Regulation U or Regulation X. If requested by any Lender or the Collateral Agent, the Borrower will furnish to the Collateral Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1 referred to in Regulation U.

(l) *Labor Matters.* There are no strikes, stoppages, slowdowns or other labor disputes against any of the Loan Parties pending or, to the knowledge of the Borrower, threatened that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect. Hours worked by and payment made to employees of the Loan Parties have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect. All payments due from any of the Loan Parties on account of employee health and welfare insurance that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect if not paid have been paid or accrued as a liability on the books of the relevant Loan Party.

(m) *ERISA.* Neither a Reportable Event nor an "accumulated funding deficiency" (within the meaning of Section 412 of the Code or Section 302 of ERISA) has occurred during the five-year period prior to the date on which this representation is made or deemed made with

respect to any Plan, and each Plan has complied in all material respects with all applicable provisions of ERISA and the Code. No termination of a Single Employer Plan has occurred, and no Lien in favor of the PBGC or a Plan has arisen, during such five-year period. The actuarial present value of all benefit liabilities under each Single Employer Plan (based on those assumptions that would be used to determine whether each such Single Employer Plan could be terminated in a standard termination under Section 4041(b) of ERISA) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Plan allocable to such accrued benefits by a material amount. Neither the Borrower, any other Loan Party nor any Commonly Controlled Entity has had a complete or partial withdrawal from any Multiemployer Plan that has resulted or could reasonably be expected to result in a material liability under ERISA, and neither the Borrower, any other Loan Party nor any Commonly Controlled Entity would become subject to any material liability under ERISA if any such Person were to withdraw completely from all Multiemployer Plans as of the most recent valuation date for which each such Multiemployer Plan has furnished data regarding potential withdrawal liability to the applicable Loan Party. As of the Document Closing Date, no such Multiemployer Plan is in Reorganization or Insolvent.

(n) *Investment Company Act; Other Regulations.* Neither the Completion Guarantor nor any Loan Party is an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended. Neither the Completion Guarantor nor any Loan Party is subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, or the Interstate Commerce Act or registration under the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur indebtedness other than the Nevada Gaming Laws or which may otherwise render all or any portion of the Obligations unenforceable. Incurrence of the Obligations by the Completion Guarantor and the Loan Parties under the Loan Documents complies with all applicable provisions of the Nevada Gaming Laws, subject to any informational filings or reports required by the Nevada Gaming Commission Regulation Section 8.130, and subject to the receipt of requisite approvals from the Nevada Gaming Authorities relating to the pledges of Capital Stock of the Loan Parties that are licensed or registered by the Nevada Gaming Authorities, which approvals shall be sought diligently and in good faith by the Borrower prior to the Opening Date, when the gaming license with respect to the Project is applied for by the Borrower.

(o) *Subsidiaries.* (i) The Persons listed on **Schedule 4.15** constitute all the Subsidiaries of Valvino as of the Document Closing Date. **Schedule 4.15** sets forth as of the Document Closing Date, the name and jurisdiction of formation of each Subsidiary of Valvino and, as to each such Subsidiary, the percentage and number of each class of Capital Stock owned by its requisite parent entity. Each such Subsidiary is a Wholly Owned Subsidiary of Valvino and, if such Subsidiary's direct parent entity is other than Valvino, its direct parent entity.

(ii) There are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors' qualifying shares) of any nature relating to any Capital Stock of any Subsidiary of Valvino. None of the Subsidiaries of Valvino have issued, or authorized the issuance of, any Disqualified Stock.

(iii) Neither Valvino nor any of its Subsidiaries are engaged in any businesses other than the Permitted Businesses. As of the Closing Date, other than, (i) in the case of Las Vegas Jet and World Travel, the Aircraft and Collateral related to the operation and maintenance of the Aircraft, (ii) in the case of Palo, the Palo Home Site Land, and in the case of Desert Inn Improvement, the DIIC Water Permits and the Water Utility Land, (iii) in the case of Wynn Design, Property reasonably related to architectural, engineering, design and project management activities, none of the Water Companies or the Wynn Group Entities owns any material Property other than the Capital Stock of its Subsidiaries (if any).

(p) *Use of Proceeds.* The proceeds of the Loans made under this Loan Agreement shall be applied toward the Purchase Price of the Equipment and Transaction Costs and the payment of all sums due and owing under the Original Aircraft Financing Documents.

(q) *Environmental Matters.*

(i) To the knowledge of the Borrower and the Loan Parties: the Borrower and the Loan Parties (A) are, and within the period of all applicable statutes of limitation have been, in material compliance with all applicable Environmental Laws; and (B) reasonably believe that material compliance with all applicable Environmental Laws that is or is expected to become applicable to any of them will be timely attained and maintained.

(ii) To the knowledge of the Borrower, Hazardous Substances are not present at, on, under, in, or about any real property now or formerly owned, leased or operated by any of the Loan Parties, or at any other location (including, without limitation, any location to which Hazardous Substances have been sent for re-use or recycling or for treatment, storage, or disposal) which could, individually or collectively, reasonably be expected to (A) give rise to liability of any of the Loan Parties under any applicable Environmental Law or otherwise result in costs to any of the Loan Parties that could reasonably be expected to have a Material Adverse Effect, or (B) materially interfere with any of the Loan Parties' continued operations, or (C) materially impair the fair saleable value of any real property owned or leased by any of the Loan Parties.

(iii) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, there is no judicial, administrative, or arbitral proceeding (including any notice of violation or alleged violation) under or relating to any Environmental Law (including, without limitation, any Environmental Claims) to which any of the Loan Parties is, or to the knowledge of the Borrower will be, named as a party that is pending or, to the knowledge of the Borrower, threatened.

(iv) No Loan Party has received any written request for information, or been notified that it is a potentially responsible party, under or relating to the federal Comprehensive Environmental Response, Compensation, and Liability Act or any similar Environmental Law.

(v) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, no Loan Party has entered into or agreed to any consent decree, order, or settlement or other agreement, or is subject to any judgment, decree, or order or other agreement, in any judicial, administrative, arbitral, or other forum for dispute resolution, relating to compliance with or liability under any Environmental Law or Environmental Claim.

(vi) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, no Loan Party has assumed or retained, by contract or operation of law, any liabilities of any kind, fixed or contingent, known or unknown, under any Environmental Law or with respect to any Hazardous Substances.

(vii) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (A) Hazardous Materials Activities are not presently occurring, and have not previously occurred, at, on, under, in, or about any Real Estate now or formerly owned, leased or operated by any of the Loan Parties and (B) none of the Loan Parties have ever engaged in any Hazardous Materials Activities at any location.

(r) *Accuracy of Information, Etc.* No statement or information contained in this Loan Agreement, any other Loan Document, the Confidential Information Memorandum or any other document, certificate or statement furnished to the Arrangers, the Collateral Agent or the Lenders or any of them, by or on behalf of the Completion Guarantor or any Loan Party for use in connection with the transactions contemplated by this Loan Agreement or the other Loan

Documents, contained as of the date such statement, information, document or certificate was so furnished (or, in the case of the Confidential Information Memorandum, as of the date of this Loan Agreement), any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements contained herein or therein not misleading. The projections and *pro forma* financial information contained in the materials referenced above (including, without limitation, the Projections) are based upon good faith estimates and assumptions believed by management of the Borrower to be reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount. There are no facts known to Valvino or any Loan Party that could, individually or collectively, reasonably be expected to have a Material Adverse Effect that has not been expressly disclosed herein, in the other Loan Documents, in the Confidential Information Memorandum or in any other documents, certificates and written statements furnished to the Arrangers, the Collateral Agent and the Lenders for use in connection with the transactions contemplated hereby and by the other Loan Documents.

(s) *Security Documents.* (i) The Borrower Security Agreement is effective to create in favor of the Collateral Agent (for the benefit of the Secured Parties) (or the Collateral Agent, as the assignee of the Borrower in the case of the Aircraft Security Agreement) a legal, valid, binding and enforceable security interest in the Collateral (or the Aircraft Collateral, in the case of the Aircraft Security Agreement). **Schedule 4.19(a)-2** lists each UCC Financing Statement covering the Collateral or the Aircraft Collateral that (i) names any Loan Party as debtor and (ii) will remain on file after the Document Closing Date.

(ii) [Intentionally Omitted.]

(iii) [Intentionally Omitted.]

(iv) Each of the FF&E Collateral Account Agreement and the Local FF&E Collateral Account Agreement is effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Account described therein and proceeds and products thereof. Upon the execution of the FF&E Collateral Account Agreement and the Local FF&E Collateral Account Agreement, each of the FF&E Collateral Account Agreement and the Local FF&E Collateral Account Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Accounts described therein and the proceeds and products

thereof, as security for the Obligations, in each case subject only to Permitted Liens and prior and superior in right to any other Lien (except Senior Permitted Liens).

(t) *Solvency.* Each Loan Party and the Completion Guarantor is, and, after giving effect to the incurrence of (i) all Indebtedness, (ii) the use of the proceeds of such Indebtedness (including, without limitation, the use of proceeds of the Loans made by the Lenders hereunder) and (iii) obligations being incurred in connection with the Operative Documents, will be and will continue to be, Solvent.

(u) *Senior Indebtedness.* The Obligations (including, without limitation, the guarantee obligations of each Guarantor under the Loan Documents) constitute secured senior debt of each of the Loan Parties and "Permitted Debt" under and as defined in the Mortgage Notes Indenture. The Mortgage Notes, when issued and paid for, will be the legally valid and binding obligations of the Borrower and Capital Corp., enforceable against the Borrower and Capital Corp. in accordance with their terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability. The issuance and sale of Mortgage Notes, either (a) have been

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registered or qualified under applicable federal and state securities laws or (b) are exempt therefrom.

(v) *Regulation H.* No Mortgage encumbers improved real property which is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968.

(w) *Insurance.* Each of the Loan Parties is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which it is engaged and in any event in accordance with **Section 6.5**; and none of the Loan Parties has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers at a cost that could not reasonably be expected to have a Material Adverse Effect (other than as a result of general market conditions).

(x) *Performance of Agreements; Material Contracts.* Neither the Completion Guarantor nor any Loan Party is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists that, with the giving of notice or the lapse of time or both, would constitute such a default, in each case, except where the consequences of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect. **Schedule 4.24** contains a true, correct and complete list of all the Material Contracts in effect on the Document Closing Date. All Material Contracts (other than Material Contracts described in clause (ii) of the definition thereof) are, to the knowledge of the Borrower, in full force and effect and no material defaults currently exist thereunder.

(y) *Real Estate.* (i) As of the Document Closing Date, **Schedule 4.25(a)** sets forth a true, complete and correct list of all Real Estate, including a brief description thereof, including, in the case of leases, the street address, landlord name, tenant name, guarantor name, current rent amount, lease date and lease expiration date. The Borrower has delivered to the Collateral Agent true, complete and correct copies of all such leases.

(ii) All Real Estate and the current use thereof complies with all applicable Requirements of Law (including building and zoning ordinances and codes) and with all Insurance Requirements, and none of the Loan Parties are non-conforming users of such Real Estate, except where noncompliance or such non-conforming use could not, individually or collectively, reasonably be expected to have a Material Adverse Effect.

(iii) No Taking has been commenced or, to the best of the Borrower's knowledge, is contemplated with respect to all or any portion of any Real Estate or for the relocation of roadways providing access to such Real Estate except, in each case, as could not, individually or collectively, reasonably be expected to have a Material Adverse effect.

(iv) Except as set forth on **Schedule 4.25(d)**, as of the Document Closing Date there are no current, pending or, to the knowledge of the Borrower, proposed special or other assessments for public improvements or otherwise affecting any Real Estate, nor are there any contemplated improvements to such Real Estate that may result in such special or other assessments. There are no current, pending or, to the knowledge of the Borrower, proposed special or other assessments for public improvements or otherwise affecting any Real Estate, nor are there any contemplated improvements to such Real Estate that may result in such special or other assessments, in any case that could reasonably be expected to result in a material liability to any Loan Party.

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(v) None of the Loan Parties has suffered, permitted or initiated the joint assessment of any Real Estate with any other real property constituting a separate tax lot. The Mortgaged Properties have been properly subdivided or entitled to exception therefrom, and for all purposes the Mortgaged Properties may be mortgaged, conveyed and, other than those with respect to leasehold interests, otherwise dealt with as separate legal lots or parcels.

(vi) The use being made of all Real Estate is in conformity with the certificate of occupancy and/or such other permits, licenses, variances and certificates for such Real Estate and any other reciprocal easement agreements, restrictions, covenants or conditions affecting such Real Estate except, in each case, to the extent such non-conformity could not reasonably be expected to materially and adversely affect the ownership, occupancy, use or operation of the Mortgaged Premises in furtherance of the Permitted Business of the applicable Loan Party.

(vii) There are no outstanding options to purchase or rights of first refusal or restrictions on transferability affecting any Real Estate (other than those set forth in the Financing Agreements).

(viii) All Real Estate (other than the Phase II Land) has adequate rights of access to public ways and is served by installed, operating and adequate water, electric, gas, telephone, sewer, sanitary sewer and storm drain facilities, in each case as necessary to permit the Real Estate to be

used for its intended purposes. All roads necessary for the full utilization of the Real Estate (other than the Phase II Land) for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities or are the subject of access easements for the benefit of such Real Estate. All reciprocal easement agreements affecting any Real Estate are in full force and effect, and Valvino and the Loan Parties are unaware of any defaults thereunder. Except for public streets and sidewalks, neither Valvino nor any of the Loan Parties uses or occupies any real property other than such Real Estate in connection with the use and operation of any Real Estate.

(ix) Except as could not, individually or collectively, reasonably be expected to have a Material Adverse Effect, no building or structure constituting a Real Estate or any appurtenance thereto or equipment thereon, or the use, operation or maintenance thereof, violates any restrictive covenant or encroaches on any easement or on any property owned by others.

(x) No portion of the Real Estate has suffered any material damage by fire or other casualty loss that has not heretofore been repaired and restored. No portion of the Real Estate is located in a special flood hazard area as designated by any federal governmental authorities.

(z) *Permits.* Other than exceptions to any of the following that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (A) each of the Loan Parties has obtained and holds all Permits required as of the date this representation is deemed made in respect of all Real Estate and for any other property otherwise operated by or on behalf of, or for the benefit of, such Person and for the operation of its Permitted Businesses, (B) all such Permits are in full force and effect, and each of the Loan Parties has performed and observed all requirements of such Permits (to the extent required to be performed by the date this representation is deemed made), (C) no event has occurred which allows or results in, or after notice or lapse of time would allow or result in, revocation, modification, suspension or termination by the issuer thereof or in any other impairment of the rights of the holder of any such Permit, (D) no such Permits contain any restrictions, either individually or in the aggregate, that are burdensome to any of the Loan Parties, or to the operation of its Permitted Business or any Property owned, leased or otherwise operated by such Person, (E) the Borrower has no

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knowledge that any Governmental Authority is considering limiting, modifying, suspending, revoking or renewing on burdensome terms any such Permit, and (F) each of the Loan Parties reasonably believes that each such Permit will be timely renewed and complied with, without undue expense or delay, and that any Permit not required to have been obtained by the date this representation is deemed made that may be required of such Person is of a type that is routinely granted on application and in compliance with the conditions of issuance (such conditions being ministerial or of a type satisfied in the ordinary course of business, without undue expense or delay) and will be timely obtained and complied with, without undue expense or delay.

(aa) *Sufficiency of Project Documents.* Other than those that can be reasonably expected to be commercially available when and as required, the services to be performed, the materials to be supplied and Real Estate and other rights granted or to be granted pursuant to the Project Documents in effect as of such date (i) comprise all of the property interests necessary to secure any right material to the operation and maintenance of the Project in accordance with all Requirements of Law, (ii) are sufficient to enable the Project to be located and operated on the Site and (iii) provide adequate ingress and egress from the Site for any reasonable purpose in connection with the operation of the Project.

(bb) *Utilities.* All gas, water and electrical interconnection and utility services necessary for the operation of the Project for its intended purposes are available at the Site.

(cc) *Fiscal Year.* The fiscal year of each of the Loan Parties (including the Borrower) ends on December 31 of each calendar year.

(dd) *Formation.* The Borrower is only formed in the State of Nevada and "Wynn Las Vegas, LLC" is the name as it appears in official filings in the State of Nevada.

(ee) *Private Offering.* The issuance, sale and delivery of the Notes under the circumstances contemplated hereby do not require the registration or qualification of such Notes under the Securities Act, any state securities laws or the Trust Indenture Act of 1939. No Loan Party nor anyone authorized to act on such Person's behalf has, directly or indirectly, solicited any offers to acquire, offered or sold: (i) any interest in the Notes in violation of Section 5 of the Securities Act or any state securities laws, or (ii) any interest in any security or lease the offering of which, for purposes of the Securities Act or any state securities laws, would be deemed to be part of the same offering as the offering of the aforementioned interests. No Loan Party, nor anyone authorized to act on such Person's behalf, was involved in (y) offering or soliciting offers for the Notes (or any similar securities) or (z) selling Notes (or any similar securities) to any Person other than the Lenders and not more than 50 other institutional investors.

Section 5.2. Representations and Warranties of Lenders. Each Lender represents and warrants, severally and only as to itself, to each of the other parties hereto as follows:

(a) *Investment.* The Note being acquired by such Lender is being acquired by such Lender for investment for its own account and not with a view to the resale or distribution of such interest or any part thereof in any manner that would require registration under the Securities Act, but without prejudice, however, to the right of such Lender at all times to sell or otherwise dispose of all or any part of such interest under a registration available under the Securities Act or under an exemption from such registration available under the Securities Act, it being understood that the disposition by the undersigned of the Note to be purchased by such Lender shall, at all times, subject to the assignment provisions of **Section 10** hereof, remain entirely within its control.

(b) *Offer of Securities, Etc.* Neither such Lender nor any Person authorized to act on its behalf has, directly or indirectly, offered to sell the Notes or any other similar securities (the sale or offer of which would be integrated with the sale or offer of the Notes), for sale to, or solicited any offer to acquire any of the same from, any Person.

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(c) *No Registration.* Such Lender understands and acknowledges that the Notes have not been and will not be registered under the Securities Act in reliance upon the exemption provided in Section 4(2) of the Securities Act or any other applicable exemption, that the Notes have not and will not be registered or qualified under the securities or "blue sky" laws of any jurisdiction, that the Notes may be resold or otherwise transferred only if so

registered or qualified or if an exemption from registration or qualification is available, that the Borrower is not required to register the Notes and that any transfer must comply with the provisions of the Operative Documents relating thereto. Such Lender will comply with all applicable federal and state securities laws in connection with any subsequent resale of the Notes held by it.

(d) *Institutional Investor.* Such Lender is a sophisticated institutional investor and an "accredited investor" as defined in paragraph (1), (2), (3) or (7) of Rule 501(a) of the Securities Act, and has knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of its investment in the Notes and is able to bear the economic risk of such investment. Such Lender has been given such information concerning the Notes, the other Operative Documents, the Collateral and the Borrower as it has requested.

(e) *Legend.* Such Lender understands and acknowledges that the Note which it is acquiring will bear a legend as set forth in the form of Note included as **Exhibit A**.

The making of any Loan on an Advance Date, and any assignment of any Loan or this Loan Agreement shall constitute an affirmation by the subject assignee or acquiring Lender of the preceding representations and warranties.

Section 5.3. Representations and Warranties of Collateral Agent. Trust Company, in its individual capacity and not in its capacity as Collateral Agent (with the exception of **clause (b)** below and the last sentence of **clause (c)** below, which representation and warranty is made by Wells Fargo Bank Nevada, National Association, solely in its capacity as Collateral Agent), hereby represents and warrants to each of the other parties hereto that:

(a) *Due Organization, Etc.* Trust Company is a national banking association duly organized, validly existing and in good standing under the laws of the United States of America; Trust Company has full banking and trust power and authority to enter into and perform its obligations under the Operative Documents to which it is or is to be a party and each other agreement, instrument and document to be executed and delivered by it on or before the Document Closing Date in connection with or as contemplated by each such Operative Document to which it is or is to be a party; and the Operative Documents to which Trust Company is a party, have been or will be duly executed and delivered by Trust Company.

(b) *Authorization; No Conflict.* The execution and delivery by Trust Company in its individual capacity, and the Trust Company in its capacity as Collateral Agent of the Operative Documents to which it is or is to be a party, and the performance by Trust Company in its individual capacity or as Collateral Agent of its obligations under such Operative Documents, have been duly authorized by all necessary action on its part, and do not and will not: (i) contravene any Federal laws governing the banking powers of Trust Company; (ii) violate any provision of its articles of association or by-laws; (iii) result in a breach of or constitute a default under any indenture, loan or credit agreement, or any other agreement or instrument to which Trust Company is a party or by which it or its properties may be bound or affected, which breaches or defaults would be reasonably likely to materially and adversely affect the ability of Trust Company in its individual capacity or as Collateral Agent to perform its obligations under any Operative Documents to which it is or will be a party; or (iv) require any authorizations, consents, approvals, licenses or formal exemptions from, or any filings, declarations or registrations with, any Governmental Authority governing the banking powers of Trust Company or any consent or approval of any non-governmental Person.

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(c) *Enforceability, Etc.* Each Operative Document to which Trust Company is a party constitutes the legal, valid and binding obligation of Trust Company enforceable against it in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of creditors' rights generally and by general equitable principles. Each Operative Document to which the Collateral Agent is a party constitutes the legal, valid and binding obligation of the Collateral Agent enforceable against it in accordance with the terms thereof, except as such enforceability may be limited by the applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of Creditors' rights generally and by general equitable principles.

(d) *Litigation.* There is no action, proceeding or investigation known to Trust Company pending or threatened which questions the validity of the Operative Documents to which Trust Company is a party or any action taken or to be taken pursuant to the Operative Documents to which Trust Company is a party, if adversely determined, would be reasonably likely to adversely affect the Trust Company's, in its individual capacity or as Collateral Agent, ability to perform its obligations under the Operative Documents.

SECTION 6. AFFIRMATIVE COVENANTS.

The Borrower hereby covenants and agrees that the Borrower shall and shall cause each of the other Loan Parties to, directly or indirectly (and by executing the FF&E Guaranty, each such other Loan Party agrees that it will):

Section 6.1. Financial Statements. Furnish to the Collateral Agent and each Lender:

(a) as soon as available, but in any event not later than the earlier of (i) 10 days after the filing with the SEC of Wynn Resorts' Annual Report on Form 10-K (or successor form thereto) with respect to each Fiscal Year and (ii) 90 days after the end of each Fiscal Year, a copy of the audited consolidated and consolidating balance sheet of Valvino and its consolidated Subsidiaries (including the consolidated balance sheet of the Borrower and its consolidated Subsidiaries) as at the end of such Fiscal Year and the related audited consolidated statements of income and of cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, reported on without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit, by Deloitte & Touche LLP or other independent certified public accountants of nationally recognized standing;

(b) as soon as available, but in any event not later than the earlier of (i) 10 days after the filing with the SEC of Wynn Resorts' Quarterly Report on Form 10-Q (or successor form thereto) with respect to each of the first three quarterly periods of each Fiscal Year and (ii) 45 days after the end of each of the first three quarterly periods of each Fiscal Year, the unaudited consolidated and consolidating balance sheets of Valvino and its consolidated Subsidiaries (including the consolidated balance sheet of the Borrower and its consolidated Subsidiaries) as at the end of such quarter and the related unaudited consolidated and consolidating statements of income and of cash flows for such quarter and the portion of the Fiscal Year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year, certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year-end audit adjustments); and

(c) on and after the Opening Date, as soon as available, but in any event not later than 45 days after the end of each month occurring during each Fiscal Year other than the third, sixth, ninth and twelfth such month, the unaudited consolidated and consolidating balance sheets of Valvino and its consolidated Subsidiaries (including the consolidated balance sheet of the Borrower and its consolidated Subsidiaries) as at the end of such month and the related unaudited consolidated and consolidating statements of income and of cash flows for such month and the

portion of the Fiscal Year through the end of such month, setting forth in each case in comparative form the figures for the previous year and the figures from the applicable Projections, certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year-end audit adjustments).

All such financial statements shall be complete and correct in all material respects (in the case of financial statements delivered pursuant to **subsections (b) and (c)** of this **Section 6.1**, subject to normal year-end audit adjustments) and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein and with prior periods (except as approved by such accountants or officer, as the case may be, and disclosed therein).

Section 6.2. Certificates; Other Information. Furnish to the Collateral Agent and each Lender, or, in the case of **subsections (g), (h) and (j)**, to the Collateral Agent, or, in the case of **subsection (l)**, to the relevant Lender:

(a) concurrently with the delivery of the financial statements referred to in **Section 6.1(a)**, a certificate of the independent certified public accountants reporting on such financial statements stating that (i) their audit examination has included a review of the terms of this Loan Agreement and the other Loan Documents as they relate to accounting matters, (ii) in making the examination necessary therefor no knowledge was obtained of any Default or Event of Default, except as specified in such certificate, and (iii) based on their audit examination nothing has come to their attention that causes them to believe that the information contained in the certificates (including, without limitation, the Compliance Certificate) delivered therewith pursuant to **subsection (b)** below is not correct or stated in accordance with the terms of this Loan Agreement;

(b) concurrently with the delivery of any financial statements pursuant to **Section 6.1**, (i) a certificate of a Responsible Officer stating that, to the best of each such Responsible Officer's knowledge, each Loan Party during such period has observed or performed all of its covenants and other agreements, and satisfied every condition, contained in this Loan Agreement and the other Loan Documents to which it is a party to be observed, performed or satisfied by it, and that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate and (ii) in the case of quarterly or annual financial statements, a Compliance Certificate containing all information and calculations necessary for determining compliance by the Loan Parties with the provisions of this Loan Agreement referred to therein as of the last day of the applicable fiscal quarter or Fiscal Year, as the case may be and (iii) in the case of monthly financial statements delivered after the Completion Date, a certificate of a Responsible Officer setting forth all payments made by the Borrower with respect to Affiliated Overhead Expenses during the 12-month period ending on the last day of the applicable month (or such shorter period commencing on the Completion Date if the Completion Date occurred during such 12-month period) and stating that all such payments were in reimbursement of Affiliated Overhead Expenses and permitted pursuant to **Section 7.10(d)**;

(c) as soon as available, and in any event no later than the Completion Date and 30 days prior to the beginning of each Fiscal Year thereafter, a detailed consolidated and consolidating budget of Valvino and its consolidated Subsidiaries (including a detailed consolidated budget of the Borrower and its consolidated Subsidiaries) for such Fiscal Year (or portion thereof from the Completion Date through the end of such Fiscal Year) (including a projected consolidated and consolidating balance sheet of Valvino and its consolidated Subsidiaries (including a consolidated balance sheet for the Borrower and its consolidated Subsidiaries) as of the end of such Fiscal Year, and the related consolidated and consolidating statements of projected cash flow, projected changes in financial position and projected income), and, as soon as available, significant revisions, if any, of such budget and projections with respect to such Fiscal Year (collectively, the "Projections"), which Projections shall in each case be accompanied by a certificate of a

Responsible Officer stating that such Projections are based on reasonable estimates, information and assumptions and that such Responsible Officer has no reason to believe that such Projections are incorrect or misleading in any material respect;

(d) within 45 days after the end of each fiscal quarter after the Completion Date, a narrative discussion and analysis of the financial condition and results of operations of each of the Loan Parties for such fiscal quarter and for the period from the beginning of the then current Fiscal Year (or if the then current Fiscal Year is the Fiscal Year in which the Completion Date has occurred, from the Completion Date) to the end of such fiscal quarter, as compared to the portion of the Projections covering such periods and to the comparable periods of the previous Fiscal Year;

(e) within five days after the same are sent, copies of all financial statements and reports that any Loan Party sends to the holders of any class of its debt securities to the extent not previously delivered to the Lenders and, within five days after the same are filed, copies of all financial statements and reports that any Loan Party may make to, or file with, the SEC;

(f) on the date of the occurrence thereof, notice that (i) any or all of the obligations under the Mortgage Notes Indenture or the Wynn Credit Agreement have been or can be accelerated, or (ii) the trustee or the required holders of Mortgage Notes, or the Administrative Agent or required Wynn Banks, as the case may be, has given notice that any or all such obligations are to be or can be accelerated;

(g) promptly, and in any event within ten Business Days after any Material Contract, or any other contract or arrangement (or a series of related contracts or arrangements) pursuant to which the Loan Parties are, or any one of them is, reasonably expected to incur obligations or liabilities with a Dollar Value in excess of \$8,000,000 during the term of such contract or arrangement is terminated or amended or any new Material Contract or any other such contract or arrangement is entered into, or upon becoming aware of any material default by any Person under a Material Contract or any other such contract or arrangement, a written statement describing such event with copies of such amendments or new Material Contracts or such other contracts or arrangements, and, with respect to any such terminations or material defaults, an explanation of any actions being taken with respect thereto;

(h) promptly upon receipt, copies of all notices provided to any Loan Party or their Affiliates pursuant to any documents evidencing Other Indebtedness, relating to material defaults or material delays and promptly upon execution and delivery thereof, copies of all amendments to any of the documents evidencing Other Indebtedness;

(i) to the extent not included in **subsections (a) through (h)** above, no later than the date the same are required to be delivered thereunder, copies of all agreements, documents or other instruments (including, without limitation, (i) audited and unaudited, pro forma and other financial statements, reports, forecasts, and projections, together with any required certifications thereon by independent public auditors or officers of any Loan Party or otherwise, (ii) press releases, (iii) statements or reports furnished to any other holder of the securities of any Loan Party and (iv) regular, periodic and special securities reports) that any Loan Party is required to provide pursuant to the terms of the Other Indebtedness;

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(j) promptly, and in any event within 30 days of the end of each Fiscal Year after the Completion Date, deliver to the Collateral Agent a certificate substantially in the form of **Exhibit M** hereto and otherwise in form and substance satisfactory to the Collateral Agent in consultation with the Insurance Advisor, certifying that the insurance requirements of **Section 8.2** have been implemented and are being complied with in all material respects;

(k) within twenty days after the end of each fiscal quarter of the Borrower, a schedule of all Proceedings involving an alleged liability of, or claims against or affecting, any Loan Party equal to or greater than \$1,000,000, and promptly after request by the Collateral Agent such other information as may be reasonably requested by the Collateral Agent to enable the Collateral Agent and its counsel to evaluate any of such Proceedings; and

(l) promptly, such additional financial and other information as any Lender may from time to time reasonably request.

Section 6.3. Payment of Obligations. To the extent not otherwise subject to valid subordination, standstill, intercreditor or similar arrangements, pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its material obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the relevant Loan Party.

Section 6.4. Conduct of Business and Maintenance of Existence, Etc. (a) Preserve, renew and keep in full force and effect its corporate or limited liability company existence and in each case remain a Wholly Owned Subsidiary of Wynn Resorts and its direct parent entity and (b) take all reasonable action to maintain all rights, privileges, franchises, Permits and licenses necessary or desirable in the normal conduct of its business, except, in each case, as otherwise permitted by **Section 7.4** and except, in the case of **subsection (ii)** above, to the extent that failure to do so could not (individually or in the aggregate) reasonably be expected to have a Material Adverse Effect.

Section 6.5. Maintenance of Property; Leases; Insurance.

(a) Keep all Property and systems useful and necessary in its business in good working order and condition, ordinary wear and tear excepted.

(b) Maintain all rights of way, easements, grants, privileges, licenses, certificates, and Permits necessary for the intended use of any Real Estate except any such item the loss of which, individually or in the aggregate, could not reasonably be expected to materially adversely affect or interfere with the Permitted Business of any Loan Party or have a material adverse effect on the Casino Land, the Golf Course Land or the Phase II Land.

(c) Comply with the terms of each lease or other grant of Real Estate, including easement grants, so as to not permit any material uncured default on its part to exist thereunder, except, in each case, where noncompliance therewith could not reasonably be expected to materially adversely affect or interfere with the Permitted Business or Property of any Loan Party.

(d) Maintain with financially sound and reputable insurance companies insurance on all its Property (including, without limitation, all inventory, equipment and vehicles) in accordance with **Section 8.2** and with the Wynn Credit Agreement.

(e) Subject to the Security Documents, preserve and protect the Lien status of each Security Document and, if any Lien (other than unrecorded Liens permitted under **Section 7.3** that arise by operation of law and other Liens permitted under **Section 7.3(f)**) is asserted against the Collateral, promptly and at its expense, give the Collateral Agent a detailed written notice of such Lien and pay the underlying claim in full or take such other action so as to cause it to be released or bonded over in a manner reasonably satisfactory to the Collateral Agent.

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Section 6.6. Inspection of Property; Books and Records; Discussions. (a) Keep proper books of records and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities and (b) subject to any Nevada Gaming Laws restricting such actions, permit representatives of any Lender to visit and inspect any of its properties and examine and, at the Borrower's expense, make abstracts from any of its books and records at any reasonable time and upon reasonable prior notice and as often as may reasonably be desired and to discuss the business, operations, properties and financial and other condition of Valvino or any Loan Party with officers and employees of Valvino or such Loan Party and with their respective independent certified public accountants.

Section 6.7. Notices. Promptly give notice to the Collateral Agent and each Lender, and, in the case of **clause (a)**, to the Administrative Agent and the Mortgage Notes Indenture Trustee, of:

(a) the occurrence of any Default or Event of Default;

(b) any (i) default or event of default (or alleged default) under any Contractual Obligation of any Loan Party or (ii) litigation, investigation or proceeding which may exist at any time between any Loan Party and any Governmental Authority, that in either case, if not cured or if adversely determined, as the case may be, could reasonably be expected to have a Material Adverse Effect;

(c) upon any officer of a Loan Party obtaining knowledge thereof, institution of any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration against or affecting any Loan Party or any Property of a Loan Party (collectively, "Proceedings") not previously disclosed in writing by the Borrowers to the Lenders that, in any case (A) if adversely determined, has a reasonable possibility of giving rise to a Material Adverse Effect or (B) seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, or any material development in any such Proceeding, in each case together with such other information as may be reasonably available to the Loan Parties to enable Lenders and their counsel to evaluate such matters;

(d) the following events, as soon as possible and in any event within 30 days after any Loan Party knows or has reason to know thereof: (i) the occurrence of any Reportable Event with respect to any Plan, a material failure to make any required contribution to a Plan, the creation of any Lien in favor of the PBGC or a Plan or any withdrawal from, or the termination, Reorganization or Insolvency of, any Multiemployer Plan or (ii) the institution of proceedings or the taking of any other action by the PBGC, Valvino, the Borrower, any other Loan Party or any Commonly Controlled Entity or any Multiemployer Plan with respect to the withdrawal from, or the termination, Reorganization or Insolvency of, any Plan; and

(e) any development or event that has had or could reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action the relevant Loan Party proposes to take with respect thereto.

Section 6.8. Environmental Laws; Permits.

(a) Comply in all material respects with, and use best efforts to ensure compliance in all material respects by all tenants and subtenants, if any, with, all applicable Environmental Laws and Environmental Permits, and obtain, maintain and comply in all material respects with and maintain, and use best efforts to ensure that all tenants and subtenants obtain, maintain and comply in all material respects with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws.

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(b) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply in all material respects with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws related to the Mortgaged Property or the Project.

(c) [Reserved]

(d) Deliver to the Collateral Agent (i) as soon as practicable following receipt thereof, copies in any Loan Party's possession or any Loan Party's control of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of Valvino or the Loan Parties or by independent consultants, governmental authorities or any other Persons, with respect to Environmental Matters at the Site or the Project or with respect to any Environmental Claims, (ii) promptly upon the occurrence thereof, written notice describing in reasonable detail (A) any Release required to be reported to any federal, state or local governmental or regulatory agency under any applicable Environmental Laws, (B) any remedial action taken by any Person in response to (1) any Hazardous Materials Activities the existence of which has a reasonable possibility of resulting in one or more Environmental Claims against a Loan Party that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (2) any Environmental Claims against a Loan Party that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (iii) as soon as practicable following the sending or receipt thereof by any Loan Party, a copy of any and all written communications with respect to (A) any Environmental Claims that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (B) any Release required to be reported to any federal, state or local governmental or regulatory agency, and (C) any request for information from any governmental agency indicating that such agency is investigating whether any Loan Party may be potentially responsible for any Hazardous Materials Activity, (iv) prompt written notice describing in reasonable detail (A) any proposed acquisition of stock, assets, or property by Valvino or any Loan Party that could reasonably be expected to (1) expose Valvino or any Loan Party to, or result in, Environmental Claims that could reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect or (2) affect the ability of any Loan Party to maintain in full force and effect all material Permits required under any Environmental Laws for their respective operations and (B) any proposed action to be taken by any Loan Party to modify current operations in a manner that could reasonably be expected to subject such Loan Party to any material additional obligations or requirements under any Environmental Laws that could reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect, (v) any notice that any Governmental Authority may condition approval of, or any application for, any material Permit held by any Loan Party on terms and conditions that are materially burdensome to such Loan Party, or to the operation of any of its businesses or any property owned, leased or otherwise operated by such Person, (vi) notice of any actions or proceedings of the types described in **Sections 5.1(q)(iii)** through **(v)**, (vii) as soon as practicable, all documents submitted to, filed with or received from any Governmental Authority, including without limitation the Nevada Public Utilities Commission and the State of Nevada, Division of Water Resources, with respect to the Water Permits and (viii) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by the Collateral Agent in relation to any matters disclosed pursuant to this **Section 6.8(d)**.

Section 6.9. [Intentionally Omitted].

Section 6.10. Additional Subsidiaries and Discharge of Liens.

(a) [Intentionally Omitted].

(b) With respect to any new Subsidiary created or acquired after the Document Closing Date by any Loan Party, subject to compliance with Nevada Gaming Laws, promptly (i) cause such new Subsidiary to become a party to the FF&E Guaranty, (ii) if requested by the Collateral Agent, deliver

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to the Collateral Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Collateral Agent and (iii) execute and/or deliver such other documents or provide such other information as the Collateral Agent may reasonably request, including delivering documents and taking such other actions which would have been required under Section 3.1 of the Disbursement Agreement if such new Subsidiary were a Loan Party on the Document Closing Date.

Section 6.11. Use of Proceeds. Except as set forth in **Section 6.16**, use the proceeds of the Loans only for the payment of the Purchase Price of the Equipment and Transaction Costs and the payment of all sums due and owing under the Original Aircraft Financing Documents.

Section 6.12. Compliance with Laws, Project Documents, Etc.; Permits.

(a) Comply with all Requirements of Law, noncompliance with which could reasonably be expected to cause, individually or in the aggregate, a Material Adverse Effect and comply in all material respects with its Governing Documents.

(b) Comply, duly and promptly, in all material respects with its respective obligations and enforce all of its respective rights under all Project Documents, except, in the case of Project Documents other than Material Affiliated Contracts, where the failure to comply could not reasonably be expected to have a Material Adverse Effect.

(c) From time to time obtain, maintain, retain, observe, keep in full force and effect and comply with the terms, conditions and provisions of all Permits as shall now or hereafter be necessary under applicable laws, to the extent the noncompliance therewith could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. From time to time maintain, retain, observe and keep in full force and effect and comply with the terms, conditions and provisions of all Water Permits.

Section 6.13. Further Assurances. From time to time execute and deliver, or cause to be executed and delivered, such additional instruments, certificates or documents, and take all such actions, as the Collateral Agent or any Lender may reasonably request, for the purposes of implementing or effectuating the provisions of this Loan Agreement and the other Loan Documents, or of more fully perfecting or renewing the rights of the Collateral Agent and the Lenders with respect to the Collateral (or with respect to any additions thereto or replacements or proceeds or products thereof or with respect to any other property or assets hereafter acquired by any Loan Party which may be deemed to be part of the Collateral) pursuant hereto or thereto. Upon the exercise by the Collateral Agent or any Lender of any power, right, privilege or remedy pursuant to this Loan Agreement or the other Loan Documents which requires any consent, approval, recording, qualification or authorization of any Governmental Authority, the Borrower shall, or shall cause any other applicable Loan Party to (and by executing the FF&E Guaranty, each such other Loan Party agrees that it will), execute and deliver, or will cause the execution and delivery of, all applications, certifications, instruments and other documents and papers that the Collateral Agent or such Lender may be required to obtain from the Borrower or the applicable Loan Party for such governmental consent, approval, recording, qualification or authorization. In the event that, notwithstanding the covenants contained in **Section 7**, a Lien not otherwise permitted under this Loan Agreement shall encumber the Collateral or any portion thereof, the relevant Loan Party shall promptly discharge or cause to be discharged by payment to the lienor or lien claimant or promptly secure removal by bonding or deposit with the county clerk or otherwise or, at the Collateral Agent's option, and if obtainable promptly obtain title insurance against, any such Lien or mechanics' or materialmen's claims of lien filed or otherwise asserted against the Collateral or any portion thereof within 60 days after the date of notice thereof; *provided*, that the provisions of this **Section 6.13** (and compliance therewith) shall not be deemed to constitute a waiver of any of the provisions of **Section 7**. Each of the Loan Parties shall fully preserve the Lien and the priority of each of the Security Documents without cost or expense to the Collateral Agent or the

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Lenders. If any Loan Party fails to promptly discharge, remove or bond off any such Lien or mechanics' or materialmen's claim of lien as described above, which is not being contested by the applicable Loan Party in good faith by appropriate proceedings promptly instituted and diligently conducted, within 30 days after the receipt of notice thereof, then the Collateral Agent may, but shall not be required to, procure the release and discharge of such Lien, mechanics' or materialmen's claim of lien and any judgment or decree thereon, and in furtherance thereof may, in its sole discretion, effect any settlement or compromise with the lienor or lien claimant or post any bond or furnish any security or indemnity as the Collateral Agent, in its sole discretion, may elect. In settling, compromising or arranging for the discharge of any Liens under this subsection, the Collateral Agent shall not be required to establish or confirm the validity or amount of the Lien. The Borrower agrees that all costs and expenses expended or otherwise incurred pursuant to this **Section 6.13** (including reasonable attorneys' fees and disbursements) by the Collateral Agent shall constitute Obligations and shall be paid by the Borrower in accordance with the terms hereof.

Section 6.14. [Reserved].

Section 6.15. [Reserved].

Section 6.16. Use of Proceeds on Initial Advance Date. On the Initial Advance Date, use the proceeds of the Loans solely (a) to pay all sums due and owing under the Original Aircraft Financing Documents, (b) to pay Transaction Costs and (c) to the extent the proceeds of the Loans exceed the amounts payable pursuant to **clause (a)** and **(b)** hereof, to pay Project Costs.

Section 6.17. Appraisal. (a) Prior to the Completion Date, the Borrower shall, at its own cost and expense, cause to be completed and delivered to the Collateral Agent and the Lenders an Appraisal of the Equipment.

(b) The Borrower shall, as required pursuant to the terms of the Disbursement Agreement, promptly cause, additional Items of Equipment to become subject to the first priority security interest of the Borrower Security Agreement.

SECTION 7. NEGATIVE COVENANTS.

The Borrower hereby covenants and agrees that the Borrower shall not, and shall not permit any of the other Loan Parties to, directly or indirectly (and by executing the FF&E Guaranty, each such other Loan Party agrees that it will not):

Section 7.1. Financial Condition Covenants.

(a) *Consolidated Leverage Ratio.* Permit the Consolidated Leverage Ratio of the Borrower as at the last day of any period of four full consecutive fiscal quarters (or such shorter period ending on any Quarterly Date set forth below and beginning on the first day of the first fiscal quarter which begins

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after the Opening Date) ending on any Quarterly Date set forth below to exceed the ratio set forth below opposite such Quarterly Date:

| Quarterly Date | Consolidated Leverage Ratio |
|---|-----------------------------|
| First Quarterly Date | 6.75:1 |
| Second Quarterly Date | 5.75:1 |
| Third Quarterly Date | 5.50:1 |
| Fourth, Fifth and Sixth Quarterly Dates | 5.25:1 |
| Seventh and Eight Quarterly Dates | 5.00:1 |
| Ninth and Tenth Quarterly Dates | 4.75:1 |
| Eleventh Quarterly Date | 4.50:1 |
| Twelfth and Thirteenth Quarterly Dates | 4.25:1 |
| Fourteenth and Fifteenth Quarterly Dates | 4.00:1 |
| Sixteenth Quarterly Date and each Quarterly Date thereafter | 3.75:1 |

; provided, that for purposes of calculating Consolidated EBITDA pursuant to this **Section 7.1(a)** for any period which is less than four full fiscal quarters, Consolidated EBITDA shall be calculated on an annualized basis.

(b) *Minimum Consolidated EBITDA.* Permit Consolidated EBITDA of the Borrower for any period of four full consecutive fiscal quarters (or such shorter period ending on the Initial EBITDA Calculation Date (if any) or any Quarterly Date set forth below and beginning on the first day of the first fiscal quarter which begins after the Opening Date) ending on the Initial EBITDA Calculation Date (if any) or any Quarterly Date set forth below to be less than the correlative amount set forth below opposite the Initial EBITDA Calculation Date (if any) or such Quarterly Date.

| Initial EBITDA Calculation Date/Quarterly Date | Consolidated EBITDA |
|--|---------------------|
| Initial EBITDA Calculation Date | \$ 170,000,000 |
| First Quarterly Date | \$ 215,000,000 |
| Second and Third Quarterly Dates | \$ 250,000,000 |
| Fourth, Fifth, Sixth, Seventh, Eight and Ninth Quarterly Dates | \$ 260,000,000 |
| Tenth, Eleventh and Twelfth Quarterly Dates | \$ 270,000,000 |
| Thirteenth and Fourteenth Quarterly Dates | \$ 275,000,000 |
| Fifteenth Quarterly Date and each Quarterly Date thereafter | \$ 280,000,000 |

; provided, that for purposes of calculating Consolidated EBITDA pursuant to this Section 7.1(b) for any period which is less than four full fiscal quarters, Consolidated EBITDA shall be calculated on an annualized basis.

(c) *Consolidated Fixed Charge Coverage Ratio.* Permit the Consolidated Fixed Charge Coverage Ratio of the Borrower for any period of four full consecutive fiscal quarters (or such shorter period ending on any Quarterly Date set forth below and beginning on the first day of the first fiscal quarter which begins after the Opening Date) ending with any Quarterly Date set forth below to be less than the ratio set forth below opposite such Quarterly Date:

| Quarterly Date | Consolidated Fixed Charge Coverage Ratio |
|--|--|
| First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Quarterly Dates | 1.00:1 |
| Ninth Quarterly Date and each Quarterly Date thereafter | 1.05:1 |

(d) *Maintenance of Net Worth.* Permit the Consolidated Net Worth of the Borrower (i) at the first Quarterly Date to be less than the sum of (such sum, the "Required First Quarter Net Worth") \$900,000,000 and (x) if Consolidated Net Income from the Document Closing Date through the first

Quarterly Date is less than or equal to zero, 100% of such negative amount of such Consolidated Net Income or (y) if Consolidated Net Income from the Document Closing Date through the first Quarterly Date is greater than zero, 75% of such positive amount of such Consolidated Net Income and (ii) at any Quarterly Date subsequent to the first Quarterly Date to be less than the sum of the Required First Quarter Net Worth plus an amount equal to the sum of 75% of Consolidated Net Income for all periods from the first Quarterly Date through such Quarterly Date.

(e) *Consolidated Interest Coverage Ratio.* Permit the Consolidated Interest Coverage Ratio of the Borrower for any period of four full consecutive fiscal quarters (or such shorter period ending on any Quarterly Date set forth below and beginning on the first day of the first fiscal quarter which begins after the Opening Date) ending on any Quarterly Date set forth below to be less than the ratio set forth below opposite such Quarterly Date:

| Quarterly Date | Consolidated Interest Coverage Ratio |
|--|--------------------------------------|
| First Quarterly Date | 1.55:1 |
| Second Quarterly Date | 1.75:1 |
| Third Quarterly Date | 1.90:1 |
| Fourth, Fifth and Sixth Quarterly Dates | 2.00:1 |
| Seventh, Eighth and Ninth Quarterly Dates | 2.10:1 |
| Tenth, Eleventh, Twelfth and Thirteenth Quarterly Dates | 2.25:1 |
| Fourteenth Quarterly Date and each Quarterly Date thereafter | 2.50:1 |

Section 7.2. Limitation on Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of any Loan Party created under any Loan Document;

(b) Unsecured Indebtedness of (i) any Loan Party (other than Desert Inn Improvement) to the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. and the Completion Guarantor, except with respect to Indebtedness, the proceeds of which are necessary for the corporate maintenance of Capital Corp.), (ii) Valvino to Wynn Resorts Holdings or Wynn Resorts Holdings to Valvino (so long as Wynn Resorts Holdings, on the one hand, or Valvino, on the other hand, is Solvent) and (iii) any Wynn Group Entity to any other Solvent Loan Party other than the Desert Inn Improvement or Capital Corp. or the Completion Guarantor; *provided*, that in each case such Indebtedness is evidenced by, and subject to the terms and conditions of, the Subordinated Intercompany Note and is otherwise subordinated in right of payment to the Obligations under the Loan Documents and the Mortgage Notes Indenture on terms and conditions reasonably satisfactory to the Collateral Agent;

(c) Indebtedness of World Travel to the Borrower represented by the Intercompany Note;

(d) Indebtedness (other than the Indebtedness referred to in **Section 7.2(f)**) of the Loan Parties outstanding on the date hereof and listed on **Schedule 7.2(d)** and any refinancings, refundings, renewals or extensions thereof (without any increase in the principal amount thereof or any shortening of the maturity of any principal amount thereof);

(e) Unsecured Guarantee Obligations made in the ordinary course of business (i) by any Loan Party (other than Desert Inn Improvement) of obligations of the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. and the Completion Guarantor), (ii) by Valvino of obligations of Wynn Resorts Holdings or by Wynn Resorts Holdings of obligations of Valvino (so long as Wynn Resorts Holdings, on the one hand, or Valvino, on the other hand, is Solvent) and (iii) any Wynn Group Entity to any other Loan Party other than Desert Inn Improvement or Capital Corp. or the Completion Guarantor (so long as such Loan Party is Solvent);

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(f) (i) Indebtedness of the Borrower and Capital Corp. created under the Mortgage Notes Indenture in respect of the Mortgage Notes in an aggregate principal amount, including all Permitted Refinancing Indebtedness incurred to refund, refinance or replace any Indebtedness incurred pursuant to this **clause (i)**, not to exceed \$370,000,000 in principal amount (reduced by any principal payments required to be made thereon) and Guarantee Obligations of any Loan Party in respect of such Indebtedness represented by the Mortgage Note Guarantees; *provided*, that the principal amount of the Indebtedness permitted pursuant to this **clause (i)** may be increased for purposes of, and in an amount equal to, Indebtedness permitted pursuant to **Section 7.2(l)**, and (ii) Indebtedness of the Borrower created under the Wynn Credit Agreement, including all Permitted Refinancing Indebtedness incurred to refund, refinance or replace any Indebtedness incurred pursuant to this **clause (ii)**, in an aggregate principal amount, not to exceed (A) at any time prior to the Completion Date, \$1,050,000,000, *provided* that to the extent such aggregate principal amount exceeds \$1,000,000,000, the Borrower shall have received an amount equal to such excess in the form a capital contribution and (B) at any time after the Completion Date, \$1,050,000,000 (plus, in each case, any accrued and unpaid interest thereon added to principal) and Guarantee Obligations of any Loan Party in respect of such Indebtedness represented by the Guarantee and Collateral Agreement;

(g) Indebtedness of the Loan Parties (including, without limitation, Capital Lease Obligations) secured by Liens permitted by **Section 7.3(s)** in an aggregate principal amount not to exceed \$10,000,000 at any one time outstanding;

(h) Indebtedness of the Loan Parties to employees of the Loan Parties (or their estates) incurred in connection with any repurchase of employee stock options or stock upon death, disability or termination of such employee in accordance with employment agreements or option plans or agreements, *provided*, that (i) such Indebtedness, when aggregated with any payments made under **Section 7.6(f)**, will not exceed \$2,000,000 in any Fiscal Year and \$6,000,000 during the term of this Loan Agreement, (ii) such Indebtedness shall be unsecured and subordinated on terms and conditions satisfactory to the Initial Arrangers and in any event not less favorable to the Loan Parties and the Lenders than the terms of the Subordinated Intercompany Note, subject to such covenants and events of default as may be acceptable to the Initial Arrangers and expressly provide that payments thereon shall be required only to the extent not restricted by any Financing Agreement;

(i) Subordinated Debt of the Loan Parties not to exceed an aggregate of \$25,000,000 at any one time outstanding; *provided*, that the Net Cash Proceeds of such Subordinated Debt shall be applied within one Business Day of the incurrence of such Subordinated Debt to the prepayment, subject to **Section 7.9**, of the Term Loans and the reduction of the Revolving Credit Commitments as set forth in Section 2.12(a) of the Wynn Credit Agreement;

(j) Indebtedness of the Loan Parties incurred to finance the acquisition of the Additional Land, provided that such Indebtedness shall not exceed the fair market value of the Additional Land (*provided*, that in determining such fair market value consideration will be given to the value of the Additional Land to the Loan Parties in light of their current Property and Permitted Business);

(k) On or prior to the Final Completion Date, Guarantee Obligations represented by performance bonds, guaranties, commercial or standby letters of credit (other than Letters of Credit (as defined in the Wynn Credit Agreement)) bankers' acceptances or similar instruments issued by a Person other than Wynn Resorts or any Loan Party for the benefit of a trade creditor of any such Loan Party, in an aggregate amount not to exceed \$10,000,000 at any time outstanding so long as (i) such is incurred in the ordinary course of business and (ii) the obligations of any Loan Party, as the case may be, supported by such performance bonds, guaranties, trade letters of

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credit, bankers' acceptances or similar instruments (1) consist solely of payment obligations with respect to costs incurred in accordance with the Project Budget which would otherwise be permitted to be paid by the applicable Loan Party pursuant to the Disbursement Agreement and (2) are secured, and (3) are secured solely by Liens permitted by **Section 7.3(v)**;

(l) after the Final Completion Date, Guarantee Obligations represented by performance bonds, guaranties, commercial or standby letters of credit (other than Letters of Credit (as defined in the Wynn Credit Agreement)), bankers' acceptances or similar instruments issued by Person other than Wynn Resorts or any Loan Party for the benefit of a trade creditor of any such Loan Party, in an aggregate amount not to exceed \$5,000,000 at any time outstanding so long as (i) such Indebtedness is incurred in the ordinary course of business and (ii) the obligations of any Loan Party, as the case may be,

supported by such performance bonds, guaranties, trade letters of credit, bankers' acceptances or similar instruments (1) do not consist of payment obligations with respect to Project Costs and (2) if secured, are secured solely by Liens permitted by **Section 7.3(w)**;

(m) Indebtedness of the Borrower to be used solely for the development, construction and opening of the Entertainment Facility, in an aggregate principal amount (or original accreted value, as applicable) at any time not to exceed the lesser of (a) \$50,000,000 and (b) 200% of the Entertainment Facility Equity Proceeds; *provided*, that in no event shall borrowings or other extensions of credit under the documentation governing such Indebtedness be made until all Entertainment Facility Equity Proceeds (as defined in the Wynn Credit Agreement) have been applied to the development, construction and opening of the Entertainment Facility; and

(n) additional Indebtedness of the Loan Parties in an aggregate principal amount (for all the Loan Parties) not to exceed \$5,000,000 at any one time outstanding.

Section 7.3. Limitation on Liens. Create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, except for:

(a) Liens for taxes not yet due or which are being contested in good faith by appropriate proceedings, *provided* that adequate reserves with respect thereto are maintained on the books of the applicable Loan Party, as the case may be, in conformity with GAAP;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business for amounts which are not overdue for a period of more than 30 days or that are being contested in good faith by appropriate proceedings (such contest proceedings conclusively operating to stay the sale of any portion of the Collateral on account of such Lien); *provided*, that adequate reserves with respect thereto are maintained on the books of the applicable Loan Party, as the case may be, in conformity with GAAP;

(c) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation;

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(d) deposits by or on behalf of the Loan Parties to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, appeal bonds and other obligations of a like nature incurred in the ordinary course of business, including, without limitation, deposits permitted pursuant to Section 6.10(c) of the Disbursement Agreement;

(e) easements, rights-of-way, restrictions, encroachments and other similar encumbrances and other minor defects and irregularities in title, in each case incurred in the ordinary course of business that, in the aggregate, are not substantial in amount and which do not in any case materially detract from the value of the Property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Loan Party;

(f) Liens in existence on the date hereof listed on **Schedule 7.3(f)**, securing Indebtedness permitted by **Section 7.2(d)**; *provided* that no such Lien is spread to cover any additional Property (other than proceeds of the sale or other disposition thereof) after the Document Closing Date and that the amount of Indebtedness secured thereby is not increased;

(g) Liens created pursuant to the Security Documents;

(h) leases and subleases permitted under **Section 7.5(f)** and any leasehold mortgage in favor of any party financing the lessee under any lease or sublease permitted under **Section 7.5(f)**; *provided* that (a) no Loan Party is liable for the payment of any principal of, or interest, premiums or fees on, such financing and (b) the affected lease and leasehold mortgage are expressly made subject and subordinate to the Lien of the applicable Mortgage;

(i) Liens created by the Golf Course Lease, the Driving Range Lease, the Building Lease or the Employee Parking Lot Lease (in each case encumbering only the Property covered by such associated lease agreement);

(j) licenses of patents, trademarks and other intellectual property rights granted by a Loan Party in the ordinary course of business and not interfering in any material respect with the ordinary conduct of the business of such Loan Party;

(k) Liens securing Indebtedness permitted under **Section 7.2(f)(i)**; *provided*, that any such Liens on the Equipment are junior in priority to the Liens securing the Obligations;

(l) Liens securing Indebtedness permitted under **Section 7.2(f)(ii)**; *provided*, that any such Liens on the Equipment are junior in priority to the Liens securing the Obligations;

(m) prior to the Final Completion Date, any "Permitted Liens" under the Disbursement Agreement;

(n) any attachment or judgment Lien not constituting an Event of Default under **Section 8.1(h)**;

(o) Permitted Encumbrances;

(p) Liens arising from the filing of UCC financing statements relating solely to leases permitted by this Loan Agreement;

(q) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(r) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any Real Estate;

(s) Liens securing Indebtedness of the Loan Parties incurred pursuant to **Section 7.2(g)** to finance the acquisition of fixed or capital assets, *provided* that (i) such Liens shall be created substantially simultaneously with the acquisition of such fixed or capital assets (or the refinancing

of such Indebtedness as otherwise permitted hereunder), (ii) such Liens do not at any time encumber any Property other than the Property (and proceeds of the sale or other disposition thereof) financed by such Indebtedness, (iii) the principal amount of Indebtedness secured thereby is not increased and (iv) the Property financed by such Indebtedness is not of a type that will become affixed to the Project such that the removal thereof could reasonably be expected to materially interfere with the ongoing ordinary course operations of the Project;

(t) Liens securing Indebtedness of the Loan Parties incurred pursuant to **Section 7.2(j)** to finance the acquisition of the Additional Land, *provided* that (i) such Liens shall be created substantially simultaneously with the acquisition of the Additional Land, (ii) such Liens do not at any time encumber any Property other than the Additional Land (and proceeds of the sale or other disposition thereof) and (iii) the principal amount of Indebtedness secured thereby is not increased;

(u) Liens with respect to the Aircraft granted by World Travel to the Borrower securing Indebtedness under the Intercompany Note;

(v) Liens on cash disbursed pursuant to the Disbursement Agreement and deposited with, or held for the account of, any Loan Party securing reimbursement obligations under performance bonds, guaranties, commercial or standby letters of credit, bankers' acceptances or similar instruments permitted under **Section 7.2(k)** granted in favor of the issuers of such performance bonds, guaranties, commercial letters of credit or bankers' acceptances, so long as (i) any cash disbursed to secure such reimbursement obligations is invested (if at all) in Permitted Securities only (to the extent the Borrower has the right to direct the investment thereof) and is segregated from the Loan Parties' general cash accounts so that such Liens attach only to such cash and Permitted Securities and (ii) the amount of cash and/or Permitted Securities secured by such Liens is not less than the amount of Indebtedness secured thereby and in any event does not exceed 110% of the amount of the Indebtedness secured thereby (ignoring, any interest earned or paid on such cash and any dividends or distributions declared or paid in respect of such Permitted Investments); and

(w) Liens on cash deposited with, or held for the account of, any Loan Party securing reimbursement obligations under performance bonds, guaranties, commercial or standby letters of credit, bankers' acceptances or similar instruments permitted under **Section 7.2(l)**, granted in favor of the issuers of such performance bonds, guaranties, commercial letters of credit or bankers' acceptances, so long as (i) any cash used as security for such reimbursement obligations is invested (if at all) in Cash Equivalents only (to the extent the Borrower has the right to direct the investment thereof) and is segregated from the Loan Parties' general cash accounts so that such Liens attach only to such cash and Cash Equivalents and (ii) the amount of cash and/or Cash Equivalents secured by such Liens does not exceed 110% of the amount of the Indebtedness secured thereby (ignoring any interest earned or paid on such cash and any dividends or distributions declared or paid in respect of such Cash Equivalents).

Section 7.4. Limitation on Fundamental Changes. Enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its Property or business, except that:

(a) (i) any Solvent Loan Party (other than the Water Entities) may be merged or consolidated with or into the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. and the Completion Guarantor), (ii) Valvino may be merged or consolidated with or into Wynn Resorts Holdings and Wynn Resorts Holdings may be merged or consolidated with or into Valvino (in each case so long as each of Wynn Resorts Holdings and Valvino are Solvent) and (iii) any Solvent Wynn Group Entity may be merged or consolidated with or into any other Solvent Loan Party other than Desert Inn Improvement, Capital Corp. or the Completion Guarantor

(*provided* that in the event any such merger or consolidation involves the Borrower, the Borrower shall be the continuing or surviving entity and, in the event such merger or consolidation involves a Subsidiary of the Borrower (but not the Borrower), a Subsidiary of the Borrower shall be the continuing or surviving entity);

(b) (i) any Solvent Loan Party may Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. and the Completion Guarantor), (ii) Valvino may Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to Wynn Resorts Holdings and Wynn Resorts Holdings may Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to Valvino (in each case so long as each of Wynn Resorts Holdings and Valvino are Solvent) and (iii) any Solvent Wynn Group Entity may Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to any other Loan Party other than the Desert Inn Improvement, Capital Corp. or the Completion Guarantor (so long as such Loan Party is Solvent); *provided*, that any permitted Disposition of Capital Stock of a Loan Party pursuant to this **Section 7.4(b)** must be of no less than all Capital Stock of such Loan Party; *provided, further*, that in no event shall (x) Wynn Resorts Holdings be permitted to Dispose of any Capital Stock of the Borrower (other than to the extent such Disposition occurs in connection with the merger of Wynn Resorts Holdings into Valvino as permitted pursuant to **Section 7.4(a)**) or (y) the Borrower or any of its Subsidiaries acquire the Capital Stock of either of the Water Entities (other than to the extent such Disposition occurs in connection with the merger of a Water Entity into the Borrower or a Subsidiary of the Borrower as permitted pursuant to **Section 7.4(a)**) and any such merger could not result in any of the Loan Parties becoming subject to regulation by the Nevada Public Utilities Commission); *provided, further* that in no event shall Desert Inn Improvement become a Subsidiary of the Borrower; and

(c) any Loan Party may Dispose of any of its Property in accordance with **Section 7.5**.

Section 7.5. Limitation on Disposition of Property. Dispose of any of its Property or Property (including, without limitation, receivables and leasehold interests), whether now owned or hereafter acquired, or issue or sell any shares of Capital Stock to any Person, except:

(a) the Disposition for fair market value in the ordinary course of business of obsolete or worn out Property or Property no longer useful in the business of the applicable Loan Party; *provided*, that (i) such Disposition could not reasonably be expected to materially adversely affect the Project, any of the Mortgaged Properties or any of the Collateral, (ii) to the extent such Property is Collateral, prior to such Disposition any such Property shall be replaced with other Property of (A) substantially equal or greater utility and similar use and (B) either (x) a value at least substantially equal to that of the replaced Property when first acquired or (y) substantially equal or greater quality and, if applicable, prestige and caliber as the replaced Property when first acquired and free from any Lien of any other Person (subject to Permitted Liens) and (iii) to the extent such Property is Collateral, the applicable Loan Party shall subject such replacement property to the Lien of the Security Documents in favor of the Lenders of at least the same priority as the Property so replaced and otherwise in compliance with the Borrower Security Agreement and the Aircraft Security Agreement, as applicable;

(b) the Disposition of Cash or Cash Equivalents or Permitted Securities (in each case in transactions otherwise permitted hereunder), Investments permitted pursuant to **Section 7.8**, inventory (in the ordinary course of business) and receivables (in connection with the collection thereof and otherwise as customary in gaming operations of the type conducted by the Loan Parties);

(c) Dispositions permitted by **Section 7.4** (including the Disposition of Capital Stock of Loan Parties pursuant to **Section 7.4(b)**);

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(d) the sale or issuance of any Loan Party's Capital Stock (other than Disqualified Stock) to its direct parent that is a Loan Party in furtherance of Investments permitted pursuant to **Section 7.8(e)**;

(e) Dispositions of Property having a fair market value not in excess of \$5,000,000 in the aggregate (with respect to all the Loan Parties) in any Fiscal Year following the Completion Date; *provided*, that (i) the consideration received for such Property shall be in an amount at least equal to the fair market value thereof; (ii) the sole consideration received shall be cash; and (iii) to the extent such Asset Sales relate to the Collateral, the proceeds of such Asset Sales shall be applied to either (A) the prepayment of the Loans pursuant to **Section 3.1(a)** or (B) the acquisition of assets which shall become a Substitute Item or Substitute Items pursuant to and in accordance with Section 4.7 of the Borrower Security Agreement;

(f) subject to Section 4.2 of the Borrower Security Agreement, the Borrower may enter into any leases with respect to any Item of Equipment, and subject to Section 4.2 of the Aircraft Security Agreement, the Aircraft Trustee, or World Travel pursuant to the Aircraft Operating Agreement, may enter into any lease with respect to the Aircraft, and Valvino may enter into any commercial office space leases with respect to the Phase II Land Building;

(g) (i) any Loan Party may dedicate space within the Project for the purpose of constructing (A) a mass transit system, (B) a pedestrian bridge over or a pedestrian tunnel under Las Vegas Boulevard or Sands Avenue or similar structures to facilitate the movement of pedestrians or vehicle traffic, (C) a right turn lane or other roadway dedication or (iv) such other structures or improvements reasonably related to and in furtherance of the development, construction and operation of the Project; *provided*, that in each case such dedication does not materially impair or interfere in the use or operation of the Project or any Loan Party or materially detract from the value of the Property subject thereto and (ii) the exchange of real property between Valvino and Clark County, Nevada, pursuant to which each such party shall transfer to each other fee ownership in real property having approximately equal fair market values; *provided*, that (A) in no event shall Valvino transfer more than an aggregate amount of 40,000 square feet of real property pursuant to this **clause (ii)**, (B) Valvino shall take such actions as required pursuant to Sections 6.10 and 7.26 of the Wynn Credit Agreement with respect to any real property acquired pursuant to this **clause (ii)** and (C) such exchange of real property could not reasonably be expected to materially and adversely affect or interfere with the Permitted Business of any Loan Party or have a material adverse effect on the Casino Land, the Golf Course Land or the Phase II Land;

(h) (x) the Loan Parties may license trademarks and trade names in the ordinary course of business and, in any event, Wynn Resort Holdings may license to Wynn Resorts, for less than fair market value, any or all Intellectual Property in or relating to the name "Wynn Resorts" (including, without limitation, any and all Intellectual Property identified in subparts (a)(12), (a)(14)-(19), (b)(1), and (c) of Part IX of **Schedule 4.9(b)**) (collectively, the "Wynn Resorts IP") and (y) Wynn Resorts Holdings may transfer to Wynn Resorts, for less than fair market value, any or all of the Wynn Resorts IP (*provided*, that all of the Wynn Resorts IP shall be transferred by Wynn Resorts Holdings to Wynn Resorts as soon as is practicable after the Document Closing Date;

(i) the incurrence of Liens permitted under **Section 7.3**, *provided* that any leases other than those permitted pursuant to **Section 7.3(i)** (whether or not constituting Permitted Liens) shall be permitted only to the extent provided in **subsection (f)** above and the last paragraph of this **Section 7.5**;

(j) the applicable Golf Course Land Owner(s) shall be permitted to Dispose of the Wynn Home Site Land to Mr. Wynn, and the Lenders hereby consent to such Disposition, on the conditions that (i) no Default or Event of Default has occurred and is continuing at the time of

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such Disposition, and (ii) such disposition is permitted pursuant to the terms of the Wynn Credit Agreement or the Wynn Banks concurrently consent to such Disposition;

(k) the Golf Course Land Owner(s) shall be permitted to Dispose of the Golf Course Land and in connection therewith the applicable Loan Parties shall be permitted to Dispose of their ownership in the Capital Stock of Desert Inn Water and Desert Inn Improvement and the DIIC Water Permits (other than the DIIC Casino Water Permit), and the Lenders hereby consent to such Dispositions, on the conditions that (i) no Default or Event of Default has occurred and is continuing at the time of such Dispositions and (ii) such Disposition is permitted pursuant to the terms of the Wynn Credit Agreement or the Wynn Banks otherwise concurrently consent to such Disposition;

(l) the applicable Golf Course Land Owner(s) shall be permitted to Dispose of the Home Site Land, and the Lenders hereby consent to such Disposition, on the conditions that (i) no Default or Event of Default has occurred and is continuing at the time of such Disposition and (ii) such Disposition is permitted pursuant to the terms of the Wynn Credit Agreement or the Wynn Banks otherwise concurrently consent to such Disposition;

(m) Valvino shall be permitted to Dispose of the Phase II Land, and the Lenders hereby consent to such Disposition, on the conditions that (i) no Default or Event of Default has occurred and is continuing at the time of such Disposition and (ii) such Disposition is permitted pursuant to the terms of the Wynn Credit Agreement or the Wynn Banks otherwise concurrently consent to such Disposition;

(n) any Event of Eminent Domain, *provided*, that the requirements of **Section 8.1** are complied with in connection therewith; and

(o) Dispositions of Items of Equipment which are replaced pursuant to Section 4.7 of the Borrower Security Agreement.

(p) the Disposition of the Aircraft so long as

- (i) the consideration received for the Aircraft shall be in an amount at least equal to the fair market value thereof,
- (ii) the sole consideration received shall be cash, and
- (iii) either
 - (A) the aggregate Net Disposition Proceeds from such Disposition are paid to the Collateral Agent and applied to the prepayment of the Loans used to refinance the Aircraft pursuant to **Section 3.1(a)** or
 - (B)(1) World Travel or the Aircraft Trustee simultaneously acquires a Replacement Aircraft which becomes subject to the Aircraft Security Agreement pursuant to Section 4.7(c) thereof,
 - (2) the aggregate Net Disposition Proceeds from such Disposition are applied to the acquisition of the Replacement Aircraft and the remaining funds required for the acquisition of the Replacement Aircraft are obtained from only the following sources:
 - (x) proceeds of equity capital contributions from Wynn Resorts (or another Loan Party to the extent acting as an intermediary for purposes of contributing equity capital contributions from Wynn Resorts) so long as Wynn Resorts or such other Loan Party do not have any interest in the Replacement Aircraft, and
 - (y) proceeds from Replacement Aircraft Indebtedness but only if (I) the Required Lenders have approved in writing any Replacement Aircraft Indebtedness

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where any person or entity other than the Collateral Agent will be granted a security interest in the Replacement Aircraft and (II) Required Lenders have approved in writing any Replacement Aircraft Indebtedness which results in either the Aggregate Commitment Amount being increased or any Lender's Commitment or any allocation of any Lender's Commitment has been changed in any manner; *provided* that, the approval in writing of any Lender whose Commitment is increased or changed shall have also been obtained; *provided further*, that any such increase to the Aggregate Commitment Amount shall not exceed \$10,000,000, and

- (3) such Disposition of the Aircraft and the acquisition of the Replacement Aircraft is permitted pursuant to the Other Indebtedness;

- (q) Valvino shall be permitted to effectuate the Valvino Water Permit Transfer (or any portion thereof) and DIIC shall be permitted to effectuate the DIIC Water Transfer (or any portion thereof); and

- (r) subject to **Section 7.4**, Dispositions (i) by any Loan Party (other than Desert Inn Improvement) to the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. or the Completion Guarantor (except with respect to Dispositions, the proceeds of which are necessary for the corporate maintenance of Capital Corp.)), (ii) by Valvino to Wynn Resorts Holdings or by Wynn Resorts Holdings to Valvino (so long as Wynn Resorts Holdings, on the one hand, or Valvino, on the other hand, is Solvent) and (iii) by any Wynn Group Entity to any other Solvent Loan Party other than Desert Inn Improvement, Capital Corp. or the Completion Guarantor; *provided*, that in each case each Loan Party shall have taken all actions required pursuant to **Section 6.10** with respect to any Property acquired by it pursuant to this **clause (r)**;

Notwithstanding the foregoing provisions of this **Section 7.5, subsection (f)** above shall be subject to the additional provisos that: (a) no Default or Event of Default shall exist and be continuing at the time of such transaction, lease or sublease or would occur after as a result of entering into such transaction, lease or sublease (or immediately after any renewal or extension thereof at the option of the Borrower), (b) such transaction, lease or sublease could not reasonably be expected to materially interfere with, impair or detract from the operation of the business of the Borrower or Valvino, as the case may be, and will, in the case of leases associated with the casino, hotel and shopping operations, in the reasonable good faith judgment of the Borrower enhance the value and operations of the Project, (c) except with respect to the Dealership Lease Agreement and subleases of space in the Phase II Land Building by the Borrower, such transaction, lease or sublease is at a fair market rent or value (in light of other similar or comparable prevailing commercial transactions) and contains such other terms such that the lease, taken as a whole, is commercially reasonable and fair to the Borrower in light of prevailing or comparable transactions in other casinos, hotels, hotel attractions, shopping venues or similarly situated buildings, as applicable (provided, that each sublease of the Phase II Land Building by the Borrower and the Dealership Lease Agreement shall contain such terms such that the transaction, taken as a whole, does not expose the Borrower to undue liabilities or obligations in light prevailing or comparable transactions), (d) no gaming, hotel or casino operations (other than the operation of arcades and games for minors) may be conducted on any space that is subject to such transaction, lease or sublease other than by and for the benefit of the Borrower, (e) with respect to subleases of the Phase II Land Building by the Borrower, no operations other than those conducted in the ordinary course of business in commercial office buildings and those related to the temporary operation of a full service Ferrari and Maserati automobile dealership may be conducted on any space that is subject to such transaction unless, subject at all time to the restrictions set forth in **clauses (a)** through **(d)** above, otherwise approved in writing by the Administrative Agent and (f) no lease or sublease may provide that the Borrower or Valvino, as the case may be, may subordinate its fee, condominium or leasehold interest to any lessee or any party financing any lessee; *provided* that (x) the Administrative Agent shall agree to provide the tenant under any such lease or sublease with a

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Subordination, Non-Disturbance and Attornment Agreement and (y) with respect to any such lease having a term of two years or more or aggregate annual rents in excess of \$500,000 (other than leases solely between Loan Parties), the Borrower shall enter into, and cause the tenant under any such lease or sublease to enter into with the Administrative Agent, a Subordination, Non-Disturbance and Attornment Agreement, in each case substantially in the form of Exhibit N to the Wynn Credit Agreement with such changes as the Administrative Agent may approve, which approval shall not be unreasonably withheld, conditioned or delayed (provided, that such changes do not materially and adversely affect the security interests granted in favor of the Lenders under any of the Security Documents).

Section 7.6. Limitation on Restricted Payments. Declare or pay any dividend (other than dividends payable solely in common stock (excluding Disqualified Stock) of the Person making such dividend) on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of any Loan Party, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of any Loan Party, or enter into any derivatives or other transaction with any financial institution, commodities or stock exchange or clearinghouse (a "*Derivatives Counterparty*") obligating any Loan Party to

make payments to such Derivatives Counterparty as a result of any change in market value of any such Capital Stock (collectively, "Restricted Payments"), except that:

(a) any Loan Party may pay dividends or other distributions (not in excess of \$15,000,000 in the aggregate) to Wynn Resorts, through any intermediate Wholly Owned Subsidiaries of Wynn Resorts, of amounts necessary to repurchase Capital Stock or Indebtedness of Wynn Resorts (other than Capital Stock held by the Existing Stockholders) to the extent required by the Nevada Gaming Authorities for not more than the fair market value thereof in order to avoid the suspension, revocation or denial by the Nevada Gaming Authorities of a gaming license necessary for the ownership, construction, maintenance, financing or operation of the Project, in any event to the extent such suspension, revocation or denial would have a Material Adverse Effect; *provided*, that so long as such efforts do not jeopardize any such gaming license necessary for the ownership, construction, maintenance, financing or operation of the Project, Wynn Resorts and its Subsidiaries shall have diligently and in good faith attempted to find a third-party purchaser(s) for such Capital Stock or Indebtedness and no third-party purchaser(s) acceptable to the Nevada Gaming Authorities was willing to purchase such Capital Stock or Indebtedness within a time period acceptable to the Nevada Gaming Authorities;

(b) (i) on the Completion Guaranty Release Date, the Completion Guarantor may pay a dividend or other distribution to Wynn Resorts, through any intermediate Wholly Owned Subsidiaries of Wynn Resorts, in an amount equal to the amount released from the Completion Guaranty Deposit Account to the Completion Guarantor in accordance with Section 2.10 of the Disbursement Agreement and (ii) on the Final Completion Date, the Completion Guarantor may pay a dividend or other distribution to Wynn Resorts, through any intermediate Wholly Owned Subsidiaries of Wynn Resorts, in an amount equal to the amount released from the Completion Guaranty Deposit Account to the Completion Guarantor in accordance with Section 2.11 of the Disbursement Agreement;

(c) to the extent constituting Restricted Payments, (i) any Loan Party may consummate a transaction permitted pursuant to **Section 7.4**, (ii) any Loan Party may make Dispositions permitted pursuant to **Section 7.5**, (iii) any Loan Party may make Investments permitted pursuant to **Section 7.8**, (iv) any Loan Party may pay Management Fees to Wynn Resorts permitted pursuant to **Section 7.22** and (v) any Loan Party may take actions expressly permitted pursuant to **Section 7.10**;

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(d) (i) any Subsidiary of the Borrower may declare and pay cash dividends to the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. or the Completion Guarantor), (ii) Wynn Resorts Holdings may declare and pay cash dividends to Valvino (so long as Valvino is Solvent) and (iii) any Wynn Group Entity may declare and pay cash dividends to any other Solvent Loan Party;

(e) any Loan Party may make distributions to the direct or indirect owners of such Loan Party with respect to any period during which such Loan Party is a Pass Through Entity or a Consolidated Member, such distributions in an aggregate amount not to exceed such owners' Tax Amounts for such period;

(f) so long as no Default or Event of Default shall have occurred and be continuing and no Material Adverse Effect shall have occurred and be continuing (or, in either case, would result therefrom), the Loan Parties may pay dividends to other Loan Parties to permit such other Loan Parties to (i) repurchase common stock or common stock options from present or former employees of the Loan Parties (or their estates) upon the death, disability or termination of employment of such employees in accordance with employment agreements or option plans or agreements; *provided*, that the aggregate amount of payments under this subsection (f), when aggregated with any Indebtedness incurred by the Loan Parties pursuant to **Section 7.2(h)**, will not exceed \$2,000,000 in any Fiscal Year and \$6,000,000 during the term of this Agreement;

(g) on and after the Completion Date and so long as no Default or Event of Default shall have occurred and be continuing and no Material Adverse Effect shall have occurred and be continuing (or, in either case, would result therefrom), the Loan Parties may make Restricted Payments not otherwise permitted under any other subsection of this **Section 7.6** in an amount not to exceed an aggregate of \$5,000,000, *plus*, for each Fiscal Year occurring after the Fiscal Year in which the Completion Date occurs, \$2,000,000; *provided*, that amounts applied to the determination of Non-Equity Cost (as defined in the Wynn Credit Agreement) pursuant to clause (b)(ii) of the definition thereof shall be considered Restricted Payments distributed pursuant to this **Section 7.6(g)**;

(h) to the extent constituting Restricted Payments, on or prior to the Final Completion Date the Borrower may pay Project Costs as permitted pursuant to the Disbursement Agreement; and

(i) until the earlier of (i) 12 months following the acquisition of the Replacement Aircraft with the Replacement Aircraft Indebtedness, and (ii) the sale by World Travel or the Aircraft Trustee, as the case may be, of the Aircraft, the payment to Wynn Resorts of amounts necessary to pay interest then due and payable on the Replacement Aircraft Indebtedness approved pursuant to the terms of **Section 7.5(p)** in an aggregate amount not to exceed \$1,000,000.

Section 7.7. Limitation on Capital Expenditures. Make, commit to make or incur Capital Expenditures, in any Fiscal Year indicated below, in an aggregate amount among all Loan Parties in excess of the corresponding amounts set forth below opposite such Fiscal Year; *provided*, that other than Capital Expenditures (x) necessary to keep all associated Property and systems reasonably related to the operation of the Golf Course Land and improvements thereon and the Phase II Land and improvements thereon in good and working order and condition or (y) funded by the proceeds of equity capital contributions from Wynn Resorts (or another Loan Party to the extent acting as an intermediary for purposes of contributing equity capital contributions from Wynn Resorts for such Capital Expenditures) in no event shall any Loan Party commit to make or incur Capital Expenditures with respect to the Golf Course or the Golf Course Land or improvements thereon in excess of (A) \$3,000,000 during the period from the Completion Date through the 18 month anniversary thereof and (B) \$5,000,000 in any 12 month period thereafter, and in no event shall any Loan Party commit to make or incur Capital Expenditures with respect to the Phase II Land or improvements thereon in excess of \$5,000,000 in any Fiscal Year; *provided*, further, that other than Capital Expenditures

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(x) necessary or advisable to keep all associated Property and systems reasonably related to the operation of the Aircraft in good and working order and condition, whether pursuant to manufacturer requirements or suggestions, Requirements of Law, good aircraft maintenance practices or otherwise, or (y) funded by the proceeds of equity capital contributions from Wynn Resorts (or another Loan Party to the extent acting as an intermediary for purposes of contributing equity

capital contributions from Wynn Resorts for such Capital Expenditures), in no event shall any Loan Party commit to make or incur Capital Expenditures with respect to the Aircraft.

| Fiscal Year | Maximum Capital Expenditures |
|------------------|------------------------------|
| Fiscal Year 2005 | \$ 25,000,000 |
| Fiscal Year 2006 | \$ 50,000,000 |
| Fiscal Year 2007 | \$ 60,000,000 |
| Fiscal Year 2008 | \$ 65,000,000 |
| Fiscal Year 2009 | \$ 52,500,000 |

Section 7.8. Limitation on Investments. Make any advance, loan, extension of credit (by way of guaranty or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting an ongoing business from, or make any other investment in, any other Person (all of the foregoing, "Investments"), except:

- (a) extensions of trade credit in the ordinary course of business (including, without limitation, advances to patrons of the Project's casino operation consistent with ordinary course gaming operations);
- (b) (i) prior to the Completion Date, Investments in Permitted Securities and (ii) on or after the Completion Date, Investments in Cash Equivalents;
- (c) to the extent constituting Investments, the incurrence of Indebtedness permitted by **Sections 7.2(b), 7.2(c)** and/or **7.2(d)**;
- (d) loans and advances to employees of the Loan Parties in the ordinary course of business (including, without limitation, for travel, entertainment and relocation expenses) in an aggregate amount for all Loan Parties not to exceed \$1,000,000 at any one time outstanding;
- (e) Investments (other than those relating to the incurrence of Indebtedness permitted by **Section 7.8(c)**) (i) by any Loan Party (other than the Desert Inn Improvements) in the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. except with respect to Investments, the proceeds of which are necessary for the corporate maintenance of Capital Corp.), (ii) by Valvino in Wynn Resorts Holdings or by Wynn Resorts Holdings in Valvino (so long as Wynn Resorts Holdings, on the one hand, or Valvino, on the other hand, is Solvent) and (iii) by any Group 1 Entity in any other Solvent Loan Party other than the Desert Inn Improvements or Capital Corp. or the Completion Guarantor;
- (f) Investments consisting of securities received in settlement of debt created in the ordinary course of business and owing to any Loan Party or in satisfaction of judgments;
- (g) nominal capital contributions in connection and in furtherance of the formation of new Subsidiaries in accordance with Section 7.17;
- (h) to the extent constituting Investments, (i) any Loan Party may consummate a transaction permitted pursuant to **Section 7.4**, (ii) any Loan Party may make Dispositions permitted pursuant to **Section 7.5**, (iii) any Loan Party may make Restricted Payments permitted pursuant to **Section 7.8** and (iv) any Loan Party may take actions expressly permitted pursuant to **Section 7.10**; and

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- (i) in addition to Investments otherwise expressly permitted by this **Section 7.8**, so long as no Default or Event of Default or Default shall have occurred and be continuing or would result therefrom and no Material Adverse Effect shall have occurred and be continuing or would result therefrom, Investments by the Loan Parties in an aggregate amount (valued at cost) not to exceed \$10,000,000 at any one time outstanding.

Section 7.9. Limitation on Optional Payments and Modifications of Governing Documents. (a) Make or offer to make any optional or voluntary payment, prepayment, repurchase or redemption of, or otherwise voluntarily or optionally defease, any Indebtedness, or segregate funds for any such payment, prepayment, repurchase, redemption or defeasance, or enter into any derivative or other transaction with any Derivatives Counterparty obligating any Loan Party to make payments to such Derivatives Counterparty as a result of any change in market value of such Indebtedness, other than the prepayment of Indebtedness incurred hereunder or the prepayment of the Other Indebtedness with the proceeds of the Permitted Refinancing Indebtedness; *provided*, that the Borrower may voluntarily prepay the Term Loans or the Revolving Credit Loans, with a corresponding permanent reduction of the Revolving Credit Commitment, so long as no Default or Event of Default shall have occurred and be continuing and the Loans under this Loan Agreement are prepaid on a *pro rata* basis (provided that for clarification (i) the prepayment of the Term Loans or Revolving Credit Loans pursuant to Sections 2.12 and 2.24 of the Wynn Credit Agreement shall not be deemed "voluntary" for purposes of this proviso); *provided, further*, that the foregoing limitations shall not restrict the ability of the Borrower to (a) make payments under any Revolving Credit Loans to the extent such payments are not accompanied by a permanent reduction in the Revolving Credit Commitment, (b) amend or permit the amendment of its Governing Documents in any manner adverse to the Lenders unless otherwise required in order to satisfy a condition or requirement set forth in the Disbursement Agreement or (c) amend, modify or otherwise change the provisions of Article VII (or the provisions corresponding to Article VII of the limited liability company agreement of Valvino) of its limited liability company agreement relating to conduct or any comparable provisions contained in its other charter documents (or, in each case, to the extent the relevant Loan Party is not a limited liability company, any comparable provisions contained in its Governing Documents), or fail to include provisions corresponding to those contained in Article VII of the limited liability company agreement of Valvino, as in effect on the Closing Date, in its limited liability company agreement or other applicable Governing Documents.

Section 7.10. Limitation on Transactions with Affiliates. Enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than such transactions solely between the Borrower and its Subsidiaries or solely between Subsidiaries of the Borrower) unless such transaction is:

- (a) on terms that are not less favorable to that Loan Party than those that might be obtained at the time in a comparable arm's length transaction or series of related transactions with Persons who are not Affiliates of such Loan Party and the Borrower has delivered to the Collateral Agent (1) with respect to any transaction or series of related transactions involving an amount in excess of \$1,000,000, a certificate signed by a Responsible Officer certifying that such transaction or series of related transactions complies with this **Section 7.10**, (2) with respect to any transaction involving an amount in excess of \$5,000,000, a resolution of the Board of Directors of the applicable Loan Party(ies) certifying that such transaction or series of related transactions complies with this **Section 7.10** and that such transaction has been approved by a majority of the Independent Directors of the applicable

Party at the time such transaction is entered into from a financial point of view issued by an independent financial advisor satisfactory to the Collateral Agent;

; *provided*, that, in no such case shall such a transaction consist of, contain, or provide for the payment of (i) Affiliated Overhead Expense or (ii) any fee, profit or similar component benefiting any Loan Party or Affiliate of a Loan Party, all payments under such transactions to represent only the payment or reimbursement of actual costs and expenses, except (x) transactions where the Borrower or a Subsidiary of the Borrower is the recipient of such payments or (y) transactions where a Loan Party is the recipient of such payments and such payments are being made by a Person other than a Loan Party; *provided, however*, that (x) the Borrower shall be permitted to lease space at the Project for the development and operation of a Ferrari and Maserati automobile dealership to an Affiliate of the Borrower pursuant to the Dealership Lease Agreement at below market rent and (y) the Borrower shall be permitted to sublease space at the Phase II Building to Affiliates of the Borrower at below market rents;

(b) a Disposition permitted pursuant to **Section 7.5** (*provided*, the requirements of **subsection (a)** above shall apply to leases of the Project by the Borrower permitted pursuant to **Section 7.5(f)** (other than the Dealership Lease and subleases of the Phase II Land Building) and Dispositions permitted pursuant to **Section 7.5(b)**), an Investment permitted pursuant to **Section 7.8** or a Restricted Payment permitted pursuant to **Section 7.6**;

(c) so long as no Default or Event of Default shall have occurred and be continuing and no Material Adverse Effect shall have occurred and be continuing (or, in either case, would result therefrom), expressly contemplated by the Tax Indemnification Agreement;

(d) on and after the Completion Date, the reimbursement by the Borrower and its Subsidiaries to the other Loan Parties and Wynn Resorts of Allocable Overhead to the extent incurred by the other Loan Parties and Wynn Resorts; *provided*, that the amount of Allocable Overhead reimbursable by the Borrower and its Subsidiaries pursuant to this **Section 7.10(d)** during any 12-month period shall not exceed, in the aggregate, the greater of (x) \$21,500,000 and (y) if the Consolidated Leverage Ratio of the Borrower for the period of four full consecutive fiscal quarters ending on the Quarterly Date immediately prior to the commencement of such 12 month period is 3.5 to 1.0 or less, 1.29% of Net Revenues of the Borrower and its consolidated Subsidiaries for such four full consecutive fiscal quarter period; or

(e) expressly contemplated by the Golf Course Lease, the Driving Range Lease, the Employee Parking Lot Lease, the Art Rental and Licensing Agreement, the Water Supply Agreement, the Management Agreement (but only to the extent payments thereunder do not constitute Management Fees (payments of such amounts being governed pursuant to **Section 7.22**)), the Building Lease, the WDD Agreement, the Tax Indemnification Agreement, the Shuttle Easement Agreement (as defined in the Wynn Credit Agreement), the DIIC Land Use Agreement (as defined in the Wynn Credit Agreement) or the Aircraft Operating Agreement; *provided, however*, any amendments, modifications or supplements thereto after the Document Closing Date shall comply with **Section 7.10(a)**; and

(f) on or prior to the Final Completion Date, the payment of Project Costs as permitted pursuant to the Disbursement Agreement.

Section 7.11. Limitation on Sales and Leasebacks. Enter into any arrangement with any Person providing for the leasing by any Loan Party of Property which has been or is to be sold or transferred by any Loan Party to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such Property or rental obligations of any Loan Party.

Section 7.12. Limitation on Changes in Fiscal Periods. Permit the fiscal year of any Loan Party to end on a day other than December 31 or change any Loan Party's method of determining fiscal quarters.

Section 7.13. Limitation on Negative Pledge Clauses. Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of a Loan Party to create, incur, assume or suffer to exist any Lien upon any of its Property or revenues, whether now owned or hereafter acquired, to secure the Obligations or, in the case of any Guarantor, its obligations under the FF&E Guaranty other than (i) this Loan Agreement and the other Financing Agreements, (ii) any agreements governing any purchase money Liens or Capital Lease Obligations otherwise permitted hereby (in which case, any prohibiting or limitation shall only be effective against the assets financed thereby and proceeds thereof); *provided*, that the principal amount of Indebtedness thereunder shall exceed 75% of the original purchase price of the assets financed thereby, and (iii) as required by applicable law or any applicable rule or order of any Nevada Gaming Authority.

Section 7.14. Limitation on Restrictions on Subsidiary Distributions, Etc. Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Loan Party to (i) make Restricted Payments in respect of any Capital Stock of such Loan Party held by, or pay or subordinate any Indebtedness owed to, any other Loan Party, (ii) make Investments in any other Loan Party or (iii) transfer any of its assets to any other Loan Party, except for such encumbrances or restrictions existing under or by reason of (A) any restrictions existing under the Loan Documents or the Wynn Credit Documents, (B) any restrictions under the Mortgage Notes Indenture, and (C) as required by applicable law or any applicable rule or order of any Nevada Gaming Authority.

Section 7.15. Limitation on Lines of Business. Subject to **Sections 7.24** and **7.25**, enter into any business or investment activities, whether directly or indirectly, other than Permitted Businesses; *provided, however*, that (a) Capital Corp. shall not hold any material Property, incur any Indebtedness or become liable for any obligations or engage in any business activities (other than as co-obligor with respect to the Other Indebtedness and Other Security Documents with respect to the Mortgage Notes Indenture), or have any Subsidiaries and (b) the Water Entities shall not hold any material Property other than the DIBC Water Permits and other Property reasonably related to the provision of water services to the Gold Course and the Additional Land or engage in any business activities other than the provision of water services to the Golf Course and surrounding properties.

Section 7.16. Restrictions on Changes.

(a) Agree to any amendment to, assignment or termination of, or waive any of its rights under, any Permit or Project Document or enter into any new Project Document or Permit (it being understood that any Material Contracts which are covered by **subsection (c)** of this **Section 7.16** shall also be subject to the restrictions set forth therein) without in each case obtaining the prior written consent of the Required Lenders if in any such case such amendment, assignment,

termination or waiver or new Project Document or Permit could reasonably be expected to have a Material Adverse Effect or otherwise adversely affect the Lenders in any material respect (taking into consideration any viable replacements or substitutions therefore at the time such determination is made).

(b) Amend or otherwise change the terms of any Financing Agreements (other than the Loan Documents) or permit the termination thereof (other than in accordance with the terms thereof), or enter into any new Financing Agreements or make any payment consistent with an amendment thereof or change thereto, (i) if the effect of such amendment, change or new Financing Agreement is to increase the interest rate or fees on the Indebtedness evidenced thereby, change (to earlier or more frequent dates) any dates upon which payments of principal or interest are due thereon (including, without limitation, changes to, or new additions of, mandatory prepayment provisions), change the redemption, prepayment or defeasance provisions thereof, or (ii) in the case of the Mortgage Notes Indenture, the Mortgage Notes, the Mortgage Notes Guarantee or any documents related thereto, if

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the effect of such amendment, change or new Financing Agreement, together with all other amendments and changes previously made or new Financing Agreements previously entered into, is to materially increase the obligations of the obligor thereunder or to confer any additional rights on the holders of the Indebtedness or obligations evidenced thereby (or a trustee or other representative on their behalf) which could be materially adverse to any Loan Party or the Lenders or change the subordination provisions thereof (or of any guaranty thereof); *provided*, that the Borrower may amend the terms of any other Financing Agreement to increase the principal amount thereof if such increase is otherwise expressly permitted by the Intercreditor Agreements and this Loan Agreement; *provided, further*, that any amendments or changes with respect to the Wynn Credit Agreement or any documents related thereto expressly permitted pursuant to Section 4.2 of the FF&E Intercreditor Agreement shall not be restricted pursuant to this **Section 7.16(b)**.

(c) Amend, waive or otherwise change, or permit any amendment or waiver of, the terms of either the Intercompany Note or the Aircraft Security Agreement or permit the termination thereof.

(d) Agree to any amendment to, assignment or termination of, or waive any of its rights under, any Material Contract (other than Material Contracts described in clause (ii) of the definition thereof) or enter into an Additional Material Contract (other than Material Contracts described in clause (ii) of the definitions thereof but including the Additional Contracts described in clauses (ii) and (iii) of the definition of "Water Show Entertainment and Production Agreement") without in each case obtaining the prior written consent of the Collateral Agent, which consent shall not be unreasonably withheld or delayed. Notwithstanding anything to the contrary contained in this **Section 7.16(d)**, this **Section 7.16(d)** shall not apply to Construction Contracts.

Section 7.17. Limitation on Formation and Acquisition of Subsidiaries and Purchase of Capital Stock. Except as otherwise permitted pursuant to **Section 7.4**, form, create or acquire any direct or indirect Subsidiary, except so long as no Default or Event of Default or Default shall have occurred and be continuing or would result therefrom, the Borrower and its Subsidiaries may form, create or acquire new Domestic Subsidiaries (so long as such new Domestic Subsidiary is Solvent); *provided*, that (a) no such new Subsidiary shall own or operate or possess any material license, franchise or right used in connection with the ownership or operation of the Project or any material Project assets, (b) any such new Subsidiary shall be a Wholly Owned Subsidiary of its requisite parent entity, and (c) any such new Subsidiary shall become a Loan Party hereunder and otherwise comply with the requirements of **Section 6.10**. Notwithstanding anything to the contrary contained in this Agreement, in no event shall any Loan Party own any Capital Stock other than that of its Wholly Owned Subsidiaries.

Section 7.18. Limitation on Hedge Agreements. Enter into any Hedge Agreement other than Hedge Agreements entered into in the ordinary course of business, and not for speculative purposes, and to protect against changes in interest rates or foreign exchange rates.

Section 7.19. Limitation on Sale or Discount of Receivables. Except as permitted pursuant to **Section 7.5(b)**, directly or indirectly, sell with recourse, or discount or otherwise sell for less than the face value thereof, any of its notes or accounts receivable other than an assignment for purposes of collection in the ordinary course of business.

Section 7.20. Limitation on Zoning and Contract Changes and Compliance. Initiate, consent to or acquiesce to (a) any zoning downgrade of the Mortgaged Properties or seek any material variance under any existing zoning ordinance except, in each case, to the extent such downgrade or variance could not reasonably be expected to materially and adversely affect the occupancy, use or operation of the Golf Course Land, the Phase II Land or the Casino Land, (b) use or permit the use of the Mortgaged Properties in any manner that could result in such use becoming a non-conforming use (other than a non-conforming use otherwise in compliance with applicable land use laws, rules and regulations by virtue of a variance or otherwise) under any zoning ordinance or any other applicable land use law, rule or regulation or (c) any change in any laws, requirements of Governmental

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Authorities or obligations created by private contracts which now or hereafter could reasonably be likely to materially and adversely affect the occupancy, use or operation of the Golf Course Land, the Phase II Land or the Casino Land or Collateral.

Section 7.21. No Joint Assessment; Separate Lots. Suffer, permit or initiate the joint assessment of any Mortgaged Property with any other real property constituting a separate tax lot.

Section 7.22. Restrictions on Payments of Management Fees. Pay to Wynn Resorts any Management Fees unless:

(a) no Default or Event of Default shall have occurred and be continuing or would result from such payment and no Material Adverse Effect shall have occurred and be continuing or would result from such payment;

(b) the Consolidated Leverage Ratio of the Borrower and its consolidated Subsidiaries for the most recently ended four full consecutive fiscal quarter period of the Borrower immediately preceding the date on which such Management Fee is proposed to be paid is no greater than 3.5 to 1.0 calculated on a pro forma basis, giving effect to the payment of the Management Fees proposed to be paid and any Indebtedness proposed to be incurred to finance the payment of such Management Fees as if the same was paid and/or incurred during such prior period; and

(c) such Management Fees in the aggregate do not exceed, during any 12-month, period 1.5% of the Net Revenues of the Borrower and its consolidated Subsidiaries for the period of four full consecutive fiscal quarters of the Borrower most recently ended prior to the commencement of such

Any Management Fees not permitted to be paid during a particular 12-month period, pursuant to this **Section 7.22** shall be deferred and shall accrue. Such accrued and unpaid Management Fees may be paid in any subsequent 12-month period to the extent such payment would be permitted under **subsections (a), (b) and (c)** of this **Section 7.22** and the Management Fees Subordination Agreement.

Section 7.23. Additional Material Contracts. Enter into or become a party to any Additional Material Contract except upon delivery to the Administrative Agent of each Delivery Requirement with respect to such Additional Material Contract; *provided, however*, that the requirements of this **Section 7.23** shall not apply to Construction Contracts or the Material Contracts described in clauses (ii) and (iii) of the definition "Water Show Entertainment and Production Agreement".

Section 7.24. Lease Terminations. Terminate or permit the termination of, or reduce or permit the reduction of the Real Estate or other Property covered by, (i) the Driving Range Lease, the Building Lease or the Parking Lot Lease, in each case until such time as (A) the Phase II Land is Disposed of in accordance with **Section 7.5(m)** and (B) with respect to the Parking Lot Lease, the Borrower has entered into such agreements or otherwise obtained such Property which in the reasonable opinion of the Majority Arrangers provides a satisfactory alternative to the Parking Lot Lease with respect to the provision of parking services for the Borrower's employees or (ii) the Golf Course Lease until such time as the Golf Course Land is Disposed of in accordance with **Section 7.5(k)** (*provided*, that the Real Estate or other Property subject to the Golf Course Lease may be reduced in connection with the Disposition of the Wynn Home Site Land pursuant to **Section 7.5(j)** or the Disposition of the Home Site Land in accordance with **Section 7.5(l)**, in either case so long as such reduction is only with respect to such Real Estate or other Property being Disposed of pursuant to such Disposition).

SECTION 8. RISK OF LOSS; INSURANCE.

Section 8.1. Casualty. Upon the occurrence of (i) a Casualty or a series of Casualties with respect to an Item or Items of Equipment with a Purchase Price aggregating in excess of \$1,000,000 or (ii) a Casualty with respect to the Airframe or an Engine, the Borrower shall give Lenders and

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Collateral Agent prompt notice thereof (a "*Casualty Notice*"). The Casualty Notice shall specify whether the Borrower will:

(a) pay to Lenders (i) the Casualty Amount of the Item or Items of Equipment, Airframe or Engine suffering such Casualty or series of Casualties, together with (ii) all Interest then due and owing, (iii) any amounts then due and owing and (iv) if such amount is paid on a date which is not a Payment Date an amount equal to the sum of the Applicable Administrative Charge with respect to such Casualty Amount (the "*Casualty Settlement Date*"); or

(b) replace, or cause to be replaced, the Item or Items of Equipment, Airframe or Engine with respect to which the Casualty or series of Casualties has occurred pursuant to the following provisions of this **Section 8.1**, *provided* that upon the occurrence and during the continuance of a Default or an Event of Default or in the event such Casualty is pursuant to the last sentence of the definition thereof, the Borrower shall be obligated, at the option of the Required Lenders, to make the payments referred to in **clause (a)** above and shall not be entitled to exercise any right or election of replacement pursuant to this **clause (b)**.

If the Borrower has elected, or is required, to pay the Casualty Amount pursuant to **clause (a)** above, the Borrower shall continue to make all payments of Interest and Required Prepayments due under this Loan Agreement until and including the Casualty Settlement Date. Upon payment of the Casualty Amount in respect of any Item of Equipment, Airframe or Engine suffering Casualty on such Casualty Settlement Date together with all Interest then due and owing, the remaining scheduled Required Prepayments and Interest under this Loan Agreement shall be reduced such that the remaining Required Prepayments, when aggregated with all other Required Prepayments, shall fully amortize the outstanding Loan Balance by the Majority Date.

Equipment Replacements—If the Borrower has given notice that it intends to replace the Item or Items of Equipment suffering such Casualty or series of Casualties, and such replacement is permitted under the foregoing **clause (b)**, the Borrower may make subject to this Loan Agreement, not later than the Casualty Settlement Date with respect to such Item or Items of Equipment, a replacement for such Item or Items of Equipment meeting the suitability standards hereinafter set forth (a "*Replacement Item*"). To be suitable as a Replacement Item of Equipment, an item (or items) must (i) be of the same general type, (ii) have the same or better remaining economic useful life, state of repair and operating condition (immediately preceding the Casualty or series of Casualties assuming that such Item or Items of Equipment had been maintained in accordance with the terms of Section 4 of the Borrower Security Agreement) as the Item or Items of Equipment, taken as a whole, suffering the Casualty or series of Casualties, (iii) have a Fair Market Value of not less than the Fair Market Value (immediately preceding the Casualty or series of Casualties assuming that such Item or Items of Equipment had been maintained in accordance with the terms of Section 4 of the Borrower Security Agreement) of the Item or Items of Equipment, taken as a whole, suffering the Casualty or series of Casualties and (iv) be free and clear of any Liens other than Permitted Liens. In the event any Replacement Item of Equipment is of an earlier year of construction than the replaced Item or Items of Equipment, the Borrower shall deliver an appraisal in form and substance satisfactory to the Required Lenders from an appraiser selected by the Required Lenders confirming that such Replacement Item or Items of Equipment meet the standards set forth in **clause (ii)** and **(iii)** of the immediately preceding sentence. The Borrower shall cause a Borrower Security Agreement Supplement to be executed and delivered to Collateral Agent and Lenders in order to subject such replacement item or items to the Borrower Security Agreement, and upon such execution and delivery and the receipt by Collateral Agent and the Lenders of (i) evidence reasonably satisfactory to them of the Borrower's compliance with the insurance provisions of **Section 8.2** with respect to such replacement item or items, and (ii) an opinion of counsel to the Borrower opining as to the authorization, execution and delivery of a Borrower Security Agreement Supplement, the enforceability of the Borrower Security Agreement Supplement and the filing and recording of the Borrower Security Agreement Supplement and UCC financing

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statements with respect thereto and, in each case, consistent with the opinions delivered on any Advance Date covering such matters, such replacement item or items shall be deemed an "*Item of Equipment*" or "*Items of Equipment*" for all purposes hereof.

Airframe Replacements—If the Borrower has given notice that it intends to replace, or permit to be replaced, an Airframe suffering a Casualty, and such replacement is permitted under the foregoing **clause (b)**, the Borrower may make, or permit, subject to this Loan Agreement, not later than the Casualty Settlement Date with respect to such Airframe, a replacement for such Airframe meeting the suitability standards hereinafter set forth (a "*Replacement*

Airframe). To be suitable as a Replacement Airframe, an airframe must (i) be a passenger aircraft, (ii) have the same or better remaining economic useful life, state of repair and operating condition (immediately preceding the Casualty assuming that such Airframe had been maintained in accordance with the terms of Section 4 of the Aircraft Security Agreement) as the Airframe suffering the Casualty, (iii) have a Fair Market Value of not less than the Fair Market Value (immediately preceding the Casualty assuming that such Airframe had been maintained in accordance with the terms of Section 4 of the Aircraft Security Agreement) of the Airframe suffering the Casualty and (iv) be free and clear of any Liens other than Permitted Liens. The Borrower shall deliver an appraisal in form and substance satisfactory to the Required Lenders from an appraiser selected by the Required Lenders confirming that such Replacement Airframe meets the standards set forth in **clause (ii)** and **(iii)** of the immediately preceding sentence. The Borrower shall cause World Travel to cause an Aircraft Security Agreement Supplement to be executed and delivered to the Borrower in order to subject such Replacement Airframe to the Aircraft Security Agreement, and upon such execution and delivery and the receipt by Lenders of:

(i) evidence reasonably satisfactory to Lenders of the Borrower's or World Travel's, as the case may be, compliance with the insurance provisions of **Section 8.2** with respect to such Replacement Airframe;

(ii) an opinion of counsel of World Travel opining as to the authorization, execution and delivery of the Aircraft Security Agreement Supplement, the enforceability of the Aircraft Security Agreement Supplement and the filing and recording of the Aircraft Security Agreement Supplement and UCC financing statements with respect thereto and, in each case, consistent with the opinions delivered on any Advance Date covering such matters;

(iii) such documents and evidence with respect to the Borrower, the Aircraft Trustee and, as applicable, and World Travel as Lenders or their counsel may reasonably request in order to establish the consummation of the transactions contemplated hereby, the taking of all corporate proceedings in connection with and compliance with the conditions set forth herein, in each case in form and substance reasonably satisfactory to such party, including evidence that the Replacement Airframe has been duly certificated by the FAA as to type and airworthiness in accordance with the terms of the Aircraft Security Agreement and application for registration of the Replacement Airframe in the name of the Aircraft Trustee has been duly made with the FAA and World Travel has temporary or permanent authority to operate the Replacement Airframe; and

(iv) an appraisal from an independent appraiser setting forth the Fair Market Value and remaining useful life with respect to such Replacement Airframe, which amount shall be at least equal to the Fair Market Value and remaining useful life of the Airframe being replaced;

such Replacement Airframe shall be deemed an "*Airframe*" for all purposes hereof.

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Engine Replacements—If the Borrower has given notice that it intends to replace, or permit to be replaced, an Engine suffering a Casualty, and such replacement is permitted under the foregoing **clause (b)**, the Borrower may make subject to this Loan Agreement, not later than the Casualty Settlement Date with respect to such Engine, a replacement for such Engine meeting the suitability standards hereinafter set forth (a "*Replacement Engine*"). To be suitable as a Replacement Engine, an engine must be (i) the same general type and of the same Manufacturer, (ii) have the same or better remaining economic useful life, state of repair and operating condition (immediately preceding the Casualty assuming that such Engine had been maintained in accordance with the terms of Section 4 of the Aircraft Security Agreement) as the Engine suffering the Casualty, (iii) have a Fair Market Value of not less than the Fair Market Value (immediately preceding the Casualty assuming that such Engine had been maintained in accordance with the terms of Section 4 of the Aircraft Security Agreement) of the Engine suffering the Casualty and (iv) be free and clear of any Liens other than Permitted Liens. In the event any Replacement Engine is of an earlier year of construction than the replaced Engine, the Borrower shall deliver an appraisal in form and substance satisfactory to the Required Lenders from an appraiser selected by the Required Lenders confirming that such Replacement Engine meets the standards set forth in **clause (ii)** and **(iii)** of the immediately preceding sentence. The Borrower shall cause World Travel to cause an Aircraft Security Agreement Supplement to be executed and delivered to the Borrower in order to subject such Replacement Engine to the Aircraft Security Agreement, and the Borrower shall cause a Borrower Security Agreement Supplement to be executed and delivered to the Collateral agent on behalf of the Lenders in order to subject the Borrower's interest in such Replacement Engine to the Borrower Security Agreement, and upon such execution and delivery and the receipt by Lenders of (i) evidence reasonably satisfactory to them of the Borrower's compliance with the insurance provisions of **Section 8.2** with respect to such Replacement Engine, and (ii) an opinion of counsel to the Borrower and World Travel opining as to the authorization, execution and delivery of the Borrower Security Agreement Supplement and the Aircraft Security Agreement Supplement, the enforceability of the Borrower Security Agreement Supplement and the Aircraft Security Agreement Supplement and the filing and recording of the Borrower Security Agreement Supplement and the Aircraft Security Agreement Supplement and UCC financing statements with respect thereto and, in each case, consistent with the opinions delivered on any Advance Date covering such matters, such Replacement Engine shall be deemed an "*Engine*" for all purposes hereof.

If (i) Lenders have received the amount payable with respect to the Casualty or series of Casualties and all other amounts due hereunder, or (ii) the Item or Items of Equipment, Airframe or Engine have been substituted in accordance herewith, and, in each case, no Default or Event of Default exists, the Borrower shall be entitled to receive from the Collateral Agent the proceeds of any recovery in respect of the Item or Items of Equipment, Airframe or Engine from insurance or otherwise, to the extent recovered by Collateral Agent ("*Casualty Recoveries*"), and Collateral Agent, subject to the rights of any insurer insuring the Items of Equipment, Airframe or Engine as provided herein, shall execute and deliver to the Borrower, or to its assignee or nominee, a release for the Item or Items of Equipment, Airframe or Engine, and such other documents as may be required to release the Item or Items of Equipment, Airframe or Engine from the terms of the Borrower Security Agreement, in such form as may reasonably be requested by the Borrower. All fees, costs and expenses relating to a substitution as described herein shall be borne by the Borrower. Except as otherwise provided in this **Section 8.1**, the Borrower shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty to any Item of Equipment, Airframe or Engine prior to or during the term of this Loan Agreement and thereafter until all of the Borrower's obligations hereunder are fully performed.

Any payments (including, without limitation, insurance proceeds) received at any time by Collateral Agent, Lenders or the Borrower from any Authority or other party with respect to any loss or damage to any Item or Items of Equipment, Airframe or Engine not constituting a Casualty (i) up to

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\$1,000,000 with respect to Equipment and \$500,000 with respect to the Airframe or an Engine, shall be paid to the Borrower, so long as no Default or Event of Default shall have occurred and be continuing, for application to repair or replacement of property in accordance with **Section 8.1** and Section 4.3 of the Borrower Security Agreement or Section 4.3 of the Aircraft Security Agreement, as the case may be, or (ii) in excess of \$1,000,000 with respect to Equipment and \$500,000 with respect to the Airframe or an Engine, shall be held by Collateral Agent and applied directly in payment of repairs or for replacement of property in accordance with the provisions of **Section 6.1** and Section 4.3 of the Borrower Security Agreement or Section 4.3 of the Aircraft Security Agreement,

as the case may be, if not already paid by the Borrower, or if already paid by the Borrower and no Default or Event of Default shall have occurred and be continuing, shall be applied to reimburse the Borrower for such payment, and any balance remaining after compliance with said Sections with respect to such loss or damage shall be retained by or disbursed to (as applicable) the Borrower.

THE BORROWER HEREBY ASSUMES ALL RISK OF LOSS, DAMAGE, THEFT, TAKING, DESTRUCTION, CONFISCATION, REQUISITION, COMMANDEERING, TAKING BY EMINENT DOMAIN OR CONDEMNATION, PARTIAL OR COMPLETE, OF OR TO EACH ITEM OF EQUIPMENT, AIRFRAME AND ENGINE, HOWEVER CAUSED OR OCCASIONED, SUCH RISK TO BE BORNE BY THE BORROWER WITH RESPECT TO EACH ITEM OF EQUIPMENT, AIRFRAME AND ENGINE. THE BORROWER AGREES THAT NO OCCURRENCE SPECIFIED IN THE PRECEDING SENTENCE SHALL IMPAIR, IN WHOLE OR IN PART, ANY OBLIGATION OF THE BORROWER UNDER THIS LOAN AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE OBLIGATION TO PAY INTEREST.

Section 8.2. Insurance Coverages. In addition to the requirements set forth in Exhibit O to the Disbursement Agreement, the Borrower shall at all times, at its expense, cause to be carried and maintained with financially sound and reputable insurers, insurance against loss or damage to the Items of Equipment, Airframe and Engine, of the kinds and in the amounts customarily maintained by similar corporations engaged in similar operations in similar jurisdictions and carry such other insurance as is usually carried by such corporations, *provided* that in any event the Borrower will maintain

(I) with respect to Equipment:

(a) Casualty Insurance—insurance against risks of physical loss or damage with respect to the Items of Equipment with deductibles and in such minimum amounts as are consistent with industry standards; *provided, however*, that at no time shall the amount of coverage, on a replacement cost basis, be less than the outstanding Loan Balance as shall be applicable to the Items of Equipment;

(b) Comprehensive General Liability Insurance—combined single limit comprehensive general liability insurance against claims for bodily injury, death or property damage in amounts at least equal to \$50,000,000 per occurrence, with such deductibles as are carried by similarly situated companies operating similar facilities and equipment; and

(c) Other Insurance—such other insurance, including comprehensive and worker's compensation insurance, in each case, generally carried by owners of equipment similar to the Items of Equipment and properties in each jurisdiction where the Items of Equipment are located, in such amounts and against such risks as are then customary for equipment and property similar in use;

(II) with respect to Aircraft—The Borrower shall secure and maintain in effect, at its own expense and at all times, insurance against such hazards and for such risks with respect to the Aircraft as the Collateral Agent and the Required Lenders holding 50% or more of the aggregate Credit Exposure of the Lenders whose Loans were used to refinance the Aircraft, may require. Without limiting the generality of the foregoing, the Borrower shall secure and maintain:

(i) Casualty Insurance—all-risk aircraft hull and engine insurance (including, without limitation, with respect to engine or part thereof while removed from the Aircraft and foreign

object damage insurance) in an amount which is not less than the principal amount of the Obligations evidenced by the Loan Documents;

(ii) Confiscation, Expropriation, War Risk and Allied Perils—confiscation, expropriation and war risk and allied perils (including, without limitation, terrorism) insurance and hijacking insurance in an amount which is, for physical damage, not less than the principal amount of the Obligations evidenced by the Loan Documents for any single occurrence, and

(iii) Comprehensive General Liability Insurance—combined single limit comprehensive general liability insurance against claims for bodily injury, death or property damage (including, without limitation, contracted liability, cargo liability, passenger legal liability and property damage coverage but excluding manufacturer's product liability coverage), to the extent exposure exists, in an amount not less than \$50,000,000 per occurrence with deductibles as approved by the Collateral Agent and the Required Lenders holding 50% or more of the aggregate Credit Exposure of the Lenders whose Loans were used to refinance the Aircraft, for all owned, non-owned and hired aircraft, fixed wing or rotary, used in connection with the operation of the Project.

Such insurance shall be written by reputable insurance companies that are financially sound and solvent, rated in Best's Insurance Guide or any successor thereto (or if there be none, an organization having a similar national reputation) with a general policyholder rating of "A-" and a size rating of at least "VIII" or otherwise acceptable to the Lenders. All such insurance shall name Collateral Agent and Lenders as additional insureds or as loss-payees, as their respective interests may appear pursuant to the terms and conditions of this Loan Agreement. Each policy referred to in this **Section 8.2** shall provide that (i) it will not be cancelled or its limits reduced, or allowed to lapse without renewal, except after not less than 30 days written notice to Lenders, (ii) the interests of Collateral Agent and Lenders shall not be invalidated by any act or negligence of, or breach of representation or warranty by, the Borrower or any Person having an interest in any Item of Equipment, Airframe or Engine (other than the Borrower's failure to pay premiums), (iii) such insurance is primary with respect to any other insurance carried by or available to Collateral Agent and/or Lenders, (iv) the insurer shall waive any right of subrogation, setoff, counterclaim, or other deduction, whether by attachment or otherwise, against Collateral Agent or Lenders; (v) the insurer shall waive any right to claim any premiums or commission against Collateral Agent or Lenders; and (vi) such policy shall contain a severability of interests clause providing for coverage of Collateral Agent and Lenders as if separate policies had been issued to each of them except with respect to the limit of such insurance which shall in no event increase as a result of such additional language. The Borrower will notify Collateral Agent and Lenders promptly of any policy cancellation, reduction in policy limits, modification or amendment.

Nothing in this **Section 8.2** shall prohibit Lenders or Collateral Agent from obtaining insurance for its own account and at its own expense and any proceeds payable thereunder shall be payable as provided in the insurance policy relating thereto, *provided* that no such insurance may be obtained which would limit or otherwise adversely affect the coverage or payment of any insurance required to be obtained or maintained by the Borrower pursuant to this **Section 8.2**.

All such policies with respect to the Aircraft shall be under such forms and upon such terms, for such periods and with such companies or underwriters as the Collateral Agent and the Required Lenders holding 50% or more of the aggregate Credit Exposure of the Lenders whose Loans were used to refinance the Aircraft, may approve, losses or refunds in all cases to be first payable to the Collateral Agent or its assigns, as its interest may appear. Notwithstanding any provision of any of the Loan Documents to the contrary, failure to obtain the Collateral Agent's and the approval of Required Lenders holding 50% or more of the aggregate Credit Exposure of the Lenders whose Loans were used to refinance the Aircraft for any insurer or policy shall not excuse the Borrower from its obligation to maintain insurance coverage required hereunder. The Borrower shall pay any deductible

portion of such insurance and any expense incurred in collecting insurance proceeds. The Borrower hereby assigns to the Collateral Agent the proceeds of all such insurance (including any refund of premium) to the extent of the Obligations secured hereby, directs the insurer to pay any losses or refunds due to the Borrower directly to the Collateral Agent, and appoints the Collateral Agent as attorney-in-fact to make proof of loss and claim for all insurance and refunds thereupon and to endorse all documents, contracts drafts, checks or forms of payment of insurance or premiums. The Collateral Agent shall apply insurance proceeds in accordance with **Section 8.1** of this Loan Agreement. The terms of Section IV.4 and Section IV.9 of Exhibit O to the Disbursement Agreement shall not apply to any of the insurance policies required with respect to the Aircraft.

Section 8.3. Insurance Certificates. Prior to each Advance Date, and thereafter not less than 12 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to **Section 8.2**, the Borrower shall deliver to Collateral Agent and the Lenders certificates and copies of policies issued by the insurer(s) or insurance broker(s) for the insurance maintained pursuant to **Section 8.2**; *provided, however*, that if the delivery of any certificate is delayed, the Borrower shall not be deemed to be in violation of the obligation to deliver such certificate if, within such 12 day period, the Borrower delivers an executed binder with respect thereto and thereafter delivers the certificate upon receipt thereof.

SECTION 9. EVENTS OF DEFAULT AND REMEDIES.

Section 9.1. Events of Default. If any of the following events shall occur and be continuing:

(a) (i) The Borrower shall fail to pay any principal of any Loan when due in accordance with the terms hereof; or (ii) the Borrower shall fail to pay any interest on any Loan or Wynn Resorts or any Loan Party shall fail to pay any other amount payable under this **clause (ii)** within five days after any such interest or other amount becomes due in accordance with the terms hereof; *provided*, that the failure to pay any amount due under the Disbursement Agreement (and not otherwise due hereunder) shall constitute an Event of Default hereunder only to the extent such failure to pay constitutes a Disbursement Agreement Event of Default; or

(b) Any representation or warranty made or deemed made by Wynn Resorts, or any Loan Party herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with this Loan Agreement or any such other Loan Document shall prove to have been inaccurate in any material respect on or as of the date made or deemed made; *provided*, that the inaccuracy of any representation or warranty contained only in the Disbursement Agreement shall constitute an Event of Default hereunder only to the extent such inaccuracy constitutes a Disbursement Agreement Event of Default; or

(c) (i) Any Loan Party shall default in the observance or performance of any agreement contained in Section 2 or Section 4 of the FF&E Guaranty (*provided*, that with respect to those covenants incorporated by reference from this Loan Agreement into the FF&E Guaranty and made the direct obligations of the Loan Parties pursuant to Section 4.1 of the FF&E Guaranty, no Event of Default shall occur from a Loan Party's default in the observance or performance of such covenants until expiration of the notice and cure periods, if any, set forth under this **Section 9** that are applicable to the corresponding covenants in this Loan Agreement), (ii) Wynn Resorts shall default in the observance or performance of any agreement contained in the Wynn Resorts FF&E Guaranty, (iii) the Borrower shall default in the observance or performance of any provision, covenant or agreement contained in Section 4 of the Borrower Security Agreement, (iv) the Aircraft Trustee shall default in the observance or performance of any provision, covenant or agreement contained in Section 4 or Section 7 of the Aircraft Security Agreement, (v) a Disbursement Agreement Event of Default shall have occurred and be continuing, (vi) the Borrower shall fail to at all times maintain in full force and effect the insurance policies and

programs listed in **Section 8.2** (other than **Section 8.2(I)(c)**) hereof or (vii) any Loan Party shall fail to at all times maintain in full force and effect the insurance policies and programs described in **Section 8.2(I)(c)** where such default shall not have been remedied within thirty (30) days after the earlier of (x) the applicable Loan Party becoming aware of such failure or (y) notice of such failure from the Collateral Agent or any Lender to such Loan Party; or

(d) Wynn Resorts or any Loan Party or the Aircraft Trustee shall default in the observance or performance of any other covenant or agreement contained in this Loan Agreement or any other Loan Document to which it is a party (other than as provided in **subsections (a)** through **(c)** of this Section but subject to the proviso set forth in **Section 9.1(c)**), and such default shall continue unremedied for a period of 30 days after the earlier of (i) the Borrower or any other Loan Party becoming aware of such default or (ii) receipt by the Borrower or any other Loan Party of notice from the Collateral Agent or any Lender of such default; *provided*, that the failure to perform or comply with any such provision of the Disbursement Agreement shall constitute an Event of Default hereunder only to the extent such failure to perform or to comply constitutes a Disbursement Agreement Event of Default; or

(e) The Borrower or any other Loan Party shall (i) default in making any payment of any principal of any Indebtedness (including, without limitation, any Guarantee Obligation, but excluding the Loans) on the scheduled or original due date with respect thereto; or (ii) default in making any payment of any interest on any such Indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; or (iii) default in the observance or performance of any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or beneficiary of such Indebtedness (or a trustee or agent on behalf of such holder or beneficiary) to cause immediately such Indebtedness to become due prior to its stated maturity or (in the case of any such Indebtedness constituting a Guarantee Obligation) to become payable; *provided*, that a default, event or condition described in **subsection (i)**, **(ii)** or **(iii)** of this **subsection (e)** shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in **subsections (i)**, **(ii)** and **(iii)** of this **subsection (e)** shall have occurred and be continuing with respect to Indebtedness the outstanding principal amount of which exceeds in the aggregate \$5,000,000; or

(f) (i) Wynn Resorts, the Borrower or any other Loan Party shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation,

dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or Wynn Resorts, the Borrower or any other Loan Party shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Wynn Resorts, the Borrower or any other Loan Party any case, proceeding or other action of a nature referred to in **subsection (i)** above that (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of 60 days; or (iii) there shall be commenced against Wynn Resorts, the Borrower or any other Loan Party any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof; or (iv) Wynn Resorts, the Borrower or any other Loan Party shall

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take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in **subsection (i), (ii), or (iii)** above; or (v) Wynn Resorts, the Borrower or any other Loan Party shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(g) (i) Any Person shall engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan, (ii) any "accumulated funding deficiency" (as defined in Section 302 of ERISA), whether or not waived, shall exist with respect to any Plan or any Lien in favor of the PBGC or a Plan shall arise on the assets of any Loan Party or any Commonly Controlled Entity, (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of the Required Lenders, likely to result in the termination of such Plan for purposes of Title IV of ERISA, (iv) any Single Employer Plan shall terminate for purposes of Title IV of ERISA other than in a standard termination under Section 4041(b) of ERISA, (v) Valvino or any Loan Party or any Commonly Controlled Entity shall, or in the reasonable opinion of the Required Lenders is likely to, incur any liability in connection with a withdrawal from, or the Insolvency or Reorganization of, a Multiemployer Plan or (vi) any Loan Party, or any of their Subsidiaries or any Commonly Controlled Entity shall be required to make during any Fiscal Year payments pursuant to any employee welfare benefit plan (as defined in Section 3(1) of ERISA) that provides benefits to retired employees (or their dependents), other than as required by Sections 601 *et. seq.* of ERISA, Section 4980B of the Code, or the corresponding provisions of applicable state law; and in each case in **subsections (i) through (vi)** above, such event or condition, together with all other such events or conditions, if any, could reasonably be expected to have a Material Adverse Effect; or

(h) One or more judgments or decrees shall be entered against any Loan Party involving for the Loan Parties taken as a whole a liability (not paid or fully covered by insurance as to which the relevant insurance company has acknowledged coverage) of \$5,000,000 or more, and all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within 45 days from the entry thereof; or

(i) Any of the Security Documents, the guarantee contained in Section 2 of the FF&E Guaranty or the Wynn Resorts FF&E Guaranty, shall cease, for any reason (other than pursuant to the terms thereof), to be in full force and effect, or any Loan Party or any Affiliate of any Loan Party shall so assert or shall assert that any provision of any Loan Document is not in full force and effect, or any Lien created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby; or

(j) Any of the Loan Documents or Project Documents shall terminate or be terminated or canceled, become invalid or illegal or otherwise cease to be in full force and effect prior to its stated expiration date or Wynn Resorts, the Borrower, any other Loan Party, any Affiliate of the Borrower or any other Person shall breach or default under any term, condition, provision, covenant, representation or warranty contained in any Project Document (after the giving of any applicable notice and the expiration of any applicable grace period); *provided*, that the occurrence of any of the foregoing events with respect to any Project Document (other than any Material Affiliated Contract) shall constitute an Event of Default hereunder only if the same could reasonably be expected to result in a Material Adverse Effect and the same shall continue unremedied for thirty (30) days after the earlier of (i) the Borrower or any other Loan Party becoming aware of, or receiving notice of, such occurrence or (ii) receipt by the Borrower or any other Loan Party of notice from the Collateral Agent or any Lender of such occurrence; *provided, however*, that in the case of any such Project Document, if the occurrence is the result of actions or inactions by a party other than a Loan Party, then no Event of Default shall be deemed to have

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occurred as a result thereof if the Borrower provides written notice to the Collateral Agent immediately upon (but in no event more than two (2) Business Days after) the Borrower or any Loan Party becoming aware of such occurrence that the relevant Loan Party intends to replace such Project Document and (x) such Loan Party obtains a replacement obligor or obligors for the affected party, (y) such Loan Party enters into a replacement Project Document on terms no less beneficial to such Loan Party and the Secured Parties in any material respect than the Project Document being replaced within sixty (60) days of such occurrence; *provided, however*, that the replacement Project Document may require the applicable Loan Party to pay amounts under the replacement Project Document in excess of those that would have been payable under the replaced Project Document and (z) such occurrence, after considering any replacement obligor and replacement Project Document and the time required to implement such replacement, has not had and could not reasonably be expected to have a Material Adverse Effect; *provided, further*, that a breach, default or termination under any "Construction Contract" prior to the Completion Date shall constitute an Event of Default hereunder only to the extent such breach, default or termination constitutes a Disbursement Agreement Event of Default; or

(k) An "event of default" under and as defined in any of the Financing Agreements (other than the Loan Documents) (in any event, after the expiration of any applicable cure periods); or

(l) (i) A Change of Control shall occur; or (ii) a Specified Change of Control shall occur; or

(m) The Liens on the Property of the Borrower permitted pursuant to **Section 7.3(k) and (l)**, shall cease, for any reason, to be validly subordinated and junior in right to the Liens of the Collateral Agent on the Equipment under the Loan Documents; or

(n) Any Subordinated Debt or the Management Fees payable under the Management Agreement shall cease, for any reason, to be validly subordinated to the Obligations of the Loan Parties as provided in the Management Agreement, the Management Fee Subordination Agreement and the documentation, instruments or other agreements related to the Subordinated Debt, as the case may be; or

(o) A License Revocation that continues for three consecutive calendar days affecting gaming operations accounting for five percent or more of the consolidated gross revenues (calculated in accordance with GAAP) of the Borrower related to gaming operations; or

(p) The Borrower or any other Loan Party shall fail to observe, satisfy or perform, or there shall be a violation or breach of, any of the terms, provisions, agreements, covenants or conditions attaching to or under the issuance to such Person of any Permit or any such Permit or any provision thereof shall be suspended, revoked, cancelled, terminated or materially and adversely modified or fail to be in full force and effect or any Governmental Authority shall challenge or seek to revoke any such Permit if such failure to perform, violation, breach, suspension, revocation, cancellation, termination or modification could reasonably be expected to have a Material Adverse Effect; or

(q) The Completion Date shall not have occurred by the Scheduled Completion Date; or

(r) World Travel shall fail to pay any principal or interest on the Intercompany Note in accordance with the terms thereof or any default shall occur thereunder; or

(s) The occurrence of an "Event of Default" under the Wynn Credit Agreement; or

(t) The Aircraft Trustee shall fail to maintain the registration of the Aircraft as required by Section 4.1 of the Aircraft Security Agreement;

then, and in any such event, (A) if such event is an Event of Default specified in **subsection (i) or (ii) of subsection (f)** above with respect to Wynn Resorts or any Loan Party, automatically the

Commitments shall immediately terminate and the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Loan Agreement and the other Loan Documents shall immediately become due and payable, and (B) if such event is any other Event of Default, either or both of the following actions may be taken: (i) with the consent of the Required Lenders, the Collateral Agent may, or upon the request of the Required Lenders, the Collateral Agent shall, by notice to the Borrower, declare the Commitments to be terminated forthwith, whereupon the Commitments shall immediately terminate; and (ii) with the consent of the Required Lenders, the Collateral Agent may, or upon the request of the Required Lenders, the Collateral Agent shall, by notice to the Borrower, declare the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Loan Agreement and the other Loan Documents to be due and payable forthwith, whereupon the same shall immediately become due and payable. Upon the occurrence and during the continuation of an Event of Default, the Collateral Agent and the Lenders shall be entitled to exercise any and all remedies available under the FF&E Guaranty and the Security Documents (subject to applicable Nevada Gaming Laws and securing any required Nevada Gaming Approvals), including, without limitation, the Borrower Security Agreement, or otherwise available under applicable law, in equity, or otherwise, including, without limitation, the right to enter into possession of the Collateral and perform any and all work and labor necessary to complete the Project or to operate and maintain the Collateral, and all sums expended by the Collateral Agent or any other Secured Party in so doing, together with interest on such total amount at the highest default rate provided hereunder, shall be Obligations hereunder, shall be repaid by the Borrower to the Collateral Agent or such Secured Party upon demand and shall be secured by the Loan Documents, notwithstanding that such expenditures may, together with amounts advanced under this Loan Agreement, exceed the total amount of the Commitments. Notwithstanding anything to the contrary contained in this Loan Agreement, in the event the consent of the Lenders is required in connection with the exercise of remedies pursuant to this **Section 9**, for purposes of determining the required lender consent pursuant to the applicable definitions thereto, the Commitments of the Lenders shall be deemed terminated.

Section 9.2. Remedies on Default. In case any one or more Events of Default shall occur and be continuing, (i) the Collateral Agent and the Required Lenders may exercise any rights of the Borrower under and with respect to the Intercompany Note and the Aircraft Security Agreement, (ii) any Lender may proceed to protect and enforce the rights of such Lender by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or in any Loan Document, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise, and (iii) the Collateral Agent and any Lender may exercise any rights or remedies in their respective capacities under the Operative Documents in accordance with the provisions thereof. No course of dealing and no delay on the part of any Lender in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice such Lender's rights, powers or remedies. No right, power or remedy conferred by this Loan Agreement or by any Note upon any holder thereof shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise.

Section 9.3. Remedies on Aircraft Default. Notwithstanding any waiver or amendment delivered under this Loan Agreement by the Collateral Agent acting at the direction of the Required Lenders to the contrary, in case any one or more Events of Default specified in (i) **subsection (a) of Section 9.1**, (ii) **subsection (b) of Section 9.1** with respect to World Travel, the Aircraft or the Aircraft Trustee, (iii) **subsection (iv) of subsection (c) of Section 9.1**, (iv) **subsection (d) of Section 9.1** with respect to World Travel, the Aircraft or the Aircraft Trustee, (v) **subsection (i) above** with respect to World Travel, the Aircraft or the Aircraft Trustee, (vi) **subsection (f) of Section 9.1**, (vii) **subsection (r) of Section 9.1**, (viii) **subsection (t) of Section 9.1**, shall occur and be continuing, the Collateral Agent, acting at the direction of the Lenders holding more than 50% of the aggregate amount of Credit Exposure of the Lenders whose Loans were used to refinance the Aircraft, shall (A) declare that

portion of the Loans hereunder (with accrued interest thereon) that were used to refinance the Aircraft to be due and payable forthwith, whereupon the same shall immediately become due and payable, (B) exercise any rights of the Borrower under and with respect to the Intercompany Note and the Aircraft Security Agreement and (C) exercise any of its rights under the Borrower Aircraft Assignment.

With the exception of the foregoing, unless the Required Lenders have consented in writing, no such Lender shall proceed to protect and enforce the rights of such Lender under this Loan Agreement or the other Loan Documents, by an action at law, suit in equity or other appropriate proceeding, whether for the specific

performance of any agreement contained herein or in any other Loan Document, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise.

SECTION 10. ASSIGNMENT BY LENDERS; PARTICIPATIONS.

Section 10.1. Assignments.

(a) Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Loan Agreement, the other Loan Documents, the Collateral or the Notes; *provided that* (i) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Loan Agreement and the other Loan Documents; and (ii) the parties to each assignment shall execute and deliver to the Collateral Agent an Assignment and Assumption Agreement in the form attached hereto as **Exhibit F**, together with a processing and recordation fee of \$500.00. Subject to acceptance and recording thereof by the Collateral Agent pursuant to **paragraph (b)** of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Loan Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Loan Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Loan Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Loan Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of **Section 12** with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Loan Agreement that does not comply with this paragraph shall be treated for purposes of this Loan Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Section 10.2**.

(b) The Collateral Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at its office listed in **Schedule IB** a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "*Register*"). The entries in the Register shall be conclusive, and the Borrower, the Collateral Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Loan Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice. Any assignment or transfer by a Lender of rights or obligations as a Lender under this Loan Agreement that does not comply with this paragraph shall be treated for purposes of this Loan Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Section 10.2**.

Section 10.2. Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Collateral Agent, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "*Participant*") in all or a portion of such Lender's rights and/or obligations under this Loan Agreement, the other Loan Documents, the Collateral or the Notes; (including all or a portion of the Loans owing to it); *provided*

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that (i) such Lender's obligations under this Loan Agreement and the other Loan Documents shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Collateral Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Loan Agreement and the other Loan Documents. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Loan Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Loan Agreement and the other Loan Documents. Subject to **paragraph (b)** of this Section, the Company agrees that each Participant shall be entitled to the benefits of **Section 12** to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 10.1**.

(b) A Participant shall not be entitled to receive any greater payment under **Section 12** than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a foreign Lender if it were a Lender shall not be entitled to the benefits of **Section 12.2** unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower to comply with **Section 12.2** as though it were a Lender.

Section 10.3. Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Loan Agreement or the other Loan Documents to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided that* no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 11. THE COLLATERAL AGENT.

Section 11.1. Appointment. Each Lender hereby irrevocably designates and appoints the Trust Company as the Collateral Agent under this Loan Agreement and the other Loan Documents, and each such Lender irrevocably authorizes the Collateral Agent, in such capacity, to take such action on its behalf under the provisions of this Loan Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Collateral Agent by the terms of this Loan Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Loan Agreement, the Trust Company shall not have any duties or responsibilities, except those expressly set forth herein and in the other Loan Documents, or any fiduciary relationship with any Lender or any other party to the Loan Documents, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Loan Agreement or any other Loan Document or otherwise exist against the Trust Company.

Section 11.2. Delegation of Duties. The Collateral Agent may execute any of its duties under this Loan Agreement and the other Loan Documents by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Collateral Agent shall not be responsible for the acts or omissions including, specifically the negligence or willful misconduct of agents or attorneys-in-fact selected by it with reasonable care.

Section 11.3. Exculpatory Provisions. Neither the Trust Company nor the Collateral Agent (in its capacity as such) nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by the Collateral Agent or such Person under or in connection with this Loan Agreement or any other Loan Document, except for the Collateral Agent's or such Person's own willful misconduct or gross negligence (or negligence in the handling of funds by the Collateral Agent in such capacity) or (b) responsible in any manner to any of

the Lenders or any other party to the Loan Documents for any recitals, statements, representations or warranties made by the Borrower or any other party or any officer thereof contained in this Loan Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Collateral Agent under or in connection with, this Loan Agreement or any other Loan Document, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Loan Agreement or any other Loan Document or for any failure of the Borrower to perform its obligations hereunder or thereunder. The Collateral Agent shall not be under any obligation to any Lender or any other party to the Loan Documents to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Loan Agreement or any other Loan Document, or to inspect the properties, books or records of the Borrower.

Section 11.4. Reliance by Collateral Agent; Indemnity. The Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any Note, writing, resolution, notice, consent, certificate, affidavit, letter, facsimile message, statement, order or other document or other written communication believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Borrower), independent accountants and other experts selected by the Collateral Agent. The Collateral Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Collateral Agent, in accordance with this Loan Agreement. The Collateral Agent shall be fully justified in failing or refusing to take any action under this Loan Agreement or any other Loan Document unless it shall first receive the advice or concurrence of the Required Lenders or it shall first be indemnified to its satisfaction by the applicable Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Loan Agreement and the other Loan Documents in accordance with a request of the Required Lenders, and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the applicable Notes. Wherever in the Loan Documents the consent or approval of the Collateral Agent is required, in giving any such consent or approval the Collateral Agent may rely upon, or make its approval subject to, the directions of or consent or approval from the Required Lenders. The Lenders agree to indemnify the Collateral Agent (to the extent not reimbursed under **Section 12** hereof but without limiting the obligations of the Borrower under **Section 12** or of the Guarantors) ratably in accordance with their respective Commitments, for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including reasonable attorneys' fees) or disbursements of any kind and nature whatsoever that may at any time (including at any time following the final payment of all of the obligations of the Borrower hereunder and under the other Loan Documents) be imposed on, incurred by or asserted against the Collateral Agent (including by any Lender) in any way relating to or arising out of this Loan Agreement or any Loan Document or the transactions contemplated thereby or any action taken or omitted by the Collateral Agent under this Loan Agreement or any Loan Document; *provided* that no Lender shall be liable for any of the foregoing to the extent they arise from the gross negligence (or negligence in the handling of funds by the Collateral Agent in such capacity) or willful misconduct of the Person to be indemnified. Without limitation of the foregoing, each Lender agrees to reimburse the Collateral Agent promptly upon demand for its ratable share of any costs or expenses payable by the Borrower under **Section 12**, to the extent that the Collateral Agent is not promptly reimbursed for such costs and expenses by the Borrower or a Guarantor.

Section 11.5. Notice of Default. The Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Collateral Agent has received notice from a Lender referring to this Loan Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Collateral Agent receives such a notice, the Collateral Agent shall promptly give notice thereof to the Lenders, the Borrower, the Administrative Agent and the Mortgage Notes Indenture Trustee. The Collateral Agent shall take such action with respect to such Default or Event of Default as shall be directed by the Required Lenders; *provided, however*, that unless and until the Collateral Agent shall have received such directions, the Collateral Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

Section 11.6. Non-Reliance on Collateral Agent and Other Lenders. Each Lender expressly acknowledges that neither the Collateral Agent, the Arranger nor any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates, has made any representations or warranties to it and that no act by the Collateral Agent, or the Arranger hereinafter taken, including any review of the affairs of the Borrower, shall be deemed to constitute any representation or warranty by the Collateral Agent or the Arranger to any Lender. Each Lender represents to the Collateral Agent that it has, independently and without reliance upon the Collateral Agent or the Arranger or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Borrower and made its own decision to enter into this Loan Agreement. Each Lender also represents that it will, independently and without reliance upon the Collateral Agent, the Arranger or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Loan Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Borrower. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Collateral Agent hereunder, neither the Collateral Agent nor the Arranger shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of the Borrower which may come into the possession of the Collateral Agent, the Arranger or any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates.

Section 11.7. Indemnification. Other than with respect to indemnification provided to the Collateral Agent in accordance with **Section 11.4**, the Collateral Agent agrees to look solely to the Borrower under **Section 12**, and not to any other party hereto, for any claim for indemnification which may arise hereunder or under any other Loan Document.

Section 11.8. Collateral Agent in Its Individual Capacity. Each Lender acknowledges that Wells Fargo Bank Nevada, National Association, is acting as Collateral Agent hereunder. Wells Fargo Bank Nevada, National Association, and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with the Borrower and its Affiliates as though it was not the Collateral Agent hereunder and under the other Loan Documents and without notice to or consent of the Lenders. Each Lender acknowledges that, pursuant to such activities, Wells Fargo Bank Nevada, National Association, or its Affiliates may receive information regarding the Borrower or its Affiliates (including information that may be subject to confidentiality obligations in favor of the Borrower or its Affiliates) and acknowledges that such Persons shall be under no obligation to provide such information to them.

Section 11.9. Successor Collateral Agent. The Collateral Agent may resign at any time by giving written notice thereof to the Lenders and the Borrower and may be removed at any time with or without cause by the Required Lenders. Upon any such resignation or removal, the Required Lenders, with the consent of the Borrower, such consent not to be unreasonably withheld, shall have the right to appoint a successor Collateral Agent. If no successor Collateral Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within sixty (60) days after the retiring Collateral Agent's giving of notice of resignation or the Required Lenders' removal of the retiring Collateral Agent, then the retiring Collateral Agent may, on behalf of the Lenders, appoint a successor Collateral Agent, which shall be a commercial bank described in clause (i) or (ii) of the definition of "Eligible Assignee" and having a combined capital and surplus of at least \$150,000,000. Upon the acceptance of any appointment as Collateral Agent hereunder by a successor Collateral Agent, such successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent, and the retiring Collateral Agent shall be discharged from its duties and obligations under this Loan Agreement. After any retiring Collateral Agent's resignation or removal hereunder as Collateral Agent, the provisions of this **Section 11** shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Collateral Agent under this Loan Agreement. Notwithstanding the foregoing if no Event of Default and no Default, shall have occurred and be continuing, then no successor Collateral Agent shall be appointed under this **Section 11.9** without the prior written consent of the Borrower, which consent shall not be unreasonably withheld or delayed.

Section 11.10. Action upon Instructions. Subject to the terms of **Sections 11.3, 11.4 and 11.7** and the Operative Documents, upon the written instructions at any time and from time to time of the Required Lenders (for any action not requiring the consent of all of the Lenders), Collateral Agent shall take such of the following actions as may be specific in such instructions:

- (a) give such notice or direction or exercise such right or power under this Loan Agreement or any other Loan Document as shall be specified in such instructions;
- (b) approve as satisfactory to it all matters required by the terms of any Loan Document to be satisfactory to Collateral Agent; and
- (c) any other action as specified by the Required Lenders.

SECTION 12. INDEMNITY.

Section 12.1. General Indemnification. Whether or not the transactions contemplated hereby are consummated, to the fullest extent permitted by any Requirements of Law, the Borrower hereby:

- (x) waives and releases any Claims now or hereafter existing against any Indemnitee on account of, and
- (y) assumes liability for and agrees to indemnify, protect, defend, save and keep harmless each Indemnitee on an after-tax basis (in accordance with **Section 12.3**) from and against, any and all Claims of every kind and nature whatsoever that may be imposed on, incurred by, or asserted against any Indemnitee, which are not caused by the gross negligence or willful misconduct (or negligence in the handling of funds by the Collateral Agent in such capacity) of the Indemnitee (*provided* that the indemnification provided under this **Section 12.1** shall specifically include matters based on or arising from the negligence of any Indemnitee), whether or not such Indemnitee shall also be indemnified as to any such Claim by any other Person and whether or not

such Claim arises or accrues prior to the Document Closing Date or after the Maturity Date, and which relates in any way to or arises in any way out of:

- (a) any of the Operative Documents or any of the transactions contemplated thereby, or any investigation, litigation or proceeding in connection therewith, and any amendment, modification or waiver in respect thereof;
- (b) the Collateral or any Part thereof or interest therein;
- (c) with respect to the Collateral or Part thereof, the acquisition, mortgaging, design, manufacture, re-manufacture, construction, preparation, installation, inspection, delivery, non-delivery, acceptance, rejection, purchase, ownership, possession, rental, lease, sublease, repossession, maintenance, repair, alteration, modification, addition or substitution, storage, titling or retitling, transfer of title, registration or re-registration, redelivery, use, operation, condition, financing, refinancing, sale, return or other application or disposition or the imposition of any Lien (or incurring of any liability to refund or pay over any amount as a result of any Lien) on any of the Collateral, including, without limitation,
 - (i) Claims or penalties arising from any violation of any Requirements of Law or in tort (strict liability or otherwise),
 - (ii) loss of or damage to the environment (including, without limitation, investigation costs, cleanup costs, response costs, remediation and removal costs, costs of corrective action, costs of financial assurance, and all other damages, costs, fees and expenses, fines and penalties, including natural resource damages), or death or injury to any Person, and any mitigative action required by or under Environmental Laws,
 - (iii) latent or other defects, whether or not discoverable, and
 - (iv) any Claim for patent, trademark or copyright infringement;
- (d) the sale or other disposition of the Collateral, including, without limitation, any disposition as a result of the exercise of remedies;
- (e) the offer, issuance, sale or delivery of the Notes in accordance with the Operative Documents;
- (f) the breach by the Borrower or a Guarantor of any representation or warranty made by it or deemed made by it in any Operative Document;
- (g) the transactions contemplated hereby or by any other Operative Document in respect of the application of Parts 4 and 5 of Subtitle B of Title I of ERISA and any Prohibited Transaction described in Section 4975(c) of the Code;
- (h) any Claims related to the release from the Collateral of any substance into the environment, including (without limitation) Claims arising out of the use of the Collateral for the transportation or storage of any Hazardous Substances;

(i) any Claims related to any Indemnitee being alleged to be an owner or operator of the Collateral or the land on which the Collateral is situated, in each case prior to taking possession thereof, under any Environmental Law;

(j) any failure on the part of the Borrower or any Guarantor to perform or comply with any of the terms of any Operative Document to which it is a party; or

(k) any other agreement entered into or assumed by the Borrower in connection with the Collateral.

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It is expressly understood and agreed that this **Section 12.1** shall not apply to Claims in respect of:

(A) Taxes (such Claims being subject to **Section 12.2**), except with respect to (1) taxes or penalties included in Claims described in **clause (g)** above, and (2) any payment necessary to make payments under this **Section 12.1** in accordance with **Section 12.3**;

(B) as to an Indemnitee, Lender Liens which such Indemnitee is responsible for discharging under the Operative Documents;

(C) the gross negligence or willful misconduct of such Indemnitee or any Affiliate, agents, officers directors, servants or employees thereof; and

(D) the breach by an Indemnitee of any representation, warranty or covenant under any Operative Document.

Section 12.2. General Tax Indemnity.

(a) The Borrower shall pay, defend and indemnify and hold each Indemnitee harmless from any and all Taxes imposed on or with respect to or in connection with any Indemnitee, the Collateral or any Part thereof, any Operative Document, the Borrower or any lessee or user of the Collateral, howsoever imposed, including Taxes imposed:

(i) with respect to the Collateral or Part thereof, the acquisition, mortgaging, design, manufacture, re-manufacture, construction, preparation, installation, inspection, delivery, non-delivery, acceptance, rejection, purchase, ownership, possession, rental, lease, sublease agreement, repossession, maintenance, repair, alteration, modification, addition or substitution, storage, titling or retitling, transfer of title, registration or re-registration, redelivery, use, operation, condition, financing, refinancing, sale, return or other application or disposition or the imposition of any Lien (other than Permitted Liens related to Taxes) or incurrence of any liability to refund or pay over any amount as a result of any Lien thereon;

(ii) Interest or Supplemental Payments or the receipts or earnings arising from or received with respect to the Collateral or any Part thereof, or any interest therein or any applications or dispositions thereof,

(iii) any other amount paid or payable pursuant to this Loan Agreement, the Notes or any other Operative Document;

(iv) the Collateral or any Part thereof or any interest therein;

(v) all or any of the Operative Documents, any other documents contemplated thereby and any amendments and supplements thereto; and

(vi) otherwise with respect to or in connection with the transactions contemplated by the Operative Documents;

provided, however, the indemnification obligation of this **Section 12.2(a)** shall not apply to Taxes (1) which are based upon or measured by the Indemnitee's net income or which are expressly in substitution for, or relieve Indemnitee from, any tax based upon or measured by Indemnitee's net income (including the United States backup withholding tax)(other than any State or local taxes imposed by means of withholding, taxes incurred solely as a result of the location of the Collateral, the operations, state of formation, or place of payment of the Borrower, and taxes necessary to pay the obligations under this paragraph on an after-tax basis); (2) characterized under local law as franchise, net worth, or shareholder's capital taxes; and (3) that are the U.S. withholding taxes under Sections 1441 or 1442 of the Code with respect to any payment to an Indemnitee that is not a U.S. Person as defined in Section 7701(a)(30) of the Code (a "Non-U.S. Indemnitee"). Notwithstanding the proviso of the preceding sentence of this **Section 12.2(a)**, the Borrower shall pay or reimburse, and indemnify and hold harmless, on an after-tax basis, any Non-U.S. Indemnitee (i) if such Non-U.S. Indemnitee, in

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compliance with **Section 12.2(c)**, has established that it is entitled to receive payments pursuant to the Operative Documents without any such deduction or withholding, from any deduction or withholding of any U.S. federal income tax, or (ii) if such Non-U.S. Indemnitee, in compliance with **Section 12.2(c)**, has established that it is entitled to receive payments pursuant to the Operative Documents at a reduced rate of withholding, from any deduction or withholding of any United States federal income tax in excess of such reduced rate, or (iii) if such Non-U.S. Indemnitee, in compliance with **Section 12.2(c)** or otherwise, has validly established that it is a foreign person or a corporation thereby entitled to an exemption from United States backup withholding taxes, from such backup withholding taxes.

Payments to any Indemnitee under this **Section 12.2(a)** shall be made within ten (10) Business Days from the date such Indemnitee makes written demand therefor, which demand shall set forth in reasonable detail the basis and calculations of the amounts demanded. Any Indemnitee claiming any indemnity payment or additional amounts payable pursuant to this **Section 12.2(a)** shall use reasonable efforts to file any certificate or document reasonably requested in writing by the Borrower or the Collateral Agent if the making of such a filing would avoid the need for or reduce the amount of any such indemnity payment or the withholding amount that may thereafter accrue.

All of the indemnities contained in this **Section 12.2** shall continue in full force and effect notwithstanding the expiration or earlier termination of this Loan Agreement in whole or in part, including the termination of this Loan Agreement with respect to the Collateral, and are expressly made for the benefit of, and shall be enforceable by, each Indemnitee.

(b) The Borrower will, promptly upon learning thereof, notify the Collateral Agent and the Indemnitees of all reports or returns required to be made with respect to any Tax with respect to which the Borrower is required to indemnify hereunder, and will, if permitted by any Requirement of Law, file the same. If the Borrower is not permitted to so file, the Borrower shall prepare such reports or returns for signature by the Collateral Agent or the applicable Indemnitee and shall forward the same, together with immediately available funds for payment of any Tax due, to the Collateral Agent or such Indemnitee, no later than later of ten (10) Business Days in advance of the date such payment is to be made or five (5) Business Days upon learning of such filing requirement. The Borrower shall furnish the Collateral Agent or such Indemnitee with copies of all paid receipts or other appropriate evidence of payment for all Taxes paid by the Borrower pursuant to this **Section 12.2**.

(c) Each Non-U.S. Indemnitee shall deliver to the Borrower and the Collateral Agent two original copies of IRS Form W-8BEN or W-8ECI or successor applicable form or forms, properly and duly executed, establishing in either case that such Non-U.S. Indemnitee is entitled to receive payments pursuant to the this Loan Agreement without deduction or withholding of any U. S. federal income taxes (or at a reduced rate, if applicable) and is a foreign person or a corporation thereby entitled to an exemption from United States backup withholding taxes. Each such Non-U.S. Indemnitee covenants that (i) it will provide to the Borrower and the Collateral Agent a new IRS Form W-8BEN or W8-ECI and any such additional forms (or any successor form or forms) in accordance with applicable United States laws and regulations and amendments, duly executed and completed by such Non-U.S. Indemnitee on the expiration or obsolescence of any previously delivered forms or after the occurrence of any event requiring a change in the most recent forms delivered by it, in either case within ten (10) Business Days of receipt from the Borrower or the Collateral Agent of (1) written notice that the existing forms are to expire or become obsolete, (2) the appropriate new forms, and (ii) it will otherwise comply from time to time with all applicable United States laws and regulations with regard to such withholding tax exemption or entitlement to reduced rate withholding.

(d) If any Indemnitee receives a refund of any Tax for which a payment has been made by the Borrower or the Collateral Agent pursuant to this **Section 12.2**, which refund in the good faith judgment of such Indemnitee is attributable to such payment made by the Borrower or Collateral

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Agent, then such Indemnitee shall reimburse the Borrower or Collateral Agent for such amount as such Indemnitee determines in good faith to be the proportion of the refund as will leave it, after such reimbursement, in the same position it would have been in if the payment of such Tax and any payment by the Borrower or a Collateral Agent under this **Section 12.2** had not been made. Subject to this **Section 12.2(d)**, upon the reasonable request of the Borrower or Collateral Agent, the Indemnitee shall use reasonable efforts to cooperate with the Borrower or a Collateral Agent with a view to obtaining a refund of any Taxes with respect to which the Borrower or a Collateral Agent has paid any amounts pursuant to this **Section 12.2** and which the Borrower or the Collateral Agent, on advice of counsel, reasonably believes were not correctly or legally asserted by the relevant Governmental Authority.

(e) If any Taxes that are imposed on the Indemnitee and excluded from the indemnification provided for under **Section 12.2(a)** are required by any Governmental Authority to be paid (other than through withholding from payments made to the affected Indemnitee) by the Borrower, then the Borrower shall provide notice to the affected Indemnitee within a reasonable time after paying such amounts, together with an explanation in reasonable detail explaining the nature and circumstances of such payment. Within a reasonable time after receipt thereof, the affected Indemnitee shall reimburse the Borrower for any payment of such Taxes, on an after-tax basis in accordance with principles set forth in **Section 12.3** taking into account any deduction, credits or other Tax benefits available to Borrower on its payment of the Taxes.

Section 12.3. Gross Up. To the extent an Indemnitee shall not be entitled to a corresponding and equal deduction or credit with respect to any payment or Tax which Borrower is required to pay or reimburse under any other provision of this **Section 12** (each such payment or reimbursement under this **Section 12**, an "Original Payment") and which Original Payment constitutes income to such Indemnitee, then the Borrower shall pay to such Indemnitee on demand the amount of such Original Payment on a grossed-up basis such that, after subtracting all Taxes imposed on such Indemnitee with respect to such Original Payment (including any Taxes otherwise excluded from the indemnification provided under **Section 12.2** and assuming for this purpose that such Indemnitee were subject to taxation at the highest Federal, state or local marginal rates applicable to widely held corporations for the year in which such income is taxable), such payments shall be equal to the Original Payment to be received (net of any credits, deductions or other Tax benefits then actually recognized that arise from the payment by such Indemnitee of any amount, including Taxes, for which the payment to be received is made).

Section 12.4. Increased Capital Costs. If any change in, or the introduction, adoption, effectiveness, interpretation, reinterpretation or phase-in of, any law or regulation, directive, guideline, decision or request (whether or not having the force of law) of any court, central bank regulator or other Governmental Authority affects or would affect the amount of capital required or expected to be maintained by any Lender directly or by its parent company (including, without limitation, any reserve requirements specified under regulations issued from time to time by the Board and then applicable to assets or liabilities consisting of and including "Eurocurrency Liabilities" as defined in Regulation D of such Board) as determined by such Lender (in its sole and absolute discretion), then, in any such case, upon written notification from time to time by such Lender to the Borrower, the Borrower shall, within five (5) Business Days following receipt of the statement referred to in the next sentence, pay directly to such Lender, as Supplemental Payment, additional amounts sufficient to compensate such Lender or its parent for such increased cost to such Lender (subject to **Section 12.3**). A statement of a Lender as to any such additional amount or amounts (including calculations thereof in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on the Borrower. In determining such amount, each Lender shall use any method of averaging or attribution that it (in its reasonable discretion) shall deem applicable. Notwithstanding any provision of this **Section 12.4** to the contrary, no amount shall be payable by the Borrower with respect to any such increased costs or reduced returns incurred more

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than 180 days before the date such Lender first notifies the Borrower of its intention to demand compensation under this **Section 12.4**.

Section 12.5. Environmental Indemnity. Without limitation of the other provisions of this **Section 12**, the Borrower hereby agrees to indemnify, hold harmless and defend each Indemnitee from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings (including informal proceedings) and orders, judgments, remedial action, requirements, enforcement actions of any kind, and all reasonable and documented costs and expenses incurred in connection therewith (including reasonable and documented attorneys', expert consultants', expert witnesses', and/or paralegals' fees and expenses), including all costs incurred in connection with any investigation or monitoring of the condition of the Collateral and/or Site or any clean-up, remedial, removal or restoration work by any Governmental Authority (collectively, "Environmental Claims"), arising in whole or in part, out of:

(a) the presence on, under or around the Collateral and/or Site or any portion thereof of any Hazardous Substances, or any releases or discharges of any Hazardous Substances on, under, from, onto or around the Collateral and/or Site or any portion thereof;

(b) any activity, including, without limitation, construction carried on or undertaken on or off the Collateral and/or Site or any portion thereof, and whether by the Borrower or any of its Affiliates or any predecessor in title or any employees, agents, sublessees, contractors or subcontractors of the Borrower, any of its Affiliates or any predecessor in title, or any other Persons (including such Indemnitee), in connection with the handling, treatment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Substances that at any time are located or present on, under or around, or that at any time migrate, flow, percolate, diffuse or in any way move onto or under the Collateral and/or Site or any portion thereof;

(c) loss of or damage to any property or the environment arising from, or in any way related to, the Collateral and/or Site or the Borrower or any of its Affiliates (including, without limitation, clean-up costs, response costs, remediation and removal costs, cost of corrective action, costs of financial assurance, fines and penalties and natural resource damages), or death or injury to any Person, and all expenses associated with the protection of wildlife, aquatic species, vegetation, flora and fauna, and any mitigative action required by or under Environmental Laws, in each case arising from, or in any way related to, the Collateral and/or Site, the Borrower or the transactions contemplated by the Operative Documents or any portion thereof;

(d) any claim concerning lack of compliance with Environmental Laws in connection with the Collateral and/or Site (including, without limitation, any claim arising from the failure or alleged failure to obtain or comply with any permit required by any Environmental Laws for the construction or operation of the Collateral and/or Site), or any act or omission causing an environmental condition that requires remediation or would allow any Governmental Authority to record a Lien against the Collateral and/or Site or any portion thereof; or

(e) any residual contamination on or under any of the Collateral and/or Site, or adversely affecting any natural resources, and any contamination of any property or natural resources arising in connection with the generation, use, handling, storage, transport or disposal of any such Hazardous Substances, in each case arising from, or in any way related to, the Collateral and/or Site, the Borrower or the transactions contemplated by the Operative Documents or any portion thereof, and irrespective of whether any of such activities were or will be undertaken in accordance with all Requirements of Law.

Section 12.6. Eurodollar Rate Illegal, Unavailable or Impracticable. If any Lender shall determine in good faith (which determination shall, upon notice thereof to Collateral Agent and the Borrower, be conclusive and binding on the Borrower) that:

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(a) a change in law makes it unlawful, or the central bank or other Governmental Authority asserts that it is unlawful, for such Lender to make, continue or maintain any amount of such Lender's investment hereunder on a Eurodollar Rate basis,

(b) deposits in Dollars (in the applicable amounts) are not being offered to such Lender in the relevant market for the applicable Interest Period, or that by reason of circumstances affecting the interbank eurodollar market adequate and reasonable means do not exist for ascertaining the applicable Eurodollar Rate, or

(c) the Eurodollar Rate, as determined by such Lender, will not adequately and fairly reflect the cost to such Lender of maintaining or funding its investments for the applicable Interest Period, or that the making or funding of such Lender's investment hereunder on a Eurodollar Rate basis has become impracticable as a result of an event occurring after the date of this Loan Agreement which in the opinion of such Lender materially changes such investment,

then the obligations of such Lender to make, continue or maintain any such investment shall, upon such determination, forthwith be suspended until such Lender shall notify Collateral Agent and the Borrower that such circumstances no longer exist, and all Interest allocable to such Lender shall automatically be determined on a Base Rate basis beginning on the next immediately succeeding Payment Date with respect thereto or sooner, if required by such law, assertion or determination. In the event of the occurrence of the conditions described in **clause (c)** above, no Applicable Administrative Charge shall be assessed against any of the Loan Parties.

Section 12.7. Funding Losses. The Borrower agrees to reimburse any Lender for any loss or expense incurred as a result of (i) the failure of the transaction contemplated hereby to occur on the Document Closing Date or (ii) any payment of all or any portion of the Loan Balance for any reason on a date other than a Payment Date. Any affected Lender shall promptly notify the Borrower in writing of the amount of any claim under this **Section 12.7**, the reason or reasons therefor and the additional amount required fully to compensate such Lender for such loss or expense. Such written notice (which shall include calculations in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on the Borrower.

Section 12.8. Actions of Lenders. Each Lender shall use reasonable efforts (including reasonable efforts to change the booking office for this transaction) to avoid or minimize any amounts which might otherwise be payable pursuant to **Sections 12.3 and 12.4**; *provided, however*, that such efforts shall not be deemed by such Lender, in its sole discretion, to be disadvantageous to it.

SECTION 13. GENERAL CONDITIONS.

Section 13.1. Payment of Transaction Costs and Other Costs. If the transactions contemplated hereby are consummated, the Borrower shall pay all Transaction Costs and all Fees in accordance with **Section 2.7** and Section 3.1 of the Disbursement Agreement (or upon such later date as agreed to by the Lenders), and in the event the transactions contemplated hereby do not close, the Borrower shall pay such Transaction Costs promptly upon receipt of invoices therefor. In addition, the Borrower shall pay or reimburse Collateral Agent, Trust Company, Arrangers and the Lenders for all other Transaction Costs and Fees and all other out-of-pocket costs and expenses (including reasonable attorneys fees) reasonably incurred in connection with: (a) entering into, or the giving or withholding of, any future amendments, supplements, waivers or consents with respect to the Operative Documents; (b) any Casualty or termination of this Loan Agreement or any other Operative Document; (c) the negotiation and documentation of any restructuring or "workout", whether or not consummated, of any Operative Document; (d) the enforcement of the rights or remedies under the Operative Documents; (e) further assurances requested pursuant to any Operative Documents; (f) any transfer by Collateral Agent or a Lender of any interest in the Operative Documents during the continuance of an Event of

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Default or pursuant to the syndication of the Notes by the Arrangers; and (g) the ongoing fees and expenses of Collateral Agent and Trust Company under the Operative Documents.

Section 13.2. Effect of Waiver. No delay or omission to exercise any right, power or remedy accruing to Collateral Agent or any Lender upon any breach or default of the Borrower hereunder shall impair any such right, power or remedy nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein or of or in any similar breach or default thereafter occurring, nor shall any single or partial exercise of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of the Lenders or Collateral Agent of any breach or default under this Loan Agreement must be specifically set forth in writing and must satisfy the requirements set forth in **Section 13.5** with respect to approval by the Lenders and Collateral Agent.

Section 13.3. Survival of Covenant. All representations, warranties and covenants of the Borrower under **Sections 2, 3** and **5.1** shall survive the expiration or termination of this Loan Agreement to the extent arising prior to any such expiration or termination.

Section 13.4. Applicable Law. **THIS LOAN AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES (OTHER THAN TITLE 14 OF ARTICLE V OF THE NEW YORK GENERAL OBLIGATIONS LAW).**

Section 13.5. Effect and Modification.

(a) This Loan Agreement and the other Loan Documents exclusively and completely state the rights of the Lenders and the Borrower with respect to the Loans and the Collateral and supersedes all prior agreements, oral or written, with respect thereto. No Loan Document nor any of the terms thereof may be terminated, amended, supplemented, waived or modified without the written agreement or consent of Collateral Agent, the Borrower and the Required Lenders, and in the case of the FF&E Guaranty, or any definition used therein, the Guarantors affected thereby; *provided, however*, that **Sections 13.1** and **13.16** hereof may not be terminated, amended, supplemented, waived or modified without the written agreement or consent of the Arrangers; and *provided, further*, that any termination, amendment, supplement, waiver or modification shall require the written agreement or consent of each Lender if such termination, amendment, supplement, waiver or modification would:

(i) modify any of the provisions of this **Section 13.5**, change the definition of "Required Lenders" or modify or waive any provision of a Loan Document requiring action by each Lender;

(ii) amend, modify, waive or supplement any of the provisions of **Section 3.2, 3.3, 3.4, 3.5** or **3.8** of this Loan Agreement;

(iii) reduce, modify, amend or waive any Fees or indemnities in favor of any Lender (other than increases thereof), including without limitation amounts payable pursuant to **Section 12** (except that any Person may consent to any reduction, modification, amendment or waiver of any indemnity payable to it);

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(iv) modify (other than increases thereof), postpone, reduce or forgive, in whole or in part, any payment of principal or Interest (other than pursuant to the terms of the Loan Documents), or any Loan, Loan Balance or Commitment Fee (except that any Person may consent to any modification, postponement, reduction or forgiveness of any payment of any Fee payable to it) or, subject to **clause (iii)** above, any other amount payable to it under this Loan Agreement, or modify the definition or method of calculation of Interest (other than pursuant to the terms of the Loan Documents), Loans, Loan Balances, Commitment, Aggregate Commitment Amount (other than as permitted by **Section 7.5(p)(iii)(B)(2)**), Maturity Date, Commitment Period, Interest Rate Applicable Lender Margin or any other definition which would affect the amounts to be advanced or which are payable under the Loan Documents or extend, modify or amend the Loan Term;

(v) release of any Lien granted by the Borrower, the Aircraft Trustee or World Travel under the Loan Documents or release the FF&E Guaranty or the Wynn Resorts FF&E Guaranty, except as provided in the Loan Documents or consent to the Collateral Agent's actions pursuant to Section 3.1.2 of the FF&E Intercreditor Agreement; or

(vi) subject to **Section 7.5(p)(iii)(B)(2)**, increase the Commitment of any Lender or subject such Lender to additional obligations.

Notwithstanding the foregoing, neither the FF&E Guaranty, the Wynn Resorts FF&E Guaranty nor any of the terms thereof may be amended, modified or waived, unless such amendment, modification or waiver is in writing entered into by, or approved in writing by the Required Lenders, the Collateral Agent and the Guarantors.

(b) The Borrower will not directly or indirectly pay or cause to be paid any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant any security, to any Lender as consideration for or as an inducement to the entering into by any Lender of any waiver or amendment of any of the terms and provisions hereof unless such remuneration is concurrently paid, or security is concurrently granted, on the same terms, ratably to each Lender then outstanding even if such Lender did not consent to such waiver or amendment.

Section 13.6. Notices. All demands, notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or one Business Day after being sent by overnight delivery service or three days after being deposited in the mail, certified mail postage prepaid, or when sent by facsimile transmission, if confirmed by mechanical confirmation and if a copy thereof is promptly thereafter personally delivered, sent by overnight delivery service or so deposited in the mail, addressed to: (A) the Borrower, a Guarantor or Collateral Agent at the address set forth below, or at such other address as may hereafter be furnished in accordance with this **Section 13.6** by either party to the other and (B) each Lender at its address set forth in **Schedule IB**:

(i) if to the Borrower:

Wynn Las Vegas, LLC
3145 Las Vegas Boulevard South

With a copy to

Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Attention: C. Kevin McGeehan, Esq.
Telecopy: (310) 282-5610
Telephone: (310) 203-7110

(ii) if to Guarantor:

c/o Wynn Resorts Holdings, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attention: Ron Kramer
Facsimile: (702) 733-4123
Telephone: (702) 791-0167

(iii) if to the Collateral Agent:

Wells Fargo Bank Nevada,
National Association
c/o Wells Fargo Bank Northwest,
National Association
299 South Main Street, 12th Floor
MAC U1228-120
Salt Lake City, Utah 84111

Section 13.7. Consideration for Consents to Waivers and Amendments. The Borrower hereby agrees that it will not, and that it will not permit any of its Affiliates to, offer or give any consideration or benefit of any kind whatsoever to Collateral Agent or any Lender in connection with, in exchange for, or as an inducement to, Collateral Agent or such Lender's consent to any waiver in respect of, any modification or amendment of, any supplement to, or any other consent or approval under, any Loan Document unless such consideration or benefit is offered ratably to all Lenders.

Section 13.8. Severability. Whenever possible, each provision of this Loan Agreement shall be interpreted in such manner as to be effective and valid under any Requirements of Law; but if any provision of this Loan Agreement shall be prohibited by or invalid under any Requirements of Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Loan Agreement.

Section 13.9. Successors and Assigns. This Loan Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 13.10. No Third-Party Beneficiaries. Other than as set forth in **Section 13.16**, nothing in this Loan Agreement or the other Loan Documents shall be deemed to create any right in any Person not a party hereto or thereto (other than the permitted successors and assigns of Lenders and the Borrower), and such agreements shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party except as aforesaid.

Section 13.11. Brokers. None of the parties has engaged or authorized any broker, finder, investment banker or other third party to act on its behalf, directly or indirectly, as a broker, finder, investment banker, agent or any other like capacity in connection with this Loan Agreement or the transactions contemplated hereby, except that the Borrower has engaged Arrangers pursuant to the Arrangement Fee Letter.

Section 13.12. Captions; Table of Contents. Section captions and the table of contents used in this Loan Agreement (including the Schedules, Exhibits and Annexes hereto) are for convenience of reference only and shall not affect the construction of this Loan Agreement.

Section 13.13. Schedules and Exhibits. The Schedules, Annexes and Exhibits hereto, along with all attachments referenced in any of such items are incorporated herein by reference and made a part hereof.

Section 13.14. Submission to Jurisdiction. Any suit by Collateral Agent or any Lender to enforce any claim arising out of the Loan Documents may be brought in any state or Federal court located in New York having subject matter jurisdiction, and with respect to any such claim, each party to this Loan Agreement hereby irrevocably: (a) submits to the jurisdiction of such courts; (b) consents to the service of process out of said courts in the manner provided for notices in **Section 13.6**; and (c) the Borrower hereby (i) irrevocably appoints CT Corporation System, with an address on date hereof at 111 Eighth Avenue, 13th Floor, New York, New York 10011 (the "New York Process Agent"), as process agent in its name, place and stead to receive and forward service of any and all writs, summonses and other legal process in any suit, action or proceeding brought in the State of New York, (ii) agrees that such service in any such suit, action or proceeding may be made upon the New York Process Agent and (iii) agrees to take all such action as may be necessary to continue said appointment in full force and effect or to appoint another agent so that the Borrower will at all times have an agent in the State of New York for service of process for the above

purposes. The Borrower irrevocably waives, to the fullest extent permitted by law: (A) any claim, or any objection, that it now or hereafter may have, that venue is not proper with respect to any such suit, action or proceeding brought in such a court located in New York including, without limitation, any claim that any such suit, action or proceeding brought in such court has been brought in an inconvenient forum; and (B) any claim that the Borrower is not subject to personal jurisdiction or service of process in such forum. The Borrower agrees that any suit to enforce any claim arising out of the Loan Documents or any course of conduct or dealing of Collateral Agent or any Lender shall be brought and maintained exclusively in any state or Federal court located in New York. Nothing in this **Section 13.14** shall affect the right of Collateral Agent or any Lender to bring any action or proceeding against Borrower or the Collateral in the courts of any other jurisdiction. The Borrower agrees that a final judgment in any action or proceeding in a state or Federal court within the United States may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

Section 13.15. Jury Trial. The Borrower, each Lender and Collateral Agent waives any right to a trial by jury in any action or proceeding to enforce or defend any rights under this Loan Agreement or any other Loan Document or under any amendment, instrument, document or agreement delivered or which may in the future be delivered in connection herewith or therewith or arising from any relationship existing in connection with this Loan Agreement or any other Loan Document and agrees that any such action or proceeding shall be tried before a court and not before a jury.

Section 13.16. Role of Banc of America Leasing & Capital, LLC and Deutsche Bank Securities Inc. Each party hereto acknowledges hereby that it is aware of the fact that Banc of America Leasing & Capital, LLC and Deutsche Bank Securities Inc. have acted and are acting as "joint arrangers" with respect to the overall transaction. The parties hereto acknowledge and agree that the Arrangers and their respective Affiliates, including each of Bank of America and Deutsche Bank, have not made any representations or warranties concerning, and that they have not relied upon the Arrangers as to, the tax, accounting or legal characterization or validity of (i) the Loan Documents or (ii) any aspect of the overall transaction. The parties hereto acknowledge and agree that the Arrangers have no duties, express or implied, under the Loan Documents in their capacity as Arrangers. The parties hereto further agree that **Section 13.1**, **Section 13.11** and this **Section 13.16** are for the express benefit of the Arrangers, and each of the Arrangers shall be entitled to rely thereon as if it were a party hereto.

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Section 13.17. Confidentiality. Subject to **Section 13.18**, each of the Lenders agrees to keep confidential all non-public information provided to it by any Loan Party pursuant to this Loan Agreement that is designated by such Loan Party as confidential; *provided*, that nothing herein shall prevent any Lender from disclosing any such information (a) to any Arranger, any other Lender or any affiliate of any thereof, (b) to any Participant or assignee (each, a "Transferee") or prospective Transferee that agrees to comply with the provisions of this Section, (c) to any of its or its Affiliates' employees, directors, agents, auditors, regulators, attorneys, accountants and other professional advisors, (d) to any financial institution that is a direct or indirect contractual counterparty in swap agreements or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section), (e) upon the request or demand of any Governmental Authority having jurisdiction over it, (f) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Requirement of Law, (g) if requested or required to do so in connection with any litigation or similar proceeding, (h) that has been publicly disclosed other than in breach of this Section, (i) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender or (j) in connection with the exercise of any remedy hereunder or under any other Loan Document.

Section 13.18. Gaming Authorities. Each Lender agrees to cooperate with the Gaming Authorities of Nevada in connection with the administration of their regulatory jurisdiction over Wynn Resorts, the Borrower and the other Loan Parties, including, without limitation, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, the provision of such documents or other information as may be requested by any such Gaming Authorities relating to any of the Lenders, Wynn Resorts or the Borrower or any other Loan Party, or to the Loan Documents. Notwithstanding any other provision of this Loan Agreement, the Borrower expressly authorizes, and will cause each other Loan Party to authorize, each Lender to cooperate with the Gaming Authorities of Nevada as described above.

Section 13.19. Trust Agreement. Notwithstanding anything to the contrary in this Loan Agreement, each party hereto acknowledges that this Loan Agreement shall not impair, postpone, waive or otherwise affect any of the rights of the Aircraft Trustee pursuant to the Aircraft Trust Agreement.

Section 13.20. Accounting Changes. In the event that any "Accounting Change" (as defined below) shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Loan Agreement, then the Borrower and the Lenders agree to enter into negotiations in order to amend such provisions of this Loan Agreement so as to equitably reflect such Accounting Changes with the desired result that the criteria for evaluating the Borrower's and the other Loan Parties' financial condition (including the requirements and restrictions associated with the provisions of this Loan Agreement applicable thereto) shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrower, the Collateral Agent and the Required Lenders, all financial covenants, standards and terms in this Loan Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred. "Accounting Changes" refers to changes in accounting principles required or permitted by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC.

Section 13.21. Disclosure. Other than as required for public disclosure to Governmental Authorities, the Loan Parties agree that neither the Loan Parties nor any of their agents or Affiliates will publicly disclose via advertising or other means the involvement of the Lenders in this transaction at any time.

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Executed and delivered as of this 30th day of October, 2002.

WYNN LAS VEGAS, LLC,
a Nevada limited liability company, as the Borrower

By: Wynn Resorts Holdings, LLC, a Nevada limited liability company, its sole member

By: Valvino Lamore, LLC, a Nevada limited liability company, its sole member

By: Wynn Resorts, Limited, a Nevada corporation, its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn
Title: Chief Executive Officer

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Accepted and agreed to as of the date last above written.

BANK OF AMERICA, N.A., as Lender

By /s/ SCOTT FABER

Name: Scott Faber
Title: Managing Director

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Accepted and agreed to as of the date last above written.

BANK OF AMERICA, N.A., as Lender

By /s/ PETER J. VITALE

Name: Peter J. Vitale
Title: Vice President

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Accepted and agreed to as of the date last above written.

SOCIETE GENERALE, as Lender

By /s/ THOMAS K. DAY

Name: Thomas K. Day
Title: Managing Director

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Accepted and agreed to as of the date last above written.

GENERAL ELECTRIC CAPITAL CORPORATION, as Lender

By /s/ RICHARD J. O'NEILL

Name: Richard J. O'Neill
Title: Vice President

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Accepted and agreed to as of the date last above written.

By /s/ FRANK O. YOUNG

Name: Frank O. Young
Title: Sr. Vice President

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Accepted and agreed to as of the date last above written.

DEUTSCHE BANK TRUST COMPANY AMERICAS, as Lender

By /s/ GEORGE REYNOLDS

Name: George Reynolds
Title: Vice President

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Accepted and agreed to as of the date last above written.

BEAR, STEARNS CORPORATE LENDING INC., as Lender

By /s/ KEITH C. BARNISH

Name: Keith C. Barnish
Title: Executive Vice President

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Accepted and agreed to as of the date last above written.

GMAC COMMERCIAL MORTGAGE CORPORATION, as Lender

By /s/ JON WRIGHT

Name: Jon Wright
Title: Sr. V.P. Managing Director

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WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION, as Collateral Agent

By /s/ C. SCOTT NIELSEN

Name: C. Scott Nielsen
Title: Trust Officer

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**SCHEDULE IA1
TO LOAN AGREEMENT
DATED AS OF OCTOBER 30, 2002**

LENDERS' COMMITMENT PERCENTAGE

| Lender | Aircraft Commitment Percentage | Gaming Equipment Commitment Percentage | Non-Gaming Equipment Commitment Percentage |
|-------------------------------------|--------------------------------------|--|---|
| Bank of America, N.A. | 0.00% | 0.00% | 16.60% |
| Bank of America, N.A.—Nevada Branch | 21.05% | 0.00% | 17.01% |
| Deutsche Bank Securities, Inc. | 0.00% | 0.00% | 16.60% |
| Societe Generale | 0.00% | 50.00% | 16.60% |

| | | | |
|---|---------|---------|---------|
| General Electric Capital Corporation | 65.79% | 0.00% | 0.00% |
| Bear, Stearns & Co. Inc. | 0.00% | 0.00% | 16.60% |
| GMAC Commercial Mortgage Corporation | 0.00% | 0.00% | 16.60% |
| The CIT Group/Equipment Financing, Inc. | 13.16% | 50.00% | 0.00% |
| | 100.00% | 100.00% | 100.00% |

| | | | | | | | | |
|----------------------|----|------------|----|------------|----|-------------|----|-------------|
| AGGREGATE COMMITMENT | \$ | 38,000,000 | \$ | 30,000,000 | \$ | 120,500,000 | \$ | 188,500,000 |
|----------------------|----|------------|----|------------|----|-------------|----|-------------|

**SCHEDULE IA2
TO LOAN AGREEMENT
DATED AS OF OCTOBER 30, 2002**

LENDERS' ALLOCATED COMMITMENT AMOUNT

| Lender | Aircraft Commitment Amount | Gaming Equipment Commitment Amount | Non-Gaming Equipment Commitment Amount | Total Commitment |
|--|-------------------------------|---------------------------------------|--|---------------------|
| Bank of America, N.A. | \$ 0.00 | \$ 0.00 | \$ 20,000,000 | \$ 20,000,000 |
| Bank of America, N.A.— Nevada Branch | \$ 8,000,000 | \$ 0.00 | \$ 20,500,000 | \$ 28,500,000 |
| Deutsche Bank Securities, Inc. | \$ 0.00 | \$ 0.00 | \$ 20,000,000 | \$ 20,000,000 |
| Societe Generale | \$ 0.00 | \$ 15,000,000 | \$ 20,000,000 | \$ 35,000,000 |
| General Electric Capital Corporation | \$ 25,000,000 | \$ 0.00 | \$ 0.00 | \$ 25,000,000 |
| Bear, Stearns & Co. Inc. | \$ 0.00 | \$ 0.00 | \$ 20,000,000 | \$ 20,000,000 |
| GMAC Commercial Mortgage Corporation | \$ 0.00 | \$ 0.00 | \$ 20,000,000 | \$ 20,000,000 |
| The CIT Group/Equipment Financing, Inc. | \$ 5,000,000 | \$ 15,000,000 | \$ 0.00 | \$ 20,000,000 |
| | \$ 38,000,000 | \$ 30,000,000 | \$ 120,500,000 | \$ 188,500,000 |

**SCHEDULE IB
TO LOAN AGREEMENT
DATED AS OF OCTOBER 30, 2002**

ADDRESS FOR NOTICE AND PAYMENT

1. Collateral Agent:

WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION

Address for all communications:

Wells Fargo Bank Nevada, National Association
c/o Wells Fargo Bank Northwest, National Association
299 South Main Street, 12th Floor
MAC U1228-120
Salt Lake City, Utah 84111
Attn: Corporate Trust Department

ABA #: 121-000-248
Account No. 38844

Reference: Wynn Las Vegas, LLC

Contact: DeAnn Madsen
Phone: 801-246-5809

2. Lender:

BANK OF AMERICA, N.A.

Address:

555 South Flower Street
Mail Code: CA9-706-17-54
Los Angeles, California 90071

Credit contact:

Scott Faber
Managing Director
Phone: 213-345-1196
Fax: 213-345-1215
Email: scott.faber@bankofamerica.com

Business contact:

William S. Newby
Managing Director
Phone: 213-345-1194
Fax: 213-345-1214
Email: bill.newby@bankofamerica.com

Operations contact:

Bank of America, N.A.
1850 Gateway Boulevard
Mail Code: CA4-706-05-11
Concord, California 94520
Attention: Nina Lemmer
Credit Services Representative
Phone: 925-675-7478
Fax: 888-969-9281
Email: nina.l.lemmer@bankofamerica.com

Address for wire transfers:

Bank of America, N.A.
Dallas, Texas
ABA #111-000012
Account Number: 37508-36479
Account Name: Concord, FTA-SBW
Reference 1: Wynn Las Vegas, LLC/Le Reve Hotel & Casino
Reference 2: Identify the purpose of wire
Attention: Nina Lemmer

3. Lender:

BANK OF AMERICA, N.A.

Address:

300 South 4th Street, 2nd Floor
Las Vegas, Nevada 89101

Credit contact:

Peter J. Vitale
Vice President
Phone: 702-654-3062
Fax: 702-654-7158
Email: peter.j.vitale@bankofamerica.com

Operations contact:

Ann Laczowski
Credit Support Specialist

Phone: 702-654-8364
Fax: 702-654-7158
Email: ann.laczkowski@bankofamerica.com

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Address for wire transfers:

Bank of America, N.A.
300 South 4th Street, 2nd Floor
Las Vegas, Nevada 89101
ABA #122400724
Account Number: 000990106395
Account Name: Bank of America ICA
Reference 1: Wynn Las Vegas, LLC
Reference 2: Identify the purpose of wire
Attention: Ann Laczkowski

4. Lender:

GENERAL ELECTRIC CAPITAL CORPORATION

Address:

401 Merritt Seven, Suite 23
Norwalk, Connecticut 06856

Credit contact:

Senior Risk Officer, Portfolio Management
Phone: 203-229-1800
Fax: 203-229-1989
Email: dennis.bickerstaff@ge.com

Legal contact:

Nick DeCorso
Phone: 714-456-9411
Fax: 714-456-9403
Email: nick.decorso@gecapital.com
or nick.decorso@ge.com

Operations contact:

Joseph Campopiano
Phone: 203-229-1861
Fax: 203-229-1989
Email: joseph.campopiano@gecapital.com

Address for wire transfers:

Deutsche Bank Trust Company Americas
New York, New York
ABA #021-001-033
Account Number: 50-270-797
Account Name: GECC/CAF Depository
Reference 1: Wynn Las Vegas, LLC
Reference 2: [Identify the purpose of wire]

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5. Lender:

THE CIT GROUP/EQUIPMENT FINANCING, INC.

Address:

1540 W. Fountainhead Pkwy
Tempe, Arizona 85282

Credit contact:

Frank Young
Phone: 800-553-8778 ext. 2780

Fax: 480-858-1489
Email: frank.young@cit.com

Post Funding Operations contact:

Matt Martin
Phone: 800-553-8778 ext. 1887
Fax: 480-858-1470
Email: matt.martin@cit.com

Legal Counsel:

James Kane
Phone: 800-553-8778 ext. 2375
Fax: 480-858-1460
Email: james.kane@cit.com

Draft Documentation Contact:

Phone: 800-553-8778 ext. 2732
Fax: 480-858-1496
Email: brenda.vankeuren@cit.com

Address for wire transfers:

Bank of America
Los Angeles, California
ABA #121-000-358
Account Number: 1233-5-18855
Account Name: The CIT Group/Equipment Finance
Reference 1: Wynn Las Vegas, LLC
Reference 2: Identify the purpose of wire

6. Lender:

DEUTSCHE BANK TRUST COMPANY AMERICAS

Credit contact:

Deutsche Bank Trust Company Americas
31 West 52nd Street
New York, New York 10019
Attention: Richard Grellier, Vice President
Phone: 646-324-2116
Fax: 664-324-7450
Email: richard.grellier@db.com

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Operations contact:

Deutsche Bank Trust Company Americas
90 Hudson Street
Jersey City, New Jersey 07302
Mail Stop JCY050511
Attention: Wendy Williams, Assistant Vice President
Phone: 201-593-2170
Fax: 201-593-2309
Email: wendy.b.williams@db.com

Address for wire transfers:

Deutsche Bank Trust Company Americas
ABA #021-001-033
Account Number: 99-401-268
Account Name: Commercial Loan Division
Reference 1: Wynn Las Vegas—FF & E facility
Reference 2: Identify the purpose of wire
Attention: Mary Hong

7. Lender:

BEAR STEARNS CORPORATE LENDING INC.

Notice Instructions:

Bear Stearns & Co. Inc.
383 Madison Avenue, 8th Floor
New York, New York 10179
Attention: Gloria Dombrowski
Phone: 212-272-6043
Fax: 212-272-4844
Email: gdombrowski@bear.com

Administrative and Funding Contact:

Gloria Dombrowski
Phone: 212-272-6043
Fax: 212-272-4844

Credit contact and Copy of Documents to:

Bear Stearns & Co. Inc.
383 Madison Avenue, 8th Floor
New York, New York 10179
Attention: Stephen O'Keefe
Phone: 212-272-9430
Fax: 212-272-9184
Email: sokeefe@bear.com

Address for wire transfers:

Citibank, N.A.
ABA #0210-00089
Account Number: 0925-3186
Favor of: Bear Stearns Securities, Corp.
Further Credit to Account Number 096-00220-28
Reference 1: Wynn Las Vegas, LLC
Reference 2: Identify the purpose of wire
Attention: Steve Resnick
Phone: 609-951-2300
Fax: 609-951-2354

8. Lender:

SOCIETE GENERALE

Credit contact:

Societe Generale
Four Embarcadero, Suite 1200
San Francisco, California 94111
Attention: Mary Brickley, Director
Phone: 415-646-7328
Fax: 415-989-9922
Email: mary.brickley@us.socgen.com

Operations contact:

Societe Generale
2001 Ross Avenue, Suite 4800
Dallas, Texas 75201
Attention: Deborah McNealy, Portfolio Manager
Phone: 214-979-2762
Fax: 214-979-1104
Email: deborah.mcnealy@us.socgen.com

Legal Counsel:

Bracewell & Patterson, LLP
711 Louisiana, Suite 2900
Houston, Texas 77002
Attention: David Locascio
Phone: 713-221-1396
Fax: 713-221-2134
Email: dlocascio@bracepatt.com

Address for wire transfers:

Societe Generale
New York, New York
ABA #026004226
Account Number: LSA9051449
Reference 1: Wynn Las Vegas, LLC
Reference 2: Identify the purpose of wire

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Loan advance instructions:

Deutsche Bank Trust Company Americas
New York, New York
ABA #021-001-033

For the Account of Commercial Loan Division:

A/C #99-401-268
Re: Wynn Resorts
Attention: Wendy Williams

Operations contact:

Wendy Williams
Phone: 201-593-2170
Fax: 201-593-2308

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9. Lender:

GMAC COMMERCIAL MORTGAGE CORPORATION

Address:

Asset Backed Lending
5730 Glenridge Drive, Suite 103
Atlanta, Georgia 30328

Credit contact:

John Gutowski
Vice President
Phone: 404-531-5006
Fax: 404-705-8622
Email: John_Gutowski@GMACCM.com

Business contact:

John Hopkins
Vice President—Manager
Phone: 404-705-7071
Fax: 404-705-8622
Email: John_Hopkins@GMACCM.com

Operations contact:

John Patton
Vice President
Phone: 404-705-1221
Fax: 404-705-8622
Email: John_Patton@GMACCM.com

Address for wire transfers:

Bank of America, N.A.
San Francisco, California Main Branch
ABA #121-000-358
Account Number: 1235020424
Account Name: GMAC Commercial Mortgage
Reference 1: Wynn/LeReve Fees
Reference 2: Identify the purpose of wire

**SCHEDULE II
TO LOAN AGREEMENT
DATED AS OF OCTOBER 30, 2002**

REQUIRED PREPAYMENTS

| Date | Total Payment | Interest | Aircraft Principal | Gaming Equipment Principal | Non-Gaming Equipment Principal |
|------|------------------|----------|-----------------------|----------------------------------|-----------------------------------|
|------|------------------|----------|-----------------------|----------------------------------|-----------------------------------|

**EXHIBIT A
TO LOAN AGREEMENT
FORM OF PROMISSORY NOTE**

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES OR "BLUE SKY" LAW, AND MAY NOT BE TRANSFERRED, SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT OR LAWS.

Wynn Las Vegas, LLC

\$

For Value Received, the undersigned, Wynn Las Vegas, LLC, a Nevada limited liability company (the "*Borrower*"), promises to pay to the order of (the "*Lender*") on the Maturity Date for the Loans the principal sum of DOLLARS (\$) or such lesser amount thereof as shall be outstanding, as recorded either on the grid attached to this Note or in the records of Lender (and such recordation shall constitute prima facie evidence of the information as recorded; *provided, however*, that the failure to make any such recordation shall not in any way affect the Borrower's obligation to repay this Note). The principal amount of the Loan evidenced hereby shall be payable on or prior to the Maturity Date as provided in that certain Loan Agreement, dated as of October 30, 2002 (together with all amendments and other modifications, if any, from time to time thereafter made thereto, the "*Loan Agreement*"), among the Borrower, Wells Fargo Bank Nevada, National Association, as Collateral Agent, and the various financial institutions (including the Lender) as are, or may from time to time become, parties thereto.

The Borrower also promises to pay interest on the unpaid principal amount hereof from time to time outstanding from the date hereof until maturity (whether by acceleration or otherwise) and, after maturity, until paid, at the rates per annum and on the dates specified in the Loan Agreement.

Payments of both principal and interest are to be made without setoff or counterclaim in lawful money of the United States of America in same day or immediately available funds to the Payment Office of the Collateral Agent specified in the Loan Agreement (or to such other account as the Collateral Agent may from time to time designate in a written notice to the Borrower).

This Note is one of the Notes referred to in, and evidences indebtedness incurred under, the Loan Agreement, to which reference is made for a statement of the terms and conditions on which the Borrower is permitted and required to make prepayments and repayments of principal of the indebtedness evidenced by this Note and on which such indebtedness may be declared to be or automatically become immediately due and payable. This Note is secured pursuant to the Borrower Security Agreement and reference is made to the Borrower Security Agreement for a statement of the terms and provisions of such security.

The transfer, assignment or pledge of this Note or any interest herein is subject to the provisions of the Loan Agreement.

Capitalized terms used but not otherwise defined herein have the respective meanings specified in the Loan Agreement.

All parties hereto, whether as makers, endorsers, or otherwise, severally waive presentment for payment, demand, protest and notice of dishonor.

**[End of Page]
[Signature Pages Follow]**

THIS NOTE HAS BEEN DELIVERED IN NEW YORK, NEW YORK AND SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES (EXCEPT TITLE 14 OF ARTICLE 5 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

WYNN LAS VEGAS, LLC,
a Nevada limited liability company, as the Borrower

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company, its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company, its sole member

By: Wynn Resorts, Limited, a Nevada corporation, its
sole member

By: _____

GRID ATTACHED TO NOTE
DATED _____, OF
WYNN LAS VEGAS, LLC
PAYABLE TO THE ORDER OF
[_____]

Loans made by the Lender to the Borrower, and payments of principal of such Loans.

| <u>Date of Funding or Payment</u> | <u>Amount of Funding or Payment</u> | <u>Outstanding Principal Balance (after such Funding or Payment)</u> | <u>Notation Made By</u> |
|---------------------------------------|---|--|-------------------------|
|---------------------------------------|---|--|-------------------------|

**Appendix I
to
Loan Agreement**

(Wynn Las Vegas, LLC, as Borrower)

In the Loan Agreement and each other FF&E Financing Document (other than the Disbursement Agreement), unless the context otherwise requires:

- (a) any term defined below by reference to another instrument or document shall continue to have the meaning ascribed thereto whether or not such other instrument or document remains in effect;
- (b) words importing the singular include the plural and vice versa;
- (c) a reference to a part, clause, section, article, exhibit or schedule is a reference to a part, clause, section and article of, and exhibit and schedule to, such FF&E Financing Document (other than the Disbursement Agreement);
- (d) a reference to any statute, regulation, proclamation, ordinance or law includes all statutes, regulations, proclamations, ordinances or laws amending, supplementing, supplanting, varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations and ordinances issued or otherwise applicable under that statute;
- (e) a reference to a document includes any amendment or supplement to, or replacement or novation of, that document;
- (f) a reference to a party to a document includes that party's successors and permitted assigns; and
- (g) references to "including" means including without limiting the generality of any description preceding such term and for purposes hereof the rule of *ejusdem generis* shall not be applicable to limit a general statement followed by or referable to an enumeration of specific matters to matters similar to those specifically mentioned.

Further, each of the parties to the FF&E Financing Documents (other than the Disbursement Agreement) and their counsel have reviewed and revised the FF&E Financing Documents (other than the Disbursement Agreement), or requested revisions thereto, and the usual rule of construction that any ambiguities are to be resolved against the drafting party shall be inapplicable in construing and interpreting the FF&E Financing Documents (other than the Disbursement Agreement).

"Account" shall have the meaning set forth in the Wynn Credit Agreement.

"Additional Completion Period" shall mean the period, if any, commencing on the Scheduled Completion Date and ending on the Completion Date.

"Additional Land" shall mean, collectively, the real property and fixtures represented as of the Document Closing Date by the following Assessor's Parcel Numbers: 162-16-510-019, 162-16-510-020, 162-16-510-023, 162-16-510-026, 162-16-510-027, 162-16-610-020, 162-16-610-023, 162-16-610-024, 162-16-610-025, 162-16-610-026, 162-16-610-027 and 162-16-610-031.

"Additional Material Contract" shall mean any Material Contract entered into after the Document Closing Date relating to the development, construction, maintenance or operation of the Project.

"Additional Project Documents" shall mean any document or agreement entered into after the Document Closing Date relating to the development, construction, maintenance or operation of the Project.

"Adjusted Eurodollar Rate" shall mean the Eurodollar Rate plus the Applicable Lender Margin.

"Administrative Agent" shall mean Deutsche Bank Trust Company Americas, in its capacity as administrative agent for the Wynn Banks under the Wynn Credit Agreement.

"Administrative Charge" shall mean an amount equal to the amount, if any, required to compensate each Lender for any losses (including, without limitation, any loss, cost or expense incurred by reason of the liquidation or reemployment of deposits or funds acquired by such Lender to fund its obligations under the Loan Documents) that may incur as a result of (i) the Borrower's payment of principal or interest on the Notes on any date other than on a Payment Date, (ii) the Borrower's payment of the Loan Balance on any date other than a Payment Date, or (iii) any condition described in **Section 12** of the Loan Agreement. Unless the

Borrower's payment to which the Administrative Charge is applicable is readily attributable to a Type of Equipment or the Aircraft, the Administrative Charge shall be allocated *pro rata* by the Lender receiving such payment to Allocated Aircraft Value and Allocated Equipment Value represented by its Note.

"Advance" shall mean an advance of funds by the Lenders pursuant to **Section 2.3** of the Loan Agreement.

"Advance Confirmation Notice" shall have the meaning set forth in the Disbursement Agreement.

"Advance Date" shall mean each of the actual dates on or prior to the Commitment Termination Date on which an Advance occurs.

"Advance Request" shall have the meaning set forth in **Section 2.5(a)** of the Loan Agreement.

"Aeronautics Authority" shall mean, where applicable, the United States Department of Transportation, the Federal Aviation Administration and/or the administrator of the Federal Aviation Administration, or any Person or Authority succeeding to the functions of any of the foregoing or having the functions of any of the foregoing in any foreign jurisdictions in which the Aircraft, the Borrower, World Travel, the Aircraft Trustee or lessee of the Aircraft may be subject.

"Affiliate" shall mean, as applied to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with") as applied to any Person means the power, directly or indirectly, either to (a) vote 10% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

"Affiliated Overhead Expenses" for any period, the reasonable expenses of, and actually incurred by, Wynn Resorts and the other Loan Parties (other than the Borrower and its Subsidiaries), for salary and benefits, office operations, development, advertising, insurance and other corporate or other overhead, for such period, calculated on a consolidated basis, after the elimination of intercompany transactions, and in accordance with GAAP; *provided*, that Affiliated Overhead Expenses shall not include any fee, profit or similar component payable to Wynn Resorts or any other Affiliate of Wynn Resorts (other than with respect to the salary of Mr. Wynn) and shall represent only the payment or reimbursement of actual costs and expenses incurred by Wynn Resorts and the Loan Parties (other than the Borrower and its Subsidiaries).

"Aggregate Commitment Amount" shall mean \$188,500,000.

"Aircraft" shall mean the Existing Aircraft and, after the Disposition of the Existing Aircraft in accordance with **Section 7.5(p)** of the Loan Agreement, the Replacement Aircraft.

"Aircraft Appraiser" shall mean Tech EquipLease, Inc., or such other Person as may be selected by the Collateral Agent.

"Aircraft Casualty Notice" shall have the meaning assigned to such term in Section 7.1 of the Aircraft Security Agreement.

"Aircraft Collateral" shall have the meaning assigned to such term in Section 2.1 of the Aircraft Security Agreement.

"Aircraft Commitment Percentage" shall mean, as to any Lender, the percentage set forth opposite such Lender's name under the heading "Aircraft Commitment Percentage" on **Schedule IA1** to the Loan Agreement.

"Aircraft Contracts" shall mean Contracts relating to the Aircraft.

"Aircraft Event of Default" shall mean any of the events specified in Section 8.1 of the Aircraft Security Agreement.

"Aircraft Financing Document" shall mean financing documents entered into by the Borrower or its Affiliates in connection with the purchase of the Replacement Aircraft.

"Aircraft Lease" shall have the meaning assigned to such term in Section 4.2 of the Aircraft Security Agreement.

"Aircraft Manufacturer" shall mean Bombardier Inc.

"Aircraft Operating Agreement" shall mean that certain Amended and Restated Aircraft Operating Agreement dated as of October 30, 2002 by and between the Aircraft Trustee, as owner and World Travel, as operator.

"Aircraft Part" shall have the meaning assigned to such term in Section 4.4 of the Aircraft Security Agreement.

"Aircraft Security Agreement" shall mean the Aircraft Security Agreement to be executed and delivered by the Aircraft Trustee and World Travel, substantially in the form of **Exhibit K** to the Loan Agreement, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the Loan Agreement.

"Aircraft Security Agreement Supplement" shall mean each supplement to the Aircraft Security Agreement, substantially in the form of Exhibit A thereto.

"Aircraft Trust Agreement" shall mean that certain Trust Agreement dated as of May 10, 2002 between World Travel and the Aircraft Trustee.

"Aircraft Trustee" shall mean Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as trustee of that certain trust created under the Aircraft Trust Agreement, and any successor or replacement thereof.

"Airframe" shall mean and include: (i) the airframe, which, together with the two Engines relating to such airframe, is to be refinanced pursuant to the Loan Documents and has the Federal Aviation Administration Registration Number and manufacturer's serial number specified in the Aircraft Security Agreement

Supplement delivered on the Initial Advance Date covering such airframe; and (ii) any and all appliances, parts, instruments, appurtenances, accessories, furnishings, improvements, additions or other equipment of whatever nature (except Engines or engines) so long as the same shall be incorporated or installed in or attached to such airframe, or, so long as World Travel shall, directly or indirectly, continue to have an interest therein in accordance with the terms of the Loan Documents, after removal from such Airframe. The term "Airframe" shall also include any Replacement Airframe in replacement for the Airframe financed thereunder.

"Allocable Overhead" shall mean, for any period, an amount equal to (x) the amount of Affiliated Overhead Expenses for such period divided by (y) the number of gaming and/or hotel projects of Wynn Resorts and its Subsidiaries which were operating during such period or for which debt and/or equity financing has been obtained to finance the development, construction and/or opening thereof; *provided*,

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that amounts allocated to any such project shall be prorated based on the period within such period that such project was in operation or financing therefor was obtained.

"Allocated Aircraft Value" shall mean the aggregate amount of Advances made by the Lenders on the Initial Advance Date for purposes of refinancing the Aircraft and the allocated share of Fees and Transaction Costs, less any prepayment of the Loan Balance pursuant to **Section 3** or **8.1** of the Loan Agreement allocated to the Aircraft.

"Allocated Commitment" shall mean, with respect to each Lender, the amount set forth opposite such Lender's name on **Schedule IA2** to the Loan Agreement under the column designated as "Aircraft Commitment," "Gaming Commitment" or "Non-Gaming Commitment," as applicable to the Type of Equipment or the Aircraft to be funded by proceeds of the requested Advance.

"Allocated Equipment Value" shall mean the aggregate amount of Advances made by the Lenders on the Advance Dates for purposes of financing the Purchase Price of the Equipment, less any prepayment or repayment of the Loan Balance pursuant to **Section 3** or **8.1** of the Loan Agreement allocated to the Equipment.

"Applicable Administrative Charge" shall mean, as of any date of determination in respect of any event, any Administrative Charge determined to be due and owing in respect of such event.

"Applicable Lender Margin" shall mean, (a) at any time of determination of the Eurodollar Rate, 4.00% per annum, and (b) at any time of determination of the Base Rate, 4.00% per annum.

"Appraisal" shall mean any appraisal of the Collateral from an Appraiser received pursuant to the terms of **Section 6.17** of the Loan Agreement.

"Appraised Value" shall mean, with respect to the Collateral, or any part thereof, as of any date of determination, the Fair Market Value of the Collateral as set forth in the Appraisal therefor.

"Appraiser" shall mean the Aircraft Appraiser or the Equipment Appraiser, as the case may be.

"Arrangement Fees" shall mean the amount referred to in the Arrangement Fee Letters.

"Arrangement Fee Letters" shall mean that certain letter agreement between the Arrangers and the Borrower dated June 25, 2002.

"Arrangers" shall mean each of (i) Deutsche Bank Securities Inc. and (ii) Banc of America Leasing & Capital, LLC and their respective successors.

"Art Rental and Licensing Agreement" shall have the meaning set forth in the Wynn Credit Agreement.

"Asset Sale" shall mean any Disposition of Property or series of related Dispositions of Property (other than (i) the granting of any Lien permitted by **Section 7.3**, (ii) any Disposition permitted by **Section 7.4** and (iii) any Disposition permitted by **subsections (a), (b), (c), (d), (f), (h), (i), (j), (k), (l), (m), (n), (o), (p)** or **(r)** of **Section 7.5**, in each case of the Loan Agreement (*provided*, that in the case of **Section 7.5(a)**, Dispositions of Property thereunder shall be considered "Asset Sales" to the extent of any proceeds thereof not applied to the replacement of Property pursuant to **Section 7.5(a)(ii)**).

"Assignment and Acceptance" shall have the meaning set forth in Section 10.6(c) of the Wynn Credit Agreement.

"Assignment and Assumption" shall mean an Assignment and Assumption Agreement substantially in the form of **Exhibit F** to the Loan Agreement or otherwise acceptable to the Collateral Agent entered into pursuant to **Section 10.1** of the Loan Agreement.

"Authority" or "Authorities" shall mean "Governmental Agency" or "Governmental Agencies" as defined herein.

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"Bank Company Collateral Account Agreement" shall have the meaning set forth in the Disbursement Agreement.

"Bank Completion Guaranty Collateral Account Agreement" shall have the meaning set forth in the Disbursement Agreement.

"Bank Local Company Collateral Account Agreement(s)" shall have the meaning set forth in the Disbursement Agreement.

"Bank of America" shall mean Bank of America, National Association, a national banking association, and its successors.

"Bank Prepayment Option" shall have the meaning assigned to such term in **Section 3.1(b)** of the Loan Agreement.

"Bankruptcy Code" shall mean the Federal Bankruptcy Reform Act of 1978 (11 U.S.C. §101, *et seq.*), as applicable to the relevant case.

"Base Rate" shall mean, on any day with respect to the Loan Balance, the rate per annum equal to the sum of (a) higher of (i) the Federal Funds Rate for such day *plus* one-half of one percent (0.50%) and (ii) the Prime Rate for such day *plus* (b) the Applicable Lender Margin. Any change in the Base Rate due to a change in the Federal Funds Rate or the Prime Rate shall be effective on the effective date of such change in the Federal Funds Rate or the Prime Rate, without notice to the Borrower or any Guarantor.

"Beneficial Owner" shall mean as defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" will be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition. The term "Beneficially Owned" has a corresponding meaning.

"Board" shall mean the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Board of Directors" shall mean (i) with respect to a corporation, the board of directors of the corporation; (ii) with respect to a partnership, the board of directors of the general partner of the partnership; and (iii) with respect to any other Person, the board or committee of such Person serving a similar function.

"Borrower" shall mean Wynn Las Vegas, LLC, a Nevada limited liability company and a Wholly-Owned Subsidiary of Wynn Resorts, or any successor thereto.

"Borrower Aircraft Assignment" shall mean the Assignment and Assumption Agreement dated as of October 30, 2002 by and between the Borrower and the Collateral Agent, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"Borrower Collateral" is defined in Section 2.1 of the Borrower Security Agreement.

"Borrower Security Agreement" shall mean the Borrower Security Agreement dated as of October 30, 2002 between the Borrower and Collateral Agent, as the same may be amended, supplemented, replaced or otherwise modified from time to time, which does not encumber the Aircraft.

"Borrower Security Agreement Supplement" means each supplement to the Borrower Security Agreement, substantially in the form of Exhibit A thereto.

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"Building Lease" shall mean that certain Lease Agreement, dated as of October 21, 2002, by and between Valvino, as lessor, and the Borrower, as lessee, with respect to the lease of space in the Phase II Land Building.

"Business Day" shall mean (i) for all purposes other than as covered by **clause (ii)** below, a day other than a Saturday, Sunday or other day on which commercial banks in New York City, New York or Las Vegas, Nevada or Salt Lake City, Utah are authorized or required by law to close and (ii) with respect to all notices and determinations in connection with, and payments of principal and interest on, Loans on which interest is paid at the Adjusted Eurodollar Rate, any day which is a Business Day described in **clause (i)** above and which is also a day for trading by and between banks in Dollar deposits in the New York interbank eurodollar market.

"Capital Corp." shall mean Wynn Las Vegas Capital Corp., a Nevada corporation.

"Capital Expenditures" shall mean for any period, with respect to any Person, the aggregate of all expenditures by such Person and its Subsidiaries for the acquisition or leasing (pursuant to a capital lease) of fixed or capital assets (including, without limitation, real property assets) or additions to equipment (including replacements, capitalized repairs and improvements during such period) which should be capitalized under GAAP on a consolidated balance sheet of such Person and its Subsidiaries; *provided*, that the amount of Capital Expenditures in respect of fixed or capital assets or additions to equipment in any Fiscal Year shall not include (a) to the extent applied during such Fiscal Year to the replacement of Property pursuant to **Section 7.5(a)(ii)**, the Net Disposition Proceeds received by any such Person from the Disposition of Property pursuant to **Section 7.5(a)** and (b) the Insurance Proceeds and/or Eminent Domain Proceeds received by any such Person for any casualties to, or Taking of, fixed or capital assets and applied during such Fiscal Year to the repair or replacement of fixed or capital assets in accordance with **Section 8** of the Loan Agreement. Notwithstanding the foregoing, any Project Costs, any expenditures in furtherance of the construction of the Entertainment Facility and any expenditures with respect to the purchase of the Replacement Aircraft in accordance with **Section 7.5(p)**, in each case that otherwise would have constituted Capital Expenditures by virtue of the foregoing, shall be excluded from this definition.

"Capital Lease" shall mean a capital lease as determined in accordance with GAAP.

"Capital Lease Obligations" shall mean as to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and, for the purposes of the Loan Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

"Capital Stock" shall mean any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all classes of membership interests in a limited liability company, any and all classes of partnership interests in a partnership, any and all equivalent ownership interests in a Person and any and all warrants, rights or options to purchase any of the foregoing.

"Cash Equivalents" shall mean (a) United States dollars; (b) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (as long as the full faith and credit of the United States, is pledged in support of those securities) having maturities of not more than six months from the date of acquisition; (c) interest-bearing demand or time deposits (which may be represented by certificates of deposit banks having general obligations rated (on the date of acquisition thereof) at least "A" or the equivalent by S&P or Moody's or, if not so rated, secured at all times, in the manner and to the extent provided by law, by collateral security consisting of property of the type specified in **clause (a)** or **(b)** of this

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definition, with a market value of no less than the amount of monies so invested; (d) repurchase obligations with a term of not more than seven days for underlying securities of the types described in **clauses (b) and (c)** above entered into with any financial institution meeting the qualifications specified in **clause (c)** above; (e) paper having the highest rating obtainable from Moody's or S&P and in each case maturing within six months after the date of acquisition; (f) money market funds or mutual at least 95% of the assets of which constitute Cash Equivalents of the kinds described in **clauses (a) through (d)** of this definition; and (g) to the extent not permitted in **clauses (a) through (f)** of this definition, Permitted Securities.

"*Casino Land*" the land owned by the Borrower as described in Exhibit T-4 to the Disbursement Agreement.

"*Casualty*" or "*Casualties*" shall mean any of the following events in respect of any Item of Equipment, Airframe or Engine: (a) the total loss of such Item of Equipment, Airframe or Engine, the total loss of use thereof due to theft, disappearance, destruction, damage beyond repair or the rendering of such Item of Equipment, Airframe or Engine permanently unfit for normal use for any reason whatsoever (other than obsolescence); (b) any damage to such Item of Equipment, Airframe or Engine which results in an insurance settlement with respect to such Item of Equipment, Airframe or Engine on the basis of a total loss or a constructive total loss; (c) the permanent condemnation, confiscation or seizure of, or the requisition of title to or use of, such Item of Equipment, Airframe or Engine; or (d) as a result of any Requirement of Law or other action by any Governmental Agency, the use of such Item of Equipment, Airframe or Engine in the normal course of the Borrower's or any Affiliate's business shall have been prohibited, directly or indirectly, for a period equal to the lesser of 180 consecutive days and the remaining Loan Term. Additionally in the event the transactions contemplated hereby are rescinded pursuant to Regulation 8.130 of the Nevada Gaming Commission, a Casualty with respect to all of the Gaming Equipment shall be deemed to occur on the date of such rescission.

"*Casualty Amount*" shall mean, with respect to any Item of Equipment, Airframe or Engine as of any date specified for payment thereof, a portion of the Loan Balance relating to such Item of Equipment, Airframe or Engine equal to the product obtained by multiplying the outstanding Loan Balance as of the Casualty Settlement Date by the Item Value Fraction of such Item of Equipment.

"*Casualty Notice*" shall have the meaning assigned to such term in **Section 8.1** of the Loan Agreement.

"*Casualty Recoveries*" shall have the meaning assigned to such term in **Section 8.1** of the Loan Agreement.

"*Casualty Settlement Date*" shall have the meaning assigned to such term in **Section 8.1** of the Loan Agreement.

"*Change of Control*" the occurrence of any of the following: (i) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Loan Parties, taken as a whole, or of the Borrower and its Subsidiaries, taken as a whole, to any "person" (as that term is used in Section 13(d)(3) of the Exchange Act), other than to Mr. Wynn or a Related Party of Mr. Wynn; (ii) the adoption of a plan relating to the liquidation or dissolution of the Borrower or any successor thereto, (iii) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that (a) any "person" (as defined in clause (i) above), other than Mr. Wynn and any of his Related Parties becomes the Beneficial Owner, directly or indirectly, of more than 50% of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than number of equity interests, (b) any "person" (as defined in clause (i) above)(other than Kazuo Okada, Aruze USA and Aruze Corp., so long as (1) the Stockholders Agreement, as in effect on the Closing

Date, remains in full force and effect, (2) a majority of the Board of Directors of Wynn Resorts is constituted of Persons named on any slate of directors chosen by Mr. Wynn and Aruze USA pursuant to the Stockholders Agreement, as in effect on the Closing Date, and (3) Kazuo Okada and his Related Parties either (A) "control" (as that term is used in Rule 405 under the Securities Act) Aruze Corp. and Aruze USA or (B) otherwise remain the direct or indirect Beneficial Owners of the Voting Stock of Wynn Resorts held by Aruze Corp.) becomes the Beneficial Owner, directly or indirectly, of a greater percentage of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than number of equity interests, than is at that time Beneficially Owned by Mr. Wynn and his Related Parties as a group, (c) Mr. Wynn and his Related Parties as a group own less than 20% of the outstanding voting stock of Wynn Resorts, measured by voting power rather than number of equity interests (excluding, for purposes of calculating the outstanding voting stock of Wynn Resorts pursuant to this clause (iii)(c), shares of voting stock issued in a primary issuance by Wynn Resorts in one or more bona fide public offerings of additional Voting Stock of Wynn Resorts (other than the IPO)); or (d) Mr. Wynn and his Related Parties as a group own less than 10% of the outstanding voting stock of Wynn Resorts, measured by voting power rather than number of equity interests, (iv) the first day on which Mr. Wynn does not act as either the Chairman of the Board of Directors of Wynn Resorts or the Chief Executive Officer of Wynn Resorts, other than (1) as a result of death or disability of Mr. Wynn or (2) if the Board of Directors of Wynn Resorts, exercising their fiduciary duties in good faith, removes or fails to re-appoint Mr. Wynn as Chairman of the Board of Directors of Wynn Resorts or Chief Executive Officer of Wynn Resorts, (v) the first day on which a majority of the members of the Board of Directors of Wynn Resorts or the Borrower are not Continuing Directors, (vi) the first day on which Wynn Resorts ceases to own, directly or indirectly, 100% of the outstanding Capital Stock of the Borrower or (vii) Wynn Resorts consolidates with, or merges with or into, any Person or sells, assigns, conveys, transfers, leases or otherwise disposes of all or substantially all of its assets to any Person, or any Person consolidates with, or merges with or into, Wynn Resorts, in any such event pursuant to a transaction in which any of the outstanding voting stock of Wynn Resorts is converted into or exchanged for cash, securities or other property, other than any such transaction where the voting stock of Wynn Resorts outstanding immediately prior to such transaction is converted into or exchanged for voting stock (other than Disqualified Stock) of the surviving or transferee Person constituting a majority of the outstanding shares of such voting stock of such surviving or transferee Person (immediately after giving effect to such issuance).

"*Claims*" shall mean liabilities, obligations, damages, losses, demands, penalties, fines, claims, actions, suits, judgments, settlements, utility charges, costs, fees, expenses and disbursements (including, without limitation, legal fees and expenses and costs of investigation which, in the case of counsel or investigators retained by an Indemnitee, shall be reasonable) of any kind and nature whatsoever.

"*Code*" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"*Collateral*" shall mean the Aircraft Collateral and the Borrower Collateral.

"*Collateral Agent*" shall mean Wells Fargo Bank Nevada, National Association, not in its individual capacity, but solely as Collateral Agent, and any successor or replacement Collateral Agent expressly permitted hereunder.

"Collateral Agent Fee Letter" shall mean the fee letter dated as of the date hereof between the Borrower and Trust Company.

"Commitment" shall mean, with respect to each Lender, the amount set forth opposite such Lender's name on **Schedule IA2** to the Loan Agreement under the column designated as "Commitment."

"Commitment Fees" shall have the meaning assigned to such term in **Section 2.9** of the Loan Agreement.

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"Commitment Percentage" shall mean, as to any Lender and any Type of Equipment or the Aircraft, the percentage set forth opposite such Lender's name under the applicable "Commitment Percentage" heading on **Schedule IA1** to the Loan Agreement.

"Commitment Termination Date" shall mean the earliest of (i) Completion Date, (ii) the Outside Date, (iii) the Final Advance Date and (iv) the date on which the Commitments of the Lenders shall have been fully utilized.

"Commonly Controlled Entity" shall mean an entity, whether or not incorporated, which is under common control with the Borrower or any other Loan Party within the meaning of Section 4001 of ERISA or is part of a group that includes such Person and that is treated as a single employer under Section 414 of the Code.

"Company" shall mean the Borrower.

"Completion Date" shall have the meaning assigned to such term in the Disbursement Agreement.

"Completion Guarantor" shall mean Wynn Completion Guarantor, LLC, a Nevada limited liability company.

"Completion Guaranty" shall mean that certain Completion Guaranty, dated as of October 30, 2002 by the Completion Guarantor in favor of the Administrative Agent on behalf of Wynn Banks and the Mortgage Notes Indenture Trustee.

"Completion Guaranty Release Date" shall have the meaning assigned to such term in the Disbursement Agreement.

"Compliance Certificate" shall mean a certificate duly executed by a Responsible Officer substantially in the form of **Exhibit E-6** to the Loan Agreement.

"Confidential Information Memorandum" shall mean the Confidential Information Memorandum dated July, 2002 and furnished to the initial Lenders.

"Consents" shall have the meaning assigned to such term in the Disbursement Agreement.

"Consolidated Current Assets" shall mean, at any date, all amounts (other than cash and Cash Equivalents) which would, in conformity with GAAP, be set forth opposite the caption "total current assets" (or any like caption) on a consolidated balance sheet of the Borrower and its Subsidiaries at such date.

"Consolidated Current Liabilities" shall mean, at any date, all amounts that would, in conformity with GAAP, be set forth opposite the caption "total current liabilities" (or any like caption) on a consolidated balance sheet of the Borrower and its Subsidiaries at such date, but excluding (a) the current portion of any Funded Debt of the Borrower and its Subsidiaries and (b) without duplication of **clause (a)** above, all Indebtedness consisting of Revolving Credit Loans or Swing Line Loans to the extent otherwise included therein.

"Consolidated EBITDA" shall mean, of any Person for any period, Consolidated Net Income of such Person and its Subsidiaries for such period plus, without duplication and to the extent reflected as a charge in the statement of such Consolidated Net Income for such period, the sum of (a) income tax expense or the Tax Amount (whether or not paid during such period), (b) Consolidated Interest Expense of such Person and its Subsidiaries, amortization or write-off of debt discount and debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness (including, in the case of the Borrower, the Loans), (c) depreciation and amortization expense, (d) amortization of intangibles (including, but not limited to, goodwill) and (e) any extraordinary, unusual or non-recurring expenses or losses (including, whether or not otherwise includable as a separate item in the statement of such Consolidated Net Income for such period, non-cash losses on

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sales of assets outside of the ordinary course of business and pre-opening expenses related to the initial opening of the Project (such pre-opening expenses to be no greater than that set forth in the Project Budget) and the opening of the Entertainment Facility (such pre-opening expenses in the aggregate to be no greater than \$5,000,000)) and minus, to the extent included in the statement of such Consolidated Net Income for such period, the sum of (a) interest income (except to the extent deducted in determining Consolidated Interest Expense) and (b) any extraordinary income or gains (and whether or not otherwise includable as a separate item in the statement of such Consolidated Net Income for such period, non-cash gains on the sales of assets outside of the ordinary course of business) and (c) any other non-cash income, all as determined on a consolidated basis in accordance with GAAP.

"Consolidated Fixed Charge Coverage Ratio" shall mean, as to any period, the ratio of (a) Consolidated EBITDA of the Borrower and its Subsidiaries to (b) Consolidated Fixed Charges of the Borrower and its Subsidiaries for such period.

"Consolidated Fixed Charges" shall mean, as to any Person for any period, the sum (without duplication) of (a) Consolidated Interest Expense of such Person and its Subsidiaries for such period, (b) provision for cash income taxes made by such Person or any of its Subsidiaries on a consolidated basis in respect of such period and the payment of any Tax Amount during such period, (c) scheduled payments made during such period on account of principal of Indebtedness of such Person or any of its Subsidiaries (including, without limitation, with respect to the Borrower, scheduled principal payments in respect of the Term Loans or any other Indebtedness under the Financing Agreements, (d) the aggregate amount actually paid by the Borrower and its Subsidiaries in cash during such period on account of Capital Expenditures, and (e) Consolidated Lease Expense of such Person and its Subsidiaries for such period.

"*Consolidated Interest Expense*" shall mean, as to any Person for any period, total cash interest expense (including that attributable to Capital Lease Obligations) of such Person and its Subsidiaries for such period with respect to all outstanding Indebtedness of such Person and its Subsidiaries (including, without limitation, all commissions, discounts and other fees and charges owed by such Person with respect to letters of credit and bankers' acceptance financing and net costs of such Person under Hedge Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP).

"*Consolidated Lease Expense*" shall mean for any period, the aggregate amount of fixed and contingent rentals payable by the Borrower and its Subsidiaries, determined on a consolidated basis in accordance with GAAP, for such period with respect to leases of real and personal property.

"*Consolidated Leverage Ratio*" shall mean, for any period, the ratio of (a) Consolidated Total Debt on the last day of such period to (b) Consolidated EBITDA of the Borrower and its Subsidiaries for such period.

"*Consolidated Member*" shall mean a corporation, other than the common parent, that is a member of an affiliated group (as defined in Section 1504 of the Code) of which Wynn Resorts or any of the Loan Parties is the common parent.

"*Consolidated Net Income*" shall mean, as to any Person for any period, the consolidated net income (or loss) of such Person and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP and before any reduction in respect of preferred equity dividends, but giving effect to, without duplication, any amounts paid or distributed by such Person or its Subsidiaries as a Tax Amount or Allocable Overhead if and to the same extent that such amounts would have been included in the calculation of net income if incurred by such Person or its Subsidiaries directly; *provided*, that in calculating Consolidated Net Income of a Person (for purposes of this definition only, the "*Parent*") and its consolidated Subsidiaries for any period, there shall be excluded (a) the income

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(or deficit) of any Person accrued prior to the date it becomes a Subsidiary of the Parent or is merged into or consolidated with the Parent or any of its Subsidiaries, (b) the income (or deficit) of any Person (other than a Subsidiary of the Parent) in which the Parent or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Parent or such Subsidiary in the form of dividends or similar distributions, (c) the undistributed earnings of any Subsidiary of the Parent to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any Contractual Obligation (other than under any Financing Agreement) or Requirement of Law applicable to such Subsidiary, (d) to the extent not reflected as a charge in the statement of such Consolidated Net Income, any Management Fees paid during such period and (e) the cumulative effect of a change in accounting principles.

"*Consolidated Net Worth*" shall mean, at any date, all amounts that would, in conformity with GAAP, be included on a consolidated balance sheet of the Borrower and its Subsidiaries under stockholders' equity at such date.

"*Consolidated Total Debt*" shall mean, at any date, the aggregate principal amount of all Indebtedness of the Borrower and its Subsidiaries at such date, determined on a consolidated basis in accordance with GAAP.

"*Construction Consultant*" shall mean Inspection & Valuation International, Inc. or such successor construction consultant of recognized national standing, as may be appointed in accordance with the Disbursement Agreement.

"*Construction Contract*" shall mean a "Contract" as defined in the Disbursement Agreement.

"*Continuing Directors*" shall mean, as of any date of determination, with respect to any Person, any member of the Board of Directors of such Person who (i) was a member of such Board of Directors on the Document Closing Date, (ii) was nominated for election or elected to such Board of Directors with the approval of a majority of the Continuing Directors who were members of such Board at the time of such nomination or election or (iii) in the case of a limited liability company, was nominated by the direct or indirect Board of Directors of its managing member or sole member.

"*Contractors*" shall mean any architects, consultants, designers, contractors, Subcontractors, suppliers, laborers or any other Persons engaged by any Loan Party in connection with the design, engineering, installation and construction of the Project.

"*Contracts*" shall mean, collectively, the contracts entered into, from time to time, between any Loan Party and any Contractor for performance of services or sale of goods in connection with the design, engineering, installation or construction of the Project.

"*Contractual Obligation*" shall mean, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its Property is bound.

"*Control Agreements*" shall mean collectively, (i) the Bank Completion Guaranty Collateral Account Agreement, (ii) the Bank Company Collateral Account Agreement, (iii) the Bank Local Company Collateral Account Agreement(s) and (iv) each Control Agreement to be executed and delivered by each Loan Party pursuant to the Guarantee and Collateral Agreement, substantially in the form of Exhibit B, Exhibit C or Exhibit D, as the case may be, thereto, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the Wynn Credit Agreement.

"*Credit Exposure*" shall mean, with respect to any Lender, the aggregate outstanding amount of Loans made by such Lender.

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"*Dealership Lease Agreement*" shall mean that certain Lease Agreement to be entered into between the Borrower, as lessor, and an Affiliate of the Borrower, as lessee, with respect to the lease of space at the Casino Land for the development and operation of a Ferrari and Maserati automobile dealership.

"*Default*" shall mean any event, act, or condition which with notice or lapse of time or both, would constitute an Event of Default.

"*Defaulting Lender*" shall mean, at any time, (i) any Lender with respect to which a Lender Default is in effect, (ii) any Lender that is the subject (as a debtor) of any action or proceeding (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, (iii) any Lender that shall make a general assignment for the benefit of its creditors or (iv) any Lender that shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due.

"*Delivery Requirement*" shall have the meaning set forth in the Wynn Credit Agreement.

"*Derivatives Counterparty*" shall have the meaning assigned to such term in **Section 7.6** of the Loan Agreement.

"*Desert Inn Improvement*" shall mean Desert Inn Improvement Co., a Nevada corporation.

"*Desert Inn Water*" shall mean Desert Inn Water Company, LLC, a Nevada limited liability company.

"*DIIC Casino Water Permit*" shall mean the Permit identified as of the Closing Date as Permit No. 13393 (Cert. 4731) as shown in the records of the State of Nevada, Division of Water Resources, in Carson City Nevada (and any successor or replacement Permit thereto).

"*DIIC Water Permits*" shall mean, collectively, the DIIC Casino Water Permit and the permits identified as of the Closing Date as Permit No. 16938 (Cert. 4765), Permit No. 16939 (Cert. 4766), Permit No. 24558 (Cert. 7828), Permit No. 24560 (Cert. 7827), Permit No. 24561 (Cert. 7829), and Permit No. 25223 (Cert. 7830), in each case as shown in the records of the State of Nevada, Division of Water Resources, in Carson City Nevada (and any successor or replacement Permits thereto).

"*DIIC Water Transfer*" shall mean a transfer by Desert Inn Improvement at no cost and in accordance with all Requirements of Law and pursuant to all necessary consents of Governmental Authorities (including, if applicable, the Nevada Public Utilities Commission and the State of Nevada, Division of Water Resources) of (a) the fee ownership of the Water Utility Land to Wynn Resorts Holdings and (b) the DIIC Water Permits to (x) in the case of the DIIC Casino Water Permit, the Borrower and (y) in the case of all other DIIC Water Permits, Wynn Resorts Holdings.

"*Disbursement Agent*" shall mean Deutsche Bank Trust Company Americas, in its capacity as Disbursement Agent under the Disbursement Agreement, and any successor Disbursement Agent appointed pursuant to the terms of the Disbursement Agreement.

"*Disbursement Agreement*" shall mean that certain Master Disbursement Agreement dated as of the date hereof among the Borrower, Capital Corp., Wynn Design & Development, the Administrative Agent, the Mortgage Notes Indenture Trustee, the Collateral Agent and the Disbursement Agent.

"*Disbursement Agreement Event of Default*" shall mean an "Event of Default" as defined in the Disbursement Agreement.

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"*Disposition*" shall mean with respect to any Property, any sale, lease, sale and leaseback, assignment, conveyance, grant of restriction, transfer or other disposition thereof; and the terms "*Dispose*" and "*Disposed of*" shall have correlative meanings.

"*Disqualified Stock*" shall mean any Capital Stock or other ownership or profit interest of any Loan Party that any Loan Party is or, upon the passage of time or the occurrence of any event, may become obligated to redeem, purchase, retire, defease or otherwise make any payment in respect of in consideration other than Capital Stock (other than Disqualified Stock).

"*Document Closing Date*" shall mean October 30, 2002.

"*Dollars*" and "\$" shall mean dollars in lawful currency of the United States of America.

"*Domestic Subsidiary*" shall mean any Subsidiary of the Borrower organized under the laws of any jurisdiction within the United States of America.

"*Driving Range*" shall mean the driving range for the Golf Course to be located on the Phase II Land and leased to the Borrower pursuant to the Driving Range Lease.

"*Driving Range Lease*" shall mean that certain Lease Agreement, dated as of October 21, 2002, by and between Valvino, as lessor, and the Borrower, as lessee, with respect to the lease of land on which the driving range for the Golf Course is to be located.

"*Eligible Assignee*" shall mean (i) a commercial bank organized under the laws of the United States, or any State thereof; (ii) a commercial bank organized under the laws of any other country that is a member of the OECD or has concluded special lending arrangements with the International Monetary Fund associated with its General Arrangements to Borrow, or a political subdivision of any such country, *provided*, that such bank is acting through a branch or agency located in the United States; (iii) a finance company, leasing company, insurance company or other financial institution or fund (whether a corporation, partnership or other entity) engaged generally in making, purchasing or otherwise investing in commercial loans or leasing property or equipment in the ordinary course of its business; (iv) the central bank of any country that is a member of the OECD; or (v) any Lender; *provided, however*, that (A) any such Person shall also have combined capital and surplus (as established in its most recent report of condition to its primary regulator) of not less than \$50,000,000 (or its equivalent in foreign currency), or if such Person does not meet the foregoing requirements in this proviso, such Person furnishes a guaranty of an Affiliate, which Affiliate meets the requirements of this proviso, of such Person's obligations under the Operative Documents and (B) any Person described in **clause (ii), (iii), (iv) or (v)** above shall, on the date on which it is to become a Lender hereunder, be entitled to receive payments hereunder without deduction or withholding of any United States Federal income taxes.

"*Eminent Domain Proceeds*" shall mean all amounts and proceeds (including instruments) received in respect of any Event of Eminent Domain relating to the Project.

"*Employee Parking Lot*" shall mean the parking lot structure located on the Phase II Land that will be used for parking for the employees of the Borrower pursuant to the Employee Parking Lot Lease.

"Employee Parking Lot Lease" shall mean that certain Lease Agreement, dated as of October 21, 2002, by and between Valvino, as lessor, and the Borrower, as lessee, with respect to the lease of land on which the parking lot structure for use by the Borrower's employees is to be located.

"Engagement Letter" shall mean the engagement letter dated June 25, 2002 between the Borrower and the Arrangers.

"Engine" shall mean and include: (i) each of the two engines for the Aircraft listed by manufacturer's serial number in a Aircraft Security Agreement Supplement delivered on the Initial Advance Date, whether or not from time to time installed on an Airframe or installed on any other

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airframe; (ii) any Replacement Engine; and (iii) any and all appliances, parts, instruments, appurtenances, accessories, improvements, additions or other equipment of whatever nature, so long as the same shall be incorporated or installed in or attached to any Engine subject to the Aircraft Security Agreement, or, so long as title thereto shall remain vested in the Aircraft Trustee in accordance with the terms of the Aircraft Trust Agreement.

"Entertainment Facility" shall mean a showroom or entertainment facility located on the Casino Land and the Phase II Land, adjoining and connected directly to the Le Rêve hotel and casino.

"Entertainment Facility Equity Proceeds" shall mean the aggregate net cash proceeds received by the Borrower from any Person other than another Loan Party (except to the extent another Loan Party is acting as an intermediary for purposes of contributing equity capital contributions from such other Persons), directly or indirectly, as a contribution to its common equity capital and deposited into the Entertainment Facility Funding Account (as defined in the Wynn Credit Agreement) and to be used solely and exclusively for the development, construction and opening of the Entertainment Facility.

"Environmental Claim" shall mean any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any governmental authority or any other Person, arising (a) pursuant to or in connection with any actual or alleged violation of any Environmental Law, (b) in connection with any Hazardous Materials or any actual or alleged Hazardous Materials Activity, or (c) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"Environmental Laws" shall mean any and all laws, rules, orders, regulations, statutes, ordinances, guidelines, codes, decrees, or other legally enforceable requirements (including, without limitation, common law) of any international authority, foreign government, the United States, or any state, local, municipal or other Governmental Authority, regulating, relating to or imposing liability or standards of conduct concerning protection of the environment or of human health, or employee health and safety, as has been, is now, or may at any time hereafter be, in effect.

"Environmental Matter" shall mean any:

(a) release, emission, entry or introduction into the air including, without limitation, the air within buildings and other natural or man-made structures above ground;

(b) discharge, release or entry into water including, without limitation, into any river, watercourse, lake, or pond (whether natural or artificial or above ground or which joins or flows into any such water outlet above ground) or reservoir, or the surface of the riverbed or of other land supporting such waters, ground waters, sewer or the sea;

(c) deposit, disposal, keeping, treatment, importation, exportation, production, transportation, handling, processing, carrying, manufacture, collection, sorting or presence of any Hazardous Substance (including, without limitation, in the case of waste, any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process or activity (including making it re-usable or reclaiming substances from it) and any substance or article which is required to be disposed of as being broken, worn out, contaminated or otherwise spoiled);

(d) nuisance, noise, defective premises, health and safety at work, industrial illness, industrial injury due to environmental factors, environmental health problems (including, without limitation, asbestosis or any other illness or injury caused by exposure to asbestos) or genetically modified organisms;

(e) conservation, preservation or protection of the natural or man made environment or any living organisms supported by the natural or man made environment; or

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(f) other matter howsoever directly affecting the environment or any aspect of it.

"Environmental Permits" shall mean any and all permits, licenses, approvals, registrations, notifications, exemptions and any other authorization required under any Environmental Law.

"Equipment" shall mean, individually, each Item of furniture, fixtures or equipment (including Gaming Equipment) described as Equipment on Schedule A to the Borrower Security Agreement and each Schedule A to each Borrower Security Agreement Supplement delivered on an Advance Date, and, collectively, each of the foregoing Items of Equipment.

"Equipment Appraiser" shall mean an appraiser as may be selected by the Collateral Agent.

"Equipment Collateral" is defined in Section 2.1 of the Borrower Security Agreement.

"Equipment Contracts" shall mean Contracts relating to the Equipment.

"Equipment Manufacturer" shall mean the original manufacturer of the applicable Type of Equipment.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

"Eurocurrency Reserve Requirements" means for any day as applied to a Eurodollar Loan, the then stated maximum rate of all reserve requirements (including, without limitation, any marginal, emergency, supplemental, special or other reserves under any regulations of the Board or other Governmental Authority having jurisdiction with respect thereto or otherwise required by applicable law) applicable to any member bank of the Federal Reserve System in respect of eurocurrency funding or liabilities as defined in Regulation D (or any successor category of liabilities under Regulation D).

"Eurodollar Loans" means Loans the rate of interest applicable to which is based upon the Eurodollar Rate.

"Eurodollar Rate" shall mean with respect to each day during each Interest Period pertaining to a Eurodollar Loan, a rate per annum equal to (a) the offered quotation to first-class banks in the New York interbank Eurodollar market by the Administrative Agent for Dollar deposits of amounts in immediately available funds comparable to the outstanding principal amount of such Eurodollar Loan of the Administrative Agent (in its capacity as a Lender) with maturities comparable to the Interest Period applicable to such Eurodollar Loan commencing two Business Days thereafter as of 10:00 A.M. (New York time) on the first day of such Interest Period, divided (and rounded upward to the nearest $\frac{1}{16}$ of 1%) by (b) a percentage equal to 100% minus the Eurocurrency Reserve Requirements.

"Event of Default" shall mean any of the events specified in **Section 9** of the Loan Agreement, *provided* that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

"Event of Eminent Domain" shall mean with respect to any Property, (i) any compulsory transfer or taking by condemnation, seizure, eminent domain or exercise of a similar power, or transfer under threat of such compulsory transfer or taking or confiscation of such Property or the requisition of the use of such Property, by any agency, department, authority, commission, board, instrumentality or political subdivision of any state, the United States or another Governmental Authority having jurisdiction or (ii) any settlement in lieu of **clause (i)** above.

"Existing Aircraft" shall mean that certain Bombardier Global Express aircraft, (manufacturer's Serial No. 9065 and United States Registration No. N711SW (formerly N789TP)), owned by a trust of which World Travel is the beneficial interest holder.

"Existing Stockholders" shall mean, collectively, Mr. Wynn, Aruze USA, Inc., a Nevada corporation, Baron Asset Fund, a Massachusetts business trust and the Kenneth R. Wynn Family Trust and, in each case, any Affiliates thereof.

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"Facility" shall mean each of (a) the Term Loan Commitments and the Term Loans made thereunder (the "*Term Loan Facility*") and (b) the Revolving Credit Commitments and the extensions of credit made thereunder (the "*Revolving Credit Facility*").

"Fair Market Value" shall mean, with respect to the Collateral or a portion thereof as of any date, the price which a purchaser would pay to purchase such Collateral in an arm's-length transaction between a willing buyer and a willing seller, neither of them being under any compulsion to buy or sell. In making any determination of Fair Market Value, Appraiser shall assume such Collateral has been maintained in accordance with the requirements of the Loan Agreement and that such Collateral is in the condition in which it is required to be hereunder as of the date for which such determination is made. Appraiser shall use such reasonable methods of appraisal as are satisfactory to the Lenders. Notwithstanding the foregoing, "Fair Market Value" with respect to any Appraisals delivered pursuant to **Section 6.17** of the Loan Agreement shall be made by the Appraiser with the assumptions that such Collateral is in its brand new condition (and without giving effect to depreciation caused by the fact that such Collateral may have been delivered and or installed prior to such Appraisal).

"Federal Aviation Administration" or "FAA" shall mean the Federal Aviation Administration and any successor agency.

"Federal Funds Rate" shall mean, for any day, the rate per annum (rounded upwards, if necessary, to the nearest $\frac{1}{100}$ of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to the Collateral Agent on such day on such transactions as determined by the Collateral Agent.

"Fee Letters" shall mean the Arrangement Fee Letters, the Participation Fee Letters and the Collateral Agent Fee Letter.

"Fees" shall have the meaning assigned to such term in **Section 2.7** of the Loan Agreement.

"FF&E Collateral Account Agreement" shall mean that certain FF&E Collateral Account Agreement dated as October 30, 2002 among the Borrower, the Collateral Agent, the Securities Intermediary (as defined in the Disbursement Agreement) and the other parties thereto.

"FF&E Financing Documents" shall mean the Loan Agreement, the Disbursement Agreement, the Security Documents, the Intercompany Note, the Aircraft Operating Agreement, the FF&E Guaranty, the Wynn Resorts FF&E Guaranty and the FF&E Intercreditor Agreement and any future guarantees, guarantee and collateral agreements, or joinder agreements thereto executed and delivered by Affiliates of the Borrower.

"FF&E Guaranty" shall mean that certain Guaranty Agreement dated as of October 30, 2002 from the Guarantors in favor of the Secured Parties.

"FF&E Intercreditor Agreement" shall mean that certain Intercreditor Agreement dated as of the Document Closing Date among the Administrative Agent, the Mortgaged Notes Indenture Trustee and the Collateral Agent, in substantially the form of **Exhibit N** to the Loan Agreement.

"Final Advance Date" shall mean the Advance Date specified by the Borrower in writing to be the final Advance Date under the Loan Agreement.

"Final Completion Date" shall have the meaning set forth in the Disbursement Agreement.

"*Financing Agreements*" shall mean, collectively, the FF&E Financing Documents, the Mortgage Notes Indenture, Mortgage Notes Guarantees, the Other Security Documents, the Mortgage Notes, the Wynn Credit Agreement and any other loan, security, support or similar agreements entered into on, prior to or after the Document Closing Date to finance the development, construction and/or operation of the Project, whether with respect to Other Indebtedness or otherwise and including, without limitation, any agreements with respect to Permitted Refinancing Indebtedness.

"*Fiscal Year*" shall mean the fiscal year of the Borrower and the other Loan Parties ending on December 31 of each calendar year.

"*Fund*," "*Funded*" or "*Funding*" shall mean each funding by a Lender of a portion of the principal under its Note constituting a portion of any Advance as described in **Section 2** of the Loan Agreement.

"*Funded Debt*" shall mean, as to any Person, all Indebtedness of such Person of the types described in **clauses (a)** through **(e)** of the definition of "Indebtedness" in this **Appendix I**.

"*GAAP*" shall mean generally accepted accounting principles in the United States of America as in effect from time to time, except that for purposes of **Sections 7.1., 7.10** and **7.22** of the Loan Agreement, GAAP shall be determined on the basis of such principles in effect on the date hereof and consistent with those used in the preparation of the most recent audited financial statements delivered pursuant to **Section 6.1** of the Loan Agreement, unless otherwise modified pursuant to **Section 13.20** of the Loan Agreement.

"*Gaming Board*" or "*Gaming Authority*" shall mean, collectively, the Nevada Gaming Commission, the Nevada State Gaming Control Board, the Clark County Liquor and Gaming Licensing Board and any other federal or state agency having jurisdiction over gaming operations in the State of Nevada.

"*Gaming Commitment Percentage*" shall mean, as to any Lender, the percentage set forth opposite such Lender's name under the heading "Gaming Commitment Percentage" on **Schedule IA1** to the Loan Agreement.

"*Gaming Equipment*" shall mean, individually, each slot machine and other device which constitutes a gaming device (as defined in the Gaming Laws) along with any related equipment with respect thereto, together with any substitutions therefor, replacements thereof, improvements thereto and additions thereto pursuant to the terms of the Loan Documents, and, collectively, each of the foregoing items of Gaming Equipment.

"*Gaming Facility*" shall mean any building or other structure used or expected to be used to enclose space in which a gaming operation is conducted and (a) is wholly or partially owned, directly or indirectly, by the Borrower or an Affiliate of the Borrower or (b) any portion or aspect of which is managed or used, or expected to be managed or used, by the Borrower or an Affiliate of the Borrower.

"*Gaming Laws*" shall mean the Nevada Gaming Control Act, as clarified in chapter 463 of the Nevada Revised Statutes, as amended from time to time, the regulations of the Nevada Gaming Commission promulgated thereunder, as amended from time to time, and other laws promulgated by the Nevada Gaming Authorities and applying to gaming operations in the State of Nevada.

"*Golf Course*" shall mean Le Reve's Tom Fazio/Stephen A. Wynn designed 18-hole golf course to be situated on the Golf Course Land, as more particularly described in Exhibit T-4 to the Disbursement Agreement.

"*Golf Course Land*" shall mean the land owned by Wynn Resorts Holdings, Palo and Desert Inn Improvement on which the Golf Course is to be located, as described in Exhibit T-4 to the Disbursement Agreement. The Golf Course Land shall include (a) the Wynn Home Site Land until such time (if ever) as the Wynn Home Site Land has been Disposed of in accordance with Section 7.5(j), (b) the Home Site Land until such time (if ever) as the Home Site Land has been

Disposed of in accordance with Section 7.5(l), the Palo Home Site Land, (c) the Water Utility Land and (d) if at any time acquired by a Loan Party, the Additional Land (or any part thereof).

"*Golf Course Land Owners*" collectively, Wynn Resorts Holdings, Desert Inn Improvement, Palo and, to the extent the Additional Land (or any part thereof) is acquired by one or more Loan Parties, such Loan Parties.

"*Golf Course Lease*" shall mean that certain Lease Agreement, dated as of October 21, 2002, by and between Wynn Resorts Holdings and Palo, on the one hand, as lessor, and the Borrower, on the other hand, as lessee, with respect to the lease of land on which the Golf Course is to be located.

"*Governing Documents*" shall mean, collectively, as to any Person, the articles or certificate of incorporation and bylaws, any shareholders agreement, certificate of formation, limited liability company agreement, partnership agreement or other formation or constituent documents of such Person.

"*Governmental Action*" shall mean all applicable permits, authorizations, registrations, consents, approvals, waivers, exceptions, variances, orders, judgments, decrees, licenses, exemptions, publications, filings, notices to and declarations of or with, or required by, any Governmental Agency, or required by any Requirement of Law.

"*Governmental Agency*" or "*Authority*" shall mean any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity, (including the Nevada Gaming Authorities, any zoning authority, the FDIC, the Comptroller of the Currency or the Federal Reserve Board, any central bank or any comparable authority), any self-regulating agency (e.g., NASD), and entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any arbitrator with authority to bind a party at law.

"*Guarantee and Collateral Agreement*" shall mean the Guarantee and Collateral Agreement to be executed and delivered by the Borrower and each other Loan Party (other than Desert Inn Improvement), substantially in the form of Exhibit A to the Wynn Credit Agreement, as the same may be amended,

supplemented, replaced or otherwise modified from time to time in accordance with the Loan Agreement.

"*Guarantee Obligation*" shall mean, as to any Person (the "*guaranteeing person*"), any obligation of (a) the guaranteeing person or (b) another Person (including, without limitation, any bank under any letter of credit) to induce the creation of which the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends or other obligations (the "*primary obligations*") of any other third Person (the "*primary obligor*") in any manner, whether directly or indirectly, including, without limitation, any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any Property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase Property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof or (v) under Hedge Agreements; *provided, however*, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms

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of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

"*Guarantors*" shall mean each of the Loan Parties (other than Desert Inn Improvement and the Borrower) and Wynn Resorts.

"*Hazardous Materials Activity*" shall mean any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Substances, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Substances and any corrective action or response action with respect to any of the foregoing.

"*Hazardous Substances*" shall mean (statutory acronyms and abbreviations having the meaning given them in the definition of "Environmental Laws") substances defined as "hazardous substances," "pollutants" or "contaminants" in Section 101 of the CERCLA; those substances defined as "hazardous waste," "hazardous materials" or "regulated substances" by the RCRA; those substances designated as a "hazardous substance" pursuant to Section 311 of the CWA; those substances defined as "hazardous materials" in Section 103 of the HMTA; those substances regulated as a hazardous chemical substance or mixture or as an imminently hazardous chemical substance or mixture pursuant to Section 6 or 7 of the TSCA; those substances defined as "contaminants" by Section 1401 of the SDWA, if present in excess of permissible levels; those substances regulated by the Oil Pollution Act; those substances defined as a pesticide pursuant to Section 2(u) of the FIFRA; those substances defined as a source, special nuclear or by-product material by Section 11 of the AEA; those substances defined as "residual radioactive material" by Section 101 of the UMTRCA; those substances defined as "toxic materials" or "harmful physical agents" pursuant to Section 6 of the OSHA; those substances defined as hazardous wastes in 40 C.F.R. Part 261.3; those substances defined as hazardous waste constituents in 40 C.F.R. Part 260.10, specifically including Appendix VII and VIII of Subpart D of 40 C.F.R. Part 261; those substances designated as hazardous substances in 40 C.F.R. Parts 116.4 and 302.4; those substances defined as hazardous substances or hazardous materials in 49 C.F.R. Part 171.8; those substances regulated as hazardous materials, hazardous substances, or toxic substances in 40 C.F.R. Part 1910; in any other Environmental Laws; and in the regulations adopted and publications promulgated pursuant to said laws, whether or not such regulations or publications are specifically referenced herein.

"*Hedge Agreements*" shall mean all interest rate swaps, caps or collar agreements or similar arrangements entered into by the Borrower providing for protection against fluctuations in interest rates or currency exchange rates or the exchange of nominal interest obligations, either generally or under specific contingencies.

"*Highest Lawful Rate*" shall have the meaning assigned to such term in **Section 3.6** of the Loan Agreement.

"*Home Site Land*" shall mean a tract of land not greater than 20 acres located on the Golf Course Land where residential and non-gaming related developments may, after Disposition of the Home Site Land in accordance with **Section 7.5(l)**, be built.

"*Indebtedness*" shall mean, as to any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of Property or services (other than trade payables incurred in the ordinary course of such Person's business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (even though the rights and remedies of

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the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property), (e) all Capital Lease Obligations or Synthetic Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party under acceptance, letter of credit, completion guaranties, performance bonds or similar facilities, (g) all obligations of such Person, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any Capital Stock of such Person, (h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in **clauses (a)** through **(g)** above; (i) all obligations of the kind referred to in **clauses (a)** through **(h)** above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on Property (including, without limitation, accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation, (j) for the purposes of **Section 9.1(e)** of the Loan Agreement only, all obligations of such Person in respect of Hedge Agreements and (k) the liquidation value of any preferred Capital Stock of such Person or its Subsidiaries held by any Person other than such Person and its Wholly Owned Subsidiaries. All obligations under the Financing Agreements shall constitute Indebtedness.

"*Indemnitee*" shall mean the Arranger, any Lender, the Collateral Agent, the Trust Company and their respective Affiliates, successors, permitted assigns, permitted transferees, invitees, contractors, servants, employees, officers, directors, shareholders, partners, participants, representatives agents and their respective designees or nominees.

"*Indemnity Agreements*" collectively, each of the Indemnity Agreements executed by a Loan Party with respect to its Mortgaged Properties in favor of the Administrative Agent substantially in the form of Exhibit F to the Wynn Credit Agreement, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the Wynn Credit Agreement, and including, without limitation the Borrower Indemnity Agreement, the Palo Indemnity Agreement, the Valvino Indemnity Agreement and the Wynn Resorts Holdings Indemnity Agreement (each as defined in the Wynn Credit Agreement).

"*Initial Advance Date*" shall mean the first date on which an Advance occurs.

"*Initial Amortization Date*" shall mean the first date on which a Required Prepayment is made.

"*Initial Arrangers*" shall have the meaning assigned thereto in the Wynn Credit Agreement.

"*Initial EBITDA Calculation Date*" shall mean the last day of the fiscal quarter of the Borrower in which the Opening Date occurs unless such date is less than 45 days after the Opening Date, in which case the last day of the first full fiscal quarter of the Borrower after the Opening Date; *provided*, that unless the Initial EBITDA Calculation Date has occurred by September 30, 2005, there shall be no Initial EBITDA Calculation Date.

"*Insolvency*" shall mean, with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of Section 4245 of ERISA.

"*Insolvent*" shall mean pertaining to a condition of Insolvency.

"*Insurance Advisor*" shall mean Marsh USA, Inc., or its successor, appointed by the Administrative Agent.

"*Insurance Proceeds*" shall mean all amounts and proceeds (including instruments) paid under any insurance policy maintained by a Loan Party (including, without limitation, any insurance policy required to be maintained by a Loan Party under any Operative Document).

"*Insurance Requirements*" shall mean all terms and conditions of any insurance policy required by any Operative Document to be maintained or caused to be maintained by the Borrower, and all requirements of the issuer of any such policy.

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"*Intellectual Property*" shall mean the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, state, multinational or foreign laws or otherwise, including, without limitation, copyrights, patents, trademarks, service-marks, technology, know-how and processes, recipes, formulas, trade secrets, or licenses (under which the applicable Person is licensor or licensee) relating to any of the foregoing and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

"*Intellectual Property Security Agreement*" shall mean, collectively, the Intellectual Property Security Agreements to be executed and delivered by the Loan Parties, substantially in the form of Exhibit C to the Guarantee and Collateral Agreement, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the Wynn Credit Agreement.

"*Intercompany Note*" shall mean, individually, that certain intercompany note from World Travel to the Borrower dated October 30, 2002 and secured by the Aircraft Security Agreement.

"*Intercreditor Agreements*" shall mean, collectively, the FF&E Intercreditor Agreement and the Project Lender Intercreditor Agreement.

"*Interest*" shall mean, with respect to each Interest Period, an amount equal to interest accrued on the Loan Balance outstanding during such period at the Interest Rate.

"*Interest Period*" shall mean (i) as to any Loan to which the Base Rate applies, initially the period commencing on (and including) the Advance Date for such Loan and ending on (but excluding) the next succeeding Payment Date thereafter, and thereafter, each period commencing on (and including) a Payment Date and ending on (but excluding) the next succeeding Payment Date and (ii) as to any Loan to which the Adjusted Eurodollar Rate applies, initially, the period commencing on the borrowing or selection date, as the case may be, with respect to such Loan and ending one, two, three or six months thereafter, as selected by the Borrower in its Advance Request or notice of interest rate selection, as the case may be, given with respect thereto and thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Loan and ending one, two, three or six months thereafter, as selected by the Borrower by irrevocable notice to the Collateral Agent not less than three Business Days prior to the last day of the then current Interest Period with respect thereto; *provided* that, all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period that would otherwise extend beyond the Maturity Date, shall end on the Maturity Date, as applicable;

(iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month; and

(iv) the Borrower shall select Interest Periods so as not to require a payment or prepayment of any Loan during an Interest Period for such Loan.

"*Interest Rate*" shall mean, for each day during each Interest Period with respect thereto, (a) if no Default or Event of Default shall then exist, (i) if the Base Rate is in effect pursuant to **Section 3.5** or **Section 12.6** of the Loan Agreement, a rate per annum equal to the Base Rate, or (ii) if the Adjusted Eurodollar Rate is in effect pursuant to **Section 3.5** of the Loan Agreement, a rate per annum equal to the Adjusted Eurodollar Rate or (b) if at any time a Default or Event of Default shall occur during such Interest Period then for so long as such Default or Event of Default shall exist or until a new

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Interest Rate is selected, or deemed to have been selected, pursuant to **Section 3.5** of the Loan Agreement, a rate per annum equal to the Overdue Rate.

"*Investments*" shall have the meaning assigned to such term in **Section 7.8** of the Loan Agreement.

"*IRS*" shall mean the Internal Revenue Service, and any Governmental Authority succeeding to any of its principal functions under the Code.

"*Item*" or "*Item of Equipment*" shall mean a particular item of Equipment, as the context may require, and "*Items of Equipment*" shall mean collectively each item of Equipment.

"*Item Value Fraction*" shall mean, with respect to any Item of Equipment, Airframe or Engine a fraction, the numerator of which is the Purchase Price for such Item of Equipment or Allocated Aircraft Value, as the case may be, and the denominator of which is the aggregate Purchase Price of all Items of Equipment and the Allocated Aircraft Value, including such Item of Equipment, Airframe or Engine.

"*Las Vegas Jet*" shall mean Las Vegas Jet, LLC, a Nevada limited liability company.

"*Las Vegas Jet Lease*" shall mean that certain Aircraft Lease dated as of January 29, 2002 by and between World Travel and Las Vegas Jet (formerly known as Las Vegas CharterJet, LLC).

"*Lease*" shall have the meaning assigned to such term in Section 4.2 of the Borrower Security Agreement.

"*Lender Addendum*" shall have the meaning set forth in the Wynn Credit Agreement.

"*Lender Default*" shall mean the failure or refusal (which has not been retracted in writing) of a Lender to make available its portion of any Loan required to be made by such Lender under **Section 2.3** of the Loan Agreement at or prior to such time that the same is required to be so made by such Lender.

"*Lender Liens*" shall mean Liens on or against the Collateral (a) which result from any act of, or any Claim against, any Lender or any agent unrelated to the transactions contemplated by the Operative Documents or (b) which result from any Tax owed by any such Person, except any Tax for which the Borrower is obligated to indemnify.

"*Lenders*" shall mean the Persons set forth on **Schedule IA1**, as amended, to the Loan Agreement, together with any permitted successors and assigns.

"*Letters of Credit*" shall have the meaning set forth in the Wynn Credit Agreement.

"*Liabilities*" shall have the meaning assigned to such term in Section 2.1 of the Borrower Security Agreement.

"*License Revocation*" the revocation, failure to renew or suspension of, or the appointment of a receiver or similar official with respect to, any casino, gambling or gaming license, including, without limitation, any Nevada Gaming Approvals, covering any portion of the Project.

"*Lien*" shall mean with respect to any Property, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such Property, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in such Property and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction).

"*Liquidated Damages*" shall mean any proceeds or liquidated damages paid pursuant to any obligation, default or breach under the Project Documents (net of arm's length costs incurred by a Loan Party pursuant to arm's length transactions in connection with adjustment or settlement thereof

and taxes paid with respect thereto). For purposes of this definition, so-called "liquidated damages" insurance policies shall be deemed to be Project Documents.

"*Loan*" shall mean any loan made by the Lenders to the Borrower pursuant to the terms of the Loan Agreement.

"*Loan Agreement*" shall mean that certain Loan Agreement dated as of October 30, 2002 among the Borrower, the Collateral Agent and the Lenders, as the same may be amended from time to time.

"*Loan Balance*" shall mean, as of any time, the aggregate principal amount outstanding on the Notes at such time.

"*Loan Conversion Date*" shall have the meaning set forth in the Wynn Credit Agreement.

"*Loan Documents*" shall mean the Loan Agreement, the Security Documents, the Disbursement Agreement, the FF&E Intercreditor Agreement, the Management Fee Subordination Agreement, the FF&E Guaranty, the Wynn Resorts FF&E Guaranty, the Indemnity Agreements, the Notes, the Intercompany Note, the Las Vegas Jet Lease and the Aircraft Operating Agreement.

"*Loan Parties*" shall mean the Borrower, Valvino, Capital Corp., Palo, Wynn Resorts Holding, Desert Inn Water, Desert Inn Improvement, Wynn Design, World Travel, Las Vegas Jet and each other Subsidiary of Valvino other than the Completion Guarantor (including any such Subsidiaries that become party to a Loan Document pursuant to **Section 6.10**).

"*Loan Term*" shall mean the period from the Document Closing Date to, and including, the Maturity Date.

"*Local FF&E Collateral Account Agreement*" shall mean that certain Local FF&E Collateral Account Agreement dated as of October 30, 2002 among the Borrower, the Collateral Agent, the Securities Intermediary (as therein defined) and the other parties thereto.

"*Loss Proceeds*" shall have the meaning set forth in the Disbursement Agreement.

"*Management Agreement*" shall mean the Management Agreement, dated as of October 30, 2002 between the Loan Parties, on the one hand and Wynn Resorts, on the other hand.

"*Management Fee Subordination Agreement*" shall mean the Management Fee Subordination Agreement, dated as of the date hereof, among the Loan Parties, Wynn Resorts, the Mortgage Notes Indenture Trustee and the Administrative Agent.

"*Management Fees*" shall have the meaning as defined in the Management Agreement.

"*Manufacturer*" shall mean, individually, the Aircraft Manufacturer or the Equipment Manufacturer, as the case may be, and "*Manufacturers*" shall mean collectively each Manufacturer.

"*Material Adverse Effect*" shall mean (i) one or a combination of conditions or changes in or affecting, in a material adverse way (a) the business, assets, liabilities, property, condition (financial or otherwise), results of operations, prospects, value or management of the Borrower and the other Loan Parties taken as a whole, (b) the Project, (c) the validity or enforceability of the Loan Agreement or any of the other Loan Documents, (d) the validity, enforceability or priority of the Liens purported to be created by the Security Documents or (e) the rights or remedies of any Secured Party hereunder or under any of the other Loan Documents or (ii) any event or circumstance that calls into question in any material respect the Projections or any of the material assumptions on which the Projections were prepared.

"*Material Affiliated Contracts*" shall mean any Material Contract to which a Loan Party, on the one hand, and an Affiliate of such Loan Party (including any other Loan Party), on the other hand, are parties.

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"*Material Contract*" shall mean (i) the Golf Course Lease, the Driving Range Lease, the Employee Parking Lot Lease, the Management Agreement, the Tax Indemnification Agreement, the WDD Agreement, the Building Lease, the Water Supply Agreements and the Water Show Entertainment and Production Agreement and (ii) any other contract or arrangement to which (a) a Loan Party, on the one hand, and an Affiliate of such Loan Party (including any other Loan Party), on the other hand, are parties, pursuant to which the Loan Parties are, or any one of them is reasonably expected to incur obligations or liabilities with a Dollar value in excess of \$1,000,000 during the term of such contract or arrangement or (b) any Loan Party is a party (other than the Financing Documents) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect (taking into consideration any viable replacements or substitutions therefor at the time such determination is made).

"*Maturity Date*" shall mean October 30, 2009, or such earlier date on which: (i) the Borrower is required to pay the Casualty Amount pursuant to **Section 8.1** of the Loan Agreement or the Payoff Amount pursuant to **Section 3.1** of the Loan Agreement or (ii) the principal and interest on the Notes have become due and payable pursuant to **Section 9.1** of the Loan Agreement.

"*Maximum Consolidated Capital Expenditures Amount*" shall have the meaning set forth in **Section 7.7** of the Loan Agreement.

"*Minimum Lease Amount*" shall mean \$5,000,000.

"*Minimum Prepayment Amount*" shall mean \$10,000,000 of the aggregate principal amount of the Loans then outstanding or such lesser amount as shall represent the proceeds of a Disposition permitted by **Section 7.5(e)** or **Section 7.5(p)**.

"*Moody's*" shall mean Moody's Investors Service, Inc., a Delaware corporation, or any successor thereto.

"*Mortgage Note Guarantee*" shall mean Guarantee and Collateral Agreement dated as of October 30, 2002 among each Loan Party (other than Desert Inn Improvement) and the Mortgage Notes Indenture Trustee.

"*Mortgage Notes*" shall mean the 12% Mortgage Notes due 2010 issued by the Borrower and Capital Corp. pursuant to the Mortgage Notes Indenture.

"*Mortgage Notes Indenture*" shall mean that certain Indenture, dated as of October 30, 2002, among the Borrower, Capital Corp., certain guarantors named therein and the Mortgage Notes Indenture Trustee.

"*Mortgage Notes Indenture Trustee*" shall mean Wells Fargo Bank, National Association in its capacity as the trustee under the Mortgage Notes Indenture and its successors in such capacity.

"*Mortgaged Properties*" shall mean the real properties and leasehold estates listed on Schedule 1.1 to the Wynn Credit Agreement or otherwise as to which the Administrative Agent for the benefit of the Wynn Credit Parties shall be granted a Lien pursuant to the Mortgages (including at such time, if any, as Desert Inn Improvement executes the Water Property Mortgage, the Water Utility Land).

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"*Mortgages*" shall mean each of the mortgages, deeds of trust and deeds to secure obligations made by any Loan Party in favor of, or for the benefit of, the Administrative Agent for the benefit of the Wynn Credit Parties under the Wynn Credit Documents (including, without limitation, the Borrower Mortgage, the Palo Mortgage, the Valvino Mortgage, the Wynn Resorts Holdings Mortgage (each as defined in the Wynn Credit Agreement) and, at such time, if any, as Desert Inn Improvement executes the Water Property Mortgage and the Water Property Mortgage), substantially in the form of Exhibit D to the Wynn Credit Agreement (with such changes thereto as shall be advisable under the law of the jurisdiction in which such mortgage or deed of trust is to be recorded), as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the Wynn Credit Agreement.

"*Mr. Wynn*" shall mean Stephen A. Wynn, an individual.

"*Multemployer Plan*" shall mean a Plan that is a multiemployer plan as defined in Section 3(37) or 4001(a)(3) of ERISA.

"*Net Cash Proceeds*" shall mean in connection with any issuance or sale of debt securities or instruments or the incurrence of loans, the cash proceeds received from such issuance or incurrence, net of arm's length attorneys' fees, investment banking fees, accountants' fees, underwriting discounts and

commissions and other arm's length fees and expenses, in each case, to the extent actually incurred by the Borrower or another Loan Party in connection therewith.

"*Net Disposition Proceeds*" in connection with any Disposition, the proceeds thereof in the form of cash or Cash Equivalents of such Disposition, net of arm's length attorneys' fees, accountants' fees, investment banking fees, and other arm's length fees and expenses, in each case, to the extent actually incurred in connection therewith and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any tax credits or deductions any tax sharing arrangements, in each case reducing the amount of taxes so paid or estimated to be payable).

"*Net Revenues*" shall mean for any period, the net revenues of the Borrower and its consolidated Subsidiaries, as set forth on the Borrower's income statement for the relevant period under the line item "net revenues," calculated in accordance with GAAP and with Regulation S-X under the Securities Act and in a manner consistent with that customarily utilized in the gaming industry.

"*Nevada Gaming Laws*" shall mean the Nevada Gaming Control Act, as codified in Chapter 463 of the NRS as amended from time to time, and the regulations of the Nevada Gaming Commission promulgated thereunder, as amended from time to time, and other regulations promulgated by the Nevada Gaming Authorities and applying to gaming operations in the State of Nevada.

"*Non-Defaulting Lender*" shall mean any Lender other than a Defaulting Lender.

"*Non-Gaming Commitment Percentage*" shall mean as to any Lender, the percentage set forth opposite such Lender's name under the heading "Non-Gaming Equipment Commitment Percentage" on **Schedule IA1** to the Loan Agreement.

"*Non-Gaming Equipment*" shall mean all Items of Equipment other than Gaming Equipment.

"*Note*" shall have the meaning assigned to such term in **Section 2.3(b)** of the Loan Agreement.

"*Notice of Funding Requests*" shall have the meaning set forth in the Disbursement Agreement.

"*NRS*" shall mean the Nevada Revised Statutes, as amended from time to time.

"*Obligations*" shall mean the unpaid principal of and interest on (including, without limitation, interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Loan Party, whether or not a claim for post-filing or post-petition interest is allowed in such

proceeding) the Loans and all other obligations and liabilities of the Loan Parties, Valvino or Wynn Resorts to any Arranger, to any Agent or to any Lender, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, fees, indemnities, costs, expenses (including, without limitation, all fees, charges and disbursements of counsel to any Arranger, to any Agent or to any Lender that are required to be paid by any Loan Party or Valvino pursuant hereto or to any other Loan Document) or otherwise.

"*Officer's Certificate*" shall mean as to any Person; a certificate signed by a Responsible Officer of such Person.

"*On-Site Cash*" shall mean amounts held in cash at the Site in connection with and necessary for the ordinary course operations of the Project.

"*Opening Date*" shall have the meaning set forth in the Disbursement Agreement.

"*Operating Lease*" shall mean an operating lease determined in accordance with GAAP.

"*Operative Documents*" shall mean the Financing Agreements and the Project Documents.

"*Original Aircraft Financing Documents*" shall mean that certain Amended and Restated Business Loan Agreement dated as of May 30, 2002 between Bank of America, N.A. and World Travel, that certain Mortgage, Security Agreement and Assignment dated as of February 28, 2002 between World Travel and Bank of America, N.A., and the other documents, certificates and agreements delivered in connection therewith.

"*Original Aircraft Part*" shall have the meaning assigned to such term in Section 4.4 of the Aircraft Security Agreement.

"*Original Part*" shall have the meaning assigned to such term in Section 4.4 of the Borrower Security Agreement.

"*Original Payment*" shall have the meaning assigned to such term in **Section 12.3** of the Loan Agreement.

"*Other Indebtedness*" shall mean (i) the Indebtedness of Valvino or any Loan Party evidenced by the Mortgage Notes or the Mortgage Notes Guarantees and (ii) the Indebtedness of Valvino or any Loan Party evidenced by the Wynn Credit Documents.

"*Other Security Documents*" shall mean any agreement, document, instrument or deed granting, creating or evidencing any security or lien for any Other Indebtedness, including, without limitation, the "*Security Documents*" as defined in the Disbursement Agreement, other than the Security Documents.

"*Outside Date*" shall mean September 30, 2005, as extended pursuant to Section 6.4 of the Disbursement Agreement.

"*Overall Transaction*" shall mean all the transactions and activities referred to in or contemplated by the Operative Documents.

"*Overdue Rate*" shall have the meaning assigned to such term in **Section 3.3(b)** of the Loan Agreement.

"Palo" shall mean Palo, LLC, a Delaware limited liability company.

"Part" shall have the meaning assigned to such term in Section 4.4 of the Borrower Security Agreement.

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"Participation Fee" shall have the meaning assigned to such term in **Section 2.7** of the Loan Agreement.

"Participation Fee Letter" shall mean each letter between the Borrower and the respective Lender relating to fees payable to such Lender in respect of its Commitment.

"Pass Through Entity" shall mean any of (1) a grantor trust for federal or state income tax purposes or (2) an entity treated as a partnership or a disregarded entity for federal or state income tax purposes.

"Payment Date" shall mean (i) as to any Loan to which the Base Rate applies the last day of each March, June, September and December to occur while such Loan is outstanding, (ii) as to any Loan to which the Adjusted Eurodollar Rate applies and which has an Interest Period of three months or less, the last day of such Interest Period, (iii) as to any Loan to which the Adjusted Eurodollar Rate applies and which has an Interest Period longer than three months, each day which is three months, or a whole multiple thereof, after the first day of such Interest Period and (iv) in any case, the Maturity Date.

"Payoff Amount" shall mean, as of any date of determination, the sum of (a) the Loan Balance as of the date of payment, plus (b) all accrued but unpaid Interest, plus (c) the Applicable Administrative Charge, if any, plus (d) all other sums then due and payable under the Loan Documents by the Borrower, a Guarantor or any of their Affiliates.

"PBGC" shall mean the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA and any successor thereto.

"Pension Plan" shall mean any "employee pension benefit plan" (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA, other than a Multiemployer Plan, which Valvino or any of its Subsidiaries or any of their respective ERISA Affiliates sponsors, maintains, or to which it makes, is making, or is obligated to make contributions, or in the case of a multiple employer plan (as described in Section 4064(a) of ERISA) has made contributions at any time during the immediately preceding five (5) plan years.

"Permits" shall mean the collective reference to (i) Environmental Permits, and (ii) any and all other franchises, licenses, leases, permits, approvals, notifications, certifications, registrations, authorizations, exemptions, variances, qualifications, easements, rights of way, Liens and other rights, privileges and approvals required under any Requirement of Law (including Nevada Gaming Laws).

"Permitted Aircraft Modification" shall have the meaning assigned to such term in Section 4.4 of the Aircraft Security Agreement.

"Permitted Businesses" shall mean (i) the gaming business, (ii) the development, construction, ownership and operation of a Gaming Facility, (iii) all businesses, whether or not licensed by the Nevada Gaming Authorities, which are necessary for, incident to, useful to, arising out of, supportive of or connected to the development, construction, ownership or operation of a Gaming Facility, (iv) any development, construction or operation of lodging, retail, restaurant or convention facilities, sports or entertainment facilities, food and beverage distribution operations, transportation services (including operation of the Aircraft and chartering thereof), parking services, sales and marketing services or other activities related to the foregoing, (v) any business (including any related internet business) that is a reasonable extension, development or expansion of any of the foregoing or incidental thereto and/or (vi) the ownership by a Person of Capital Stock in its directly Wholly Owned Subsidiaries other than, with respect to the ownership and operation of the Aircraft only, World Travel and Las Vegas Jet; provided, however, that with respect to the Borrower and its Subsidiaries, the foregoing shall only be Permitted Businesses to the extent related to the Project or furtherance of the Project's development, construction, ownership or operation; provided, further, that, notwithstanding the foregoing, the Borrower shall be permitted to (a) sublease space within the Phase II Building to Persons not related

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to the development, construction, ownership or operation of the Project and (b) pay Allocable Overhead as otherwise permitted under this Loan Agreement.

"Permitted Encumbrances" shall have the meaning assigned to such term in the Disbursement Agreement.

"Permitted Liens" shall mean the collective reference to in the case of Collateral, Liens permitted by Section 7.3 of the Loan Agreement (but only of the priority and to the extent of coverage expressly set forth in Section 7.3 of the Loan Agreement and subject to the provisions of the FF&E Intercreditor Agreement); provided, that for purposes of **Section 8** "Permitted Liens" shall not include Liens permitted by **Section 7.3(c), (e), (i), (o), (r), (t), and (v)**.

"Permitted Modification" shall have the meaning assigned to such term in Section 4.4 of the Borrower Security Agreement.

"Permitted Refinancing Indebtedness" shall mean any Indebtedness of the Borrower and, with respect to the Mortgage Notes, Capital Corp. (and, with respect to Guaranty Obligations in support thereof, the other Loan Parties) issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund the Mortgage Notes or Indebtedness under the Wynn Credit Agreement; provided that (i) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded (plus all accrued interest on such Indebtedness and the amount of all expenses and premiums incurred in connection therewith), (ii) such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded, (iii) the restrictions on the Loan Parties contained in the agreements governing such Permitted Refinancing Indebtedness are no more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded, (iv) if such Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of payment to the Loan Documents, such Permitted Refinancing Indebtedness is subordinated in right of payment to the Loan Documents on terms at least as favorable to the Lenders as those contained in the applicable documents reflecting such subordination (whether the Intercreditor Agreements or otherwise), (v) the relevant holders of such

Permitted Refinancing Indebtedness become party to the Intercreditor Agreements, as applicable, and (vi) all agreements, instruments, documentation and other arrangements associated with such Permitted Refinancing Indebtedness is in form and substance satisfactory to the Required Lenders. In the event Permitted Refinancing Indebtedness is used to extend, refinance, renew, replace, amend and restate, restate, defease or refund the Mortgage Notes or the Indebtedness under the Wynn Credit Agreement, all relevant definitions and provisions of the Loan Documents related to the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded shall be amended, as necessary, to reflect such Permitted Refinancing Indebtedness and related documentation and/or arrangements.

"*Permitted Securities*" shall mean (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within 18 months from the date of acquisition; or (b) shares of money market, mutual or similar funds which invest exclusively in assets satisfying the requirements of **clause (a)** of this definition.

"*Permitted Taking*" shall mean a Taking that is permitted by Section 7.5 of the Wynn Credit Agreement.

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"*Person*" shall mean an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"*Phase II Land*" shall mean the approximately 20-acre tract of land adjacent to the Le Rêve hotel and casino resort owned by Valvino, as more particularly described in Exhibit T-4 to the Disbursement Agreement.

"*Phase II Land Building*" shall mean the building existing on the Phase II Land as of the Closing Date that is subject to the Building Lease.

"*Plan*" shall mean, at a particular time, any employee benefit plan that is subject to the requirements of Section 412 of the Code or that is a Single Employer Plan and which Valvino, the Borrower or any other Loan Party or any Commonly Controlled Entity maintains, administers, contributes to or is required to contribute to or under which the Borrower or any Commonly Controlled Entity could incur any liability.

"*Pledged Stock*" shall have the meaning set forth in the Guarantee and Collateral Agreement or the Valvino Guarantee and Collateral Agreement, as applicable.

"*Prepayment Option*" shall have the meaning assigned to such term in **Section 3.1** of the Loan Agreement.

"*Presumed Tax Liability*" shall mean, for any Person that is not a Pass Through Entity for any period, an amount equal to the product of (a) the Taxable Income allocated or attributable to such Person (directly or through one or more tiers of Pass Through Entities) (net of taxable losses allocated to such Person with respect to any Loan Party that (i) are, or were previously, deductible by such Person and (ii) have not previously reduced Taxable Income), and (b) the Presumed Tax Rate.

"*Presumed Tax Rate*" shall mean, with respect to any Person for any period, the highest effective combined Federal, state and local income tax rate applicable during such period to a corporation organized under the laws of the State of Nevada, taxable at the highest marginal Federal income tax rate and the highest marginal Nevada and Las Vegas income tax rates (after giving effect to the Federal income tax deduction for such state and local income taxes, taking into account the effects of the alternative minimum tax, such effects being calculated on the assumption that such Person's only taxable income is the income allocated or attributable to such Person for such period (directly or through one or more tiers of Pass Through Entities) with respect to its equity interest in any of the Loan Parties that is a Pass Through Entity.) In determining the Presumed Tax Rate, the character of the items of income and gain comprising Taxable Income (*e.g.* ordinary income or long term capital gain) shall be taken into account.

"*Pricing Grid*" shall have the meaning set forth in the Wynn Credit Agreement.

"*Prime Rate*" shall mean the per annum rate of interest established, from time to time, by Deutsche Bank Trust Company Americas as its prime lending rate, the Prime Rate to change when and as such prime lending rate changes. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged by Deutsche Bank Trust Company Americas to any customer of Deutsche Bank Trust Company Americas. The Borrower acknowledges that Deutsche Bank Trust Company Americas, may, from time to time, make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

"*Proceedings*" shall have the meaning assigned thereto in **Section 6.7(c)** of the Loan Agreement.

"*Prohibited Transaction*" shall mean a transaction that is prohibited under Code Section 4975 or ERISA Section 406 and not exempt under Code Section 4975 or ERISA Section 408.

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"*Project*" shall mean the Le Rêve Casino Resort, a large scale luxury hotel and destination casino resort, with related parking structure and golf course facilities to be developed on the Project Site, all as more particularly described in Exhibit T-1 to the Disbursement Agreement.

"*Project Costs*" shall have the meaning set forth in the Disbursement Agreement.

"*Project Documents*" shall mean any and all "Project Documents" as defined in the Disbursement Agreement (including, without limitation, the Project Documents set forth in clause (i) of the definition of "Material Contracts") and any other document or agreement entered into on, prior to or after the Closing Date (including Material Contracts and Additional Material Contracts) relating to the design, engineering, development, construction, installation, maintenance or operation of the Project (including any Guarantee Obligations in furtherance thereof).

"*Project Lender Intercreditor Agreement*" shall mean that certain Intercreditor Agreement dated as of the Document Closing Date among the Administrative Agent and the Mortgage Notes Indenture Trustee.

"Project Liquidity Reserve Account" shall have the meaning as set forth in the Disbursement Agreement.

"Project Revenues" shall mean all income and receipts of the Loan Parties, including, without limitation, those derived from the ownership or operation of the Project or the Permitted Businesses, including payments received by the Loan Parties under any Project Document or Additional Material Contract, net payments, if any, received under Hedge Agreements, Liquidated Damages, Insurance Proceeds, Eminent Domain Proceeds, together with any receipts derived from the sale of any property pertaining to the Project or the Permitted Businesses or incidental to the operation of the Project or the Permitted Businesses, all as determined in conformity with cash accounting principles, the proceeds of any condemnation awards relating to the Project or the Permitted Businesses.

"Projections" shall have the meaning set forth in **Section 6.2(c)** of the Loan Agreement.

"Property" shall mean any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Capital Stock.

"Purchase Price" shall mean, for an Item of Equipment, the invoiced price or required contract payment for such Item plus the allocated pro rata share of any Fees and Transaction Costs, delivery costs or installation costs financed by the Lenders through Advances, but not to exceed 75% of the invoiced price or required gross contract payment for such Item of Equipment, and the aggregate Purchase Price of all Items of Equipment shall be the aggregate invoice price or required contract payments plus any Fees and Transaction Costs, delivery costs or installation costs financed by the Lenders through Advances but not to exceed 75% of the aggregate of the invoiced price or required gross contract payment for all of the Items of Equipment; *provided* that the aggregate Purchase Price for all of the Items of Equipment shall in no event exceed the Aggregate Commitment Amount.

"Qualified Affiliate Transaction" shall mean any transaction by or among one or more of the Loan Parties, on the one hand, and one or more of Wynn Resorts or any of its Subsidiaries, on the other hand, for the provision of goods, rights and/or services to be used in Permitted Businesses related to or in connection with and, in any event for the benefit of, the Project.

"Quarterly Date" shall mean (i) with respect to the first Quarterly Date, (a) the last day of the first full fiscal quarter of the Borrower beginning after the Initial EBITDA Calculation Date or (b) if there is no Initial EBITDA Calculation Date, December 31, 2005 and (ii) with respect to each subsequent Quarterly Date, the last day of the next succeeding fiscal quarter of the Borrower.

"Real Estate" shall mean all real property held or used by Valvino and the Loan Parties, which Valvino or the relevant Loan Party owns in fee or in which it holds a leasehold interest as a tenant or

in which it holds an easement right as an easement holder or otherwise occupies, including, without limitation, the real property more particularly identified in **Schedule 4.25(a)** and includes, without limitation, the Site and the Site Easements.

"Reimbursement Obligation" shall mean the obligation of the Borrower to reimburse the Issuing Lender pursuant to Section 3.5 of the Wynn Credit Agreement for amounts drawn under Letters of Credit.

"Related Party" shall mean either (i) any 80% (or more) owned Subsidiary, heir, estate, lineal descendent or immediate family member of Mr. Wynn; or (ii) any trust, corporation, partnership or other entity, the beneficiaries, equity holders, partners, owners or Persons beneficially holding an 80% or more controlling interest of which consist of Mr. Wynn and/or such other Persons referred to in the immediately preceding **clause (i)**.

"Release" shall mean any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Substances into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Substances), including the movement of any Hazardous Substances through the air, soil, surface water or groundwater.

"Removable Aircraft Part" shall have the meaning assigned to such term in Section 4.4 of the Aircraft Security Agreement.

"Removable Part" shall have the meaning assigned to such term in Section 4.4 of the Borrower Security Agreement.

"Reorganization" shall mean, with respect to any Multiemployer Plan, the condition that such plan is in reorganization within the meaning of Section 4241 of ERISA.

"Repair Plan" shall have the meaning set forth in the Wynn Credit Agreement.

"Replaced Aircraft Part" or "Replaced Aircraft Parts" shall have the meaning assigned to such term in Section 4.7 of the Aircraft Security Agreement.

"Replaced Item" or "Replaced Items" shall have the meaning assigned to such term in Section 4.7 of the Borrower Security Agreement.

"Replacement Aircraft" shall have the meaning set forth in Section 4.7(c) of the Aircraft Security Agreement.

"Replacement Aircraft Indebtedness" shall mean Indebtedness approved by the Required Lenders and/or all Lenders pursuant to the terms of **Section 7.5(p)** of the Loan Agreement represented by Capital Lease Obligations (following a prepayment of the Loans pursuant to **Section 7.5(p)(iii)(A)**), mortgage financings or purchase money obligations (following a prepayment of the Loans pursuant to **Section 7.5(p)(iii)(A)**) incurred by Wynn Resorts or a direct Wholly Owned Subsidiary (which may be a trust) of Wynn Resorts (other than any Loan Party) for the purpose of financing all (following a prepayment of the Loans pursuant to **Section 7.5(p)(iii)(A)**) or part of the purchase price of a Replacement Aircraft, so long as: (a) the principal amount of such Indebtedness does not exceed the cost (including sales and excise taxes, installation and delivery charges, interior buildout and outfitting and other direct costs of, and other direct expenses paid or charged in connection with, such purchase) of the Replacement Aircraft purchased with the proceeds thereof, (b) the aggregate principal amount of such Indebtedness does not exceed \$55.0 million at any time outstanding, and (c) except as permitted pursuant to **Section 7.6(i)**, no Loan Party (i) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) as to such Indebtedness, (ii) is directly or indirectly liable as a guarantor or otherwise as to such Indebtedness, or (iii) constitutes the lender of such Indebtedness.

"Replacement Aircraft Part" or "Replacement Aircraft Parts" shall have the meaning assigned to such term in Section 4.4 of the Aircraft Security Agreement.

"Replacement Airframe" shall have the meaning assigned to such term in **Section 8.1** of the Loan Agreement.

"Replacement Engine" shall have the meaning assigned to such term in **Section 8.1** of the Loan Agreement.

"Replacement Item" or "Replacement Items" shall have the meaning provided in **Section 8.1** of the Loan Agreement.

"Replacement Parts" shall have the meaning assigned to such term in Section 4.4 of the Borrower Security Agreement.

"Reportable Event" shall mean any of the events set forth in Section 4043(c) of ERISA, other than those events as to which the 30-day notice period is waived under subsection .27, .28, .29, .30, .31, .32, .34 or .35 of PBGC Reg. Section 4043.

"Required Aircraft Alteration" shall have the meaning assigned to such term in Section 4.4 of the Aircraft Security Agreement.

"Required Alteration" shall have the meaning assigned to such term in Section 4.4 of the Borrower Security Agreement.

"Required Lenders" shall mean at any time, Lenders holding more than 50% of the aggregate amount of Credit Exposure of all Lenders outstanding at such time; *provided, however*, that prior to the Final Completion Date any determination of "Required Lenders" at a time at which no Default or Event of Default exists, shall mean Non-Defaulting Lenders holding more than 50% of the Commitments (less the aggregate Commitments of Defaulting Lenders) of all Lenders at such time; *provided, further*, that for purposes of **Sections 2.4, 6.17, 7.5(p), 8.1 and 8.2** of the Loan Agreement any determination of "Required Lenders" shall only include that portion of the Lenders' Commitment or Credit Exposure, as the case may be, which relates to the relevant Type of Equipment or Aircraft; *provided, further*, that for purposes of (i) Sections 4.8, 5 and 9.2 of the Aircraft Security Agreement and for the Aircraft Operating Agreement, (ii) any other provision in this Loan Agreement or any other Loan Document with respect to insurance to be provided with respect to the Aircraft, (iii) instructions or directions to the Collateral Agent with respect to actions to be taken, or not to be taken, by the Collateral Agent with respect to the Aircraft, and (iv) any amendment, modification or waiver to this Loan Agreement or any Loan Document with respect to the Aircraft any determination of "Required Lenders" shall only include that portion of the Lenders' Commitment or Credit Exposure, as the case may be, which relates to the Aircraft.

"Required Prepayment" shall mean, for any Interest Period, a portion of the Loan Balance in the amount set forth on **Schedule II** to the Loan Agreement for such Interest Period.

"Requirement of Law" shall mean, as to any Person, the Governing Documents of such Person, and any law, treaty, order, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

"Responsible Officer" shall mean, as to any Person, the chief executive officer, president or chief financial officer of such Person, but in any event, with respect to financial matters, the chief financial officer of such Person. Unless otherwise qualified, all references to a "Responsible Officer" shall refer to a Responsible Officer of the Borrower or Wynn Resorts.

"Responsible Officer's Certificate" shall mean a certificate signed by an applicable Responsible Officer, which certificate shall certify as true and correct the subject matter being certified to in such certificate.

"Revolving Credit Commitment" shall have the meaning set forth in the Wynn Credit Agreement.

"Revolving Credit Lender" shall have the meaning set forth in the Wynn Credit Agreement.

"Revolving Credit Loans" shall have the meaning set forth in the Wynn Credit Agreement.

"Revolving Credit Percentage" shall have the meaning set forth in the Wynn Credit Agreement.

"Revolving Extensions of Credit" shall have the meaning set forth in the Wynn Credit Agreement.

"S&P" shall mean Standard & Poor's Ratings Group, a New York corporation or any successor thereof.

"Scheduled Completion Date" shall mean as defined in the Disbursement Agreement. As of the Closing Date, the Scheduled Completion Date is April 30, 2005.

"SEC" shall mean the Securities and Exchange Commission (or successors thereto or an analogous Governmental Authority).

"Secured Parties" shall mean, collectively, the Collateral Agent and the Lenders.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Security Agreement Event of Default" shall mean any of the events specified in Section 8.1 of the Borrower Security Agreement.

"Security Documents" shall mean, as the context requires, the collective reference to (i) the Borrower Security Agreement and all other pledge and security documents hereafter delivered to the Collateral Agent for the benefit of the Lenders granting a Lien on the Collateral (or associated with such a grant) to secure the obligations and liabilities of the Borrower to the Lenders under any Loan Document, (ii) the Aircraft Security Agreement and all other pledge and security documents hereafter delivered to the Borrower granting a Lien on the Aircraft Collateral to secure the obligations and liabilities of World Travel under any Loan Document, (iii) the Borrower Aircraft Assignment, (iv) the FF&E Collateral Account Agreement and (v) the Local FF&E Collateral Account Agreement.

"Seller" or "Sellers" shall mean, with respect to one or more Items of Equipment, Airframe or Engine; any of the Manufacturers, any vendors or the Borrower.

"Senior Permitted Liens" shall mean Permitted Liens that are expressly permitted by the terms of the Loan Documents to be superior in priority to the Liens of the Security Documents.

"Single Employer Plan" shall mean any Plan that is covered by Title IV of ERISA, but which is not a Multiemployer Plan.

"Site" shall mean all or any portion of the Real Estate, as described in Exhibit T-4 to the Disbursement Agreement. The Site includes, without limitation, the Wynn Home Site Land (until such time (if ever) as such Property has been Disposed of in accordance with Section 7.5(j) of the Loan Agreement), the Golf Course Land (until such time (if ever) as such Property has been Disposed of in accordance with Section 7.5(k) of the Loan Agreement), the Home Site Land (until such time (if ever) as such Property has been Disposed of in accordance with Section 7.5(l) of the Loan Agreement), the Phase II Land (until such time (if ever) as such Property has been Disposed of in accordance with Section 7.5(m) of the Loan Agreement) and any other Real Estate which is subject to a lien under any Mortgage.

"Site Easement" shall have the meaning assigned to such term in the Wynn Credit Agreement.

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"Solvent" shall mean, when used with respect to any Person, as of any date of determination, (a) the amount of the "present fair saleable value" of the assets of such Person will, as of such date, exceed the amount of all "liabilities of such Person, contingent or otherwise", as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, (d) such Person will be able to pay its debts as they mature, and (e) such Person is not insolvent within the meaning of any applicable Requirements of Law. For purposes of this definition, (i) "debt" means liability on a "claim", and (ii) "claim" means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

"Specified Change of Control" shall mean a "change of control" or similar event (howsoever defined) as defined (i) in the Mortgage Notes Indenture or (ii) the Wynn Credit Agreement.

"Subcontractor" shall mean any direct or indirect subcontractor of any tier under any Contract.

"Subordinated Debt" Indebtedness that (i) does not have any scheduled principal payment, mandatory principal prepayment, sinking fund payment or similar payment due prior to the Scheduled Term Loan Termination Date, (ii) is not secured by any Lien on any Property, (iii) is subordinated on terms and conditions reasonably satisfactory to the Initial Arrangers and in any event not less favorable to the Lenders than the terms of the Subordinated Intercompany Note and (iv) is subject to such covenants and events of default as may be reasonably acceptable to the Initial Arrangers; *provided*, that Permitted Refinancing Indebtedness or Indebtedness permitted pursuant to **Section 7.2(d)** shall not be deemed Subordinated Debt.

"Subordinated Intercompany Note" shall mean the Subordinated Intercompany Note to be executed and delivered by the Borrower and each of the other Loan Parties, substantially in the form of Exhibit L to the Wynn Credit Agreement, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the Wynn Credit Agreement.

"Subsidiary" shall mean, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the directors, managers or trustees of such corporation, partnership, limited liability company or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in the Loan Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

"Substitute Aircraft Part" or "Substitute Aircraft Parts" shall have the meaning assigned to such term in Section 4.7 of the Aircraft Security Agreement.

"Substitute Item" or "Substitute Items" shall have the meaning assigned to such term in Section 4.7 of the Borrower Security Agreement.

"Supplemental Payment" shall mean any and all amounts, liabilities and obligations other than Interest and Required Prepayments which the Borrower assumes or agrees or is otherwise obligated to pay under the Loan Agreement or any other Operative Document (whether or not designated as Supplemental Payment) to the Collateral Agent, any Lender or any other Person, including, without

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limitation, any Administrative Charge, indemnities and damages for breach of any covenants, representations, warranties or agreements.

"Swing Line Loans" shall have the meaning set forth in the Wynn Credit Agreement.

"Syndication Agent" shall mean Banc of America Securities, LLC, in its capacity as syndication agent under the Wynn Credit Agreement.

"*Synthetic Lease Obligations*" shall mean all monetary obligations of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations which do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the Indebtedness of such Person (without regard to accounting treatment).

"*Taking*" shall mean a taking or voluntary conveyance during the term of the Loan Agreement of all or part of any Mortgaged Property or Collateral, or any interest therein or right accruing thereto or use thereof, as the result of, or in settlement of, any condemnation or other eminent domain proceeding by any Governmental Authority affecting a Mortgaged Property or Collateral or any portion thereof, whether or not the same shall have actually been commenced.

"*Tax Amount*" shall mean, with respect to any period, (i) in the a case of any direct or indirect member of a Loan Party that is a Pass Through Entity, the Presumed Tax Liability of such direct or indirect member, and (ii) with respect to any of the Loan Parties that are Consolidated Members, the aggregate federal income tax liability such Persons would owe for such period if each was a corporation filing federal income tax returns on a stand alone basis at all times during its existence and, if any of the Consolidated Members files a consolidated or combined state income tax return such that it is not paying its own state income taxes, then Tax Amount shall also include the aggregate state income tax liability such Consolidated Members would have paid for such period if each was a corporation filing state income tax returns on a stand alone basis at all times during its existence.

"*Taxable Income*" shall mean, with respect to any Person for any period, the taxable income or loss of such Person for such period for federal income tax purposes as a result of such Person's equity ownership of one or more Loan Parties that are Pass Through Entities for such period; *provided, however*, that all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss.

"*Taxes*" and "*Tax*" shall mean any and all fees (including, without limitation, documentation, recording, license and registration fees), taxes (including, without limitation, income (whether net, gross or adjusted gross) taxes; gross and net receipts taxes; taxes that are or are in the nature of franchise, value added, privilege or doing business taxes, license and registration fees; real and personal property (including intangibles) taxes; sales, use and similar taxes (including rent taxes); any excise taxes; real estate transfer taxes, mortgage taxes, conveyance taxes, turnover taxes, value-added taxes; stamp taxes and documentary recording taxes and fees), levies, imposts, duties, charges, assessments or withholdings of any nature whatsoever, in each case imposed or required by the Governmental Authority to be paid, together with any penalties, fines or interest thereon or additions thereto.

"*Tax Indemnification Agreement*": that certain Tax Indemnification Agreement, dated as of September 24, 2002 among the Existing Stockholders, Valvino and Wynn Resorts, as in effect as of the date hereof.

"*Term Loan Commitment*" shall have the meaning set forth in the Wynn Credit Agreement.

"*Term Loan Extensions of Credit*" shall have the meaning set forth in the Wynn Credit Agreement.

"*Term Loan Lender*" shall have the meaning set forth in the Wynn Credit Agreement.

"*Term Loans*" shall have the meaning set forth in the Wynn Credit Agreement.

"*Total Revolving Credit Commitments*" shall have the meaning set forth in the Wynn Credit Agreement.

"*Total Term Loan Commitments*" shall have the meaning set forth in the Wynn Credit Agreement.

"*Total Term Loan Extensions of Credit*" shall have the meaning set forth in the Wynn Credit Agreement.

"*Transaction Costs*" shall mean:

(i) the reasonable fees and expenses of Chapman and Cutler incurred in connection with the negotiation, execution and delivery of the term sheet, the commitment letters, the Operative Documents, the syndication of the Notes and any amendments to the Operative Documents in connection therewith and the transactions contemplated thereby;

(ii) the reasonable fees and expenses of the Arrangers, including, without limitation, the fees and expenses of any insurance consultant hired by the Arrangers and any fees and expenses incurred in connection with the syndication of the Notes;

(iii) the actual and ongoing fees and expenses of the Collateral Agent;

(iv) the reasonable counsel fees of the Collateral Agent;

(v) the fees and expenses of the Appraiser;

(vi) all costs of searching and perfecting a first priority Lien and security interest in the Equipment and the Aircraft;

(vii) costs and expenses for the Aircraft Appraiser;

(viii) the Commitment Fees;

(ix) the Participation Fees;

(x) the Arrangement Fees; and

(xi) all other documented fees and expenses incurred by Collateral Agent or any Lender in connection with the Operative Documents and the transactions contemplated hereby.

"Trust Company" shall mean Wells Fargo Bank Nevada, National Association, or any successor financial institution acting as Collateral Agent under the Loan Documents, in each case, in its individual capacity.

"Type of Equipment" shall mean Gaming Equipment or Non-Gaming Equipment.

"UCC" shall mean the Uniform Commercial Code, as in effect from time to time in any jurisdiction.

"Valvino" shall mean Valvino Lamore, LLC, a Nevada limited liability company.

"Valvino Water Permits" shall mean collectively, the Permits identified as of the Closing Date as Permit No. 60164 (Cert. 15447) and Permit No. 60165 (Cert. 15448), in each case as shown in the records of the State of Nevada, Division of Water Resources, in Carson City Nevada (and any successor or replacement Permits thereto).

"Valvino Water Permit Transfer" shall have the meaning assigned to such term in the Wynn Credit Agreement.

"Voting Stock" shall mean with respect to any Person as of any date, the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"Water Entities" shall mean Desert Inn Water and Desert Inn Improvement.

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"Water Permits" shall mean collectively the DIIC Water Permits and the Valvino Water Permits.

"Water Property Mortgage" shall have the meaning set forth in the Wynn Credit Agreement.

"Water Show Entertainment and Production Agreement" shall mean collectively, (i) the Agreement, dated January 25, 2001, between Wynn Resorts Holdings and Calitri Services and Licensing Limited Liability Company ("Calitri"), (ii) upon execution thereof, that certain Production Services Agreement to be entered into between the Borrower and Productions Du Dragon, S.A. ("Dragon") pursuant to which Dragon will, among other things, collaborate with the Borrower and asset in designing, manufacturing and producing the sets, equipment and customers for an aquatic live show at the Project and (iii) upon execution thereof, that certain License Agreement to be entered into between the Borrower and Calitri pursuant to which Calitri will, among other things, license to the Borrower the necessary rights to produce and present an aquatic live show at the Project.

"Water Supply Agreements" that certain Water Supply Agreement dated as of October 30, 2002 among Desert Inn Improvement, Wynn Resorts Holdings and the Borrower.

"Water Utility Land" shall mean the approximately .17 acre tract of land located on the Golf Course owned by Desert Inn Improvement, as more particularly described in Exhibit T-4 of the Disbursement Agreement; *provided*, that the Water Utility Land shall not include any improvements thereon utilized by Desert Inn Improvement as of the Closing Date for the transportation of water to non-Affiliates of the Borrower.

"WDD Agreement" shall mean the Wynn Design Agreement, dated as of October 30, 2002 between the Borrower and Wynn Design.

"Weighted Average Life to Maturity" shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing:

(1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one—twelfth) that will elapse between such date and the making of such payment; by

(2) the then outstanding principal amount of such Indebtedness.

"Wholly Owned Subsidiary" shall mean, as to any Person, any other Person all of the Capital Stock of which (other than directors' qualifying shares required by law) is owned by such Person directly and/or through other Wholly Owned Subsidiaries.

"World Aircraft Part" shall have the meaning assigned to such term in Section 4.4 of the Aircraft Security Agreement.

"World Liabilities" shall have the meaning assigned to such term in Section 2 of the Aircraft Security Agreement.

"World Travel" shall mean World Travel, LLC, a Nevada limited liability company, or any successor thereto.

"Wynn Banks" shall mean the lenders that are parties to the Wynn Credit Agreement.

"Wynn Credit Agreement" shall mean that certain Credit Agreement, dated as of October 30, 2002, among the Borrower, the several lenders from time to time party thereto, Duetsche Bank Securities Inc., as lead arranger and joint book running manager, Deutsche Bank Securities Trust Company Americas, as administrative agent and swingline lender, Bank of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending, Inc., as joint documentation agent

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and Dresdner Bank AG, New York and Grand Cayman Branches, as arranger and joint documentation agent and JPMorgan Chase Bank, as joint documentation agent.

"Wynn Credit Documents" shall mean the Wynn Credit Agreement and the notes issued thereunder, the Other Security Documents, the Disbursement Agreement, the Completion Guaranty, the Wynn Resorts Guaranty, the Applications, the Environmental Indemnity Agreements.

"Wynn Design" shall mean Wynn Design & Development, LLC, a Nevada limited liability company, or any successor thereto.

"Wynn Group Entities" shall mean collectively, Palo and Wynn Design.

"Wynn Home Site Land" shall mean an approximately two-acre tract of land located on the Golf Course Land where Mr. Wynn's personal residence may, after Disposition of the Wynn Home Site Land in accordance with **Section 7.5(j)**; of the Loan Agreement, be built.

"Wynn Resorts" shall mean Wynn Resorts, Limited, a Nevada corporation, or any successor thereto.

"Wynn Resorts FF&E Guaranty" shall mean that certain Parent Guaranty, dated as of October 30, 2002, made by Wynn Resorts in favor of the Secured Parties (as defined therein).

"Wynn Resorts Guaranty" shall have the meaning set forth in the Wynn Credit Agreement.

"Wynn Resorts Holdings" shall mean Wynn Resorts Holdings, LLC, a Nevada limited liability company, or any successor thereto.

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BORROWER SECURITY AGREEMENT

Dated as of October 30, 2002

Between

**WYNN LAS VEGAS, LLC,
as Borrower**

and

**WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION,
as Collateral Agent for the Lenders**

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EXHIBIT A—Form of the Borrower Security Agreement Supplement

SCHEDULE A—Description of the Borrower Collateral

BORROWER SECURITY AGREEMENT

THIS BORROWER SECURITY AGREEMENT (this "*Security Agreement*") made as of October 30, 2002, by WYNN LAS VEGAS, LLC, a Nevada limited liability company (the "*Borrower*"), in favor of WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION, a national banking association, as Collateral Agent (being referred to herein, together with any successor(s) thereto in such capacity, as the "*Collateral Agent*") for the Lenders under the Loan Agreement referenced below.

W I T N E S S E T H :

Whereas, pursuant to the terms of the Loan Agreement dated as of October 30, 2002 (as amended from time to time, the "*Loan Agreement*"), among the Borrower, the Collateral Agent and the several lenders listed in Schedule IA attached thereto (together with each successive and additional lender thereunder, the "*Lenders*"), the Borrower has agreed to borrow, and the Initial Lenders have agreed to lend, subject to certain conditions, the funds necessary to acquire the Borrower Collateral (as hereinafter defined);

WHEREAS, as a condition precedent to making their loans, the Lenders have required that the Borrower and the Collateral Agent enter into this Security Agreement; and

WHEREAS, therefore, the Borrower wishes to execute, deliver and perform, and has duly authorized the execution, delivery and performance of, this Security Agreement.

NOW, THEREFORE, the Borrower and the Collateral Agent hereby agree as follows:

SECTION 1. DEFINITIONS.

Section 1.1. Loan Agreement Definitions. Unless otherwise defined herein or the context otherwise requires, terms used in this Security Agreement, including its preamble and recitals, have the meanings provided in Appendix I to the Loan Agreement.

Section 1.2. UCC Definitions. Unless otherwise defined herein (including those terms defined in the Loan Agreement) or the context otherwise requires, terms for which meanings are provided in the UCC in effect in the State of New York are used in this Security Agreement, including its preamble and recitals, with such meanings, subject to those mandatory provisions of Nevada Law governing perfection, the effect of perfection or non-perfection, and the priority of a security interest in the Borrower Collateral.

SECTION 2. SECURITY INTEREST.

Section 2.1. Grant of Security. As security for the payment and performance of all Obligations of the Borrower under the Loan Agreement, the Notes and any other Loan Document or agreement or document related to any Loan Document (hereinafter, collectively, the "*Liabilities*"), the Borrower hereby transfers, assigns and pledges to the Collateral Agent, for the ratable benefit of the Lenders, and grants to the Collateral Agent for the ratable benefit of the Lenders, a continuing first and prior security interest (subject to the FF&E Intercreditor Agreement) in and to all of the Borrower's right, title and interest in (i) the Items of Equipment listed on **Schedule A** hereto and each Schedule A to each Borrower Security Agreement Supplement executed pursuant to Sections 4.2 and 6.17(b) of the Loan Agreement, whether now or hereafter existing or acquired by the Borrower or in which the Borrower now has or at any time in the future may acquire any right, title or interest, (ii) the Equipment Contracts, (iii) contracts and warranties necessary to operate and maintain the Items of Equipment or otherwise specifically related to the Items of Equipment, (iv) any rights to Liquidated Damages, rebates, offset or other warranty payments, or assignment under a purchase order, invoice or purchase agreement with any manufacturer of or contractor for any portion of the foregoing, including any general contractor, (v) all insurance policies relating to the foregoing required to be maintained pursuant to any Loan Document, (vi) all books, records, writings, databases, information and other property relating to, used or useful in connection with, evidencing, embodying, incorporating or referring to, any of the foregoing and (vii) all proceeds from the sale of any or all of the foregoing, and to the extent not otherwise included, all payments under insurance (whether or not the Borrower is the

loss payee hereof) or any indemnity, warranty or guarantee payable by reason of loss or damage to or otherwise with respect to any of the foregoing (collectively, the "*Borrower Collateral*"). Notwithstanding anything to the contrary in this Security Agreement, the term ("*Borrower Collateral*") shall not include any items in which a security interest may not be granted under Gaming Laws, or other applicable law, or under the terms of any license, permit or authorization issued by a Nevada Gaming Authority or other Governmental Agency, or which would require a finding of a suitability or other similar approval or procedure by a Nevada Gaming Authority or other Governmental Agency prior to being given as collateral security.

Section 2.2. Continuing Security Interest. Subject to **Section 2.4**, this Security Agreement shall create a continuing security interest in the Borrower Collateral and shall (a) remain in full force and effect until indefeasible payment in full of all Liabilities, (b) be binding upon the Borrower, its successors, transferees and assigns, and (c) inure, together with the rights and remedies of the Collateral Agent hereunder, to the benefit of the Collateral Agent and each Lender. Without limiting the generality of the foregoing **clause (c)**, any Lender may, subject to Section 10 of the Loan Agreement, assign or otherwise transfer (in whole or in part) any Note or Loan held by it to any other Person, and such other Person shall thereupon become vested with all the rights and benefits in respect thereof granted to such Lenders under any Loan Document (including this Security Agreement) or otherwise, subject, however, to any contrary provisions in the Loan Agreement.

Upon the payment in full of all Liabilities, the security interest granted herein shall terminate and all rights to the Borrower Collateral granted thereby shall revert to the Borrower, without the delivery of any instrument or performance of any act by any party. Upon any such termination, the Collateral Agent will, at the request and at the sole expense of the Borrower, execute and deliver to the Borrower such documents as the Borrower shall reasonably request to evidence such termination.

Section 2.3. Borrower Remains Liable. Anything herein to the contrary notwithstanding:

(a) The Borrower shall remain liable under the contracts and agreements included in the Borrower Collateral to the extent set forth therein, and shall perform all of their duties and obligations under such contracts and agreements to the same extent as if this Security Agreement had not been executed,

(b) the exercise by the Collateral Agent of any of its rights hereunder shall not release the Borrower from any of its duties or obligations under any such contracts or agreements included in the Borrower Collateral, and

(c) neither the Collateral Agent nor any Lender shall have any obligation or liability under any such contracts or agreements included in the Borrower Collateral by reason of this Security Agreement, nor shall the Collateral Agent or any Lender be obligated to perform any of the obligations or duties of the Borrower thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

Section 2.4. Equipment Collateral Release. (a) Upon payment of the Bank Prepayment Option pursuant to Section 3.1(b) of the Loan Agreement, the security interest granted herein shall terminate. Upon any such termination, the Collateral Agent will, at the direction of the Required Lenders and at the sole expense of the Borrower, execute and deliver to the Eligible Payor (as defined in the FF&E Intercreditor Agreement) such documents as the Eligible Payor (as defined in the FF&E Intercreditor Agreement) shall reasonably request to evidence such termination.

(b) Pursuant to the terms of the Disbursement Agreement, following the delivery of an Appraisal pursuant to Section 6.17 of the Loan Agreement, the security interests granted herein shall terminate with respect to those Items of Equipment which are to be released in connection therewith. Upon any such termination, the Collateral Agent will, at the direction of the Required Lenders and the sole

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expense of the Borrower, execute and deliver to the Borrower such documents as the Borrower shall reasonably request to evidence such termination.

SECTION 3. WARRANTIES.

The Borrower hereby represents and warrants to the Collateral Agent and each Lender that:

(a) the Borrower is and will be the lawful owner of all of the Borrower Collateral, free of all liens and claims whatsoever, other than Permitted Liens, with full power and authority to execute this Security Agreement and perform the obligations of the Borrower hereunder and to subject the Borrower Collateral to the security interest hereunder;

(b) this Security Agreement creates a valid first priority security interest in the Borrower Collateral securing payment and performance of the Liabilities and that all filings and other action necessary to perfect such security interest have been taken; and

(c) all information with respect to the Borrower Collateral and the Borrower set forth in any schedule, certificate or other writing at any time heretofore or hereafter furnished by the Borrower to the Collateral Agent or any Lender and all other written information heretofore or hereafter furnished by the Borrower to the Collateral Agent or any Lender, is and will be true and correct in all material respects as of the date furnished, unless it refers by its terms to a specific date, then as of that date.

SECTION 4. COVENANTS WITH RESPECT TO THE BORROWER COLLATERAL.

The Borrower covenants and agrees as follows:

Section 4.1. Possession and Use of Borrower Collateral; Compliance with Laws. The Borrower agrees that the Borrower Collateral will be used and operated in compliance with all applicable Requirements of Law. The Borrower shall not use any Item of Equipment or any part thereof for any purpose or in any manner that would materially adversely affect the Fair Market Value, the utility of the Item of Equipment or the remaining useful life of such Item of Equipment, ordinary wear and tear and depreciation excepted. The Borrower shall procure and maintain in effect all material licenses, registrations, certificates, permits, approvals and consents required by any Requirement of Law or by any Governmental Authority necessary for the ownership, delivery, installation, maintenance, repair, use and operation of the Borrower Collateral. The Borrower shall not (a) use, operate, or maintain the Borrower Collateral or any portion thereof in violation of **Section 4.3** or any Insurance Requirement; (b) lease, assign or otherwise permit the use of any of the Borrower Collateral except as may be permitted by **Section 4.2**; or (c) except as set forth in **Section 4.2** or the Loan Agreement, sell, assign or transfer any of its rights or in any of the Borrower Collateral, or directly or indirectly create, incur or suffer to exist any Lien on any of its rights hereunder or in any of the Borrower Collateral, except for Permitted Liens or (d) except in connection with any maintenance or repair thereof, permit any Item of Gaming Equipment or any Part relating to such Item of Gaming Equipment to be located at any location other than the Project.

Section 4.2. Leases and Assignments. Except for leases permitted by this **Section 4.2**, the Borrower may not assign, lease, mortgage, pledge or otherwise transfer to any Person, at any time, in whole or in part, any of its rights, title or interest in, or obligations to or under this Security Agreement, any other Loan Document or to any portion of the Borrower Collateral, other than Liens permitted by Section 7.3 of the Loan Agreement. Each lease entered into in accordance with this **Section 4.2** shall be referred to as a "Lease." The Borrower may, so long as no Security Agreement Event of Default exists, lease all or any portion of the Borrower Collateral to one or more of its Affiliates, so long as in connection with any Lease of a portion of the Borrower Collateral, such portion shall include Items of Equipment with an aggregate Purchase Price of at least the Minimum Lease Amount. With respect to any Lease permitted under this **Section 4.2**, the Borrower shall not

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lease any portion of the Borrower Collateral to any Person who shall then be engaged in any proceedings for relief under any bankruptcy or insolvency law or laws relating to the relief of debtors.

No Lease hereunder will (a) discharge or diminish any of the Borrower's obligations to Collateral Agent or any Lender hereunder or the Borrower's or any Guarantor's obligations to any other Person under any other Loan Document, and the Borrower shall remain directly and primarily liable under this Security Agreement and any other Loan Document to which it is a party with respect to all of the Borrower Collateral or (b) extend beyond the last day of the Loan Term. Each Lease permitted hereby shall be made and shall expressly provide that it is subject and subordinate to this Security Agreement and the rights of Collateral Agent thereunder, and shall expressly provide for the surrender of the Borrower Collateral leased by the applicable lessee at the election of Collateral Agent after a Security Agreement Event of Default.

The Borrower shall give the Collateral Agent prompt, and in any event within 5 Business Days thereof, written notice of any Lease permitted under this **Section 4.2**, and shall promptly provide the Collateral Agent with a fully executed copy of each document evidencing such Lease, together with a Certificate of a Responsible Officer of the Borrower that such Lease complies with this **Section 4.2**.

Section 4.3. Maintenance. At all times, the Borrower shall, at its own cost and expense:

(a) keep, repair, maintain and preserve the Borrower Collateral in good order and operating condition and repair as existing on the Advance Date to which such Borrower Collateral relates, ordinary wear and tear excepted, and in conformance with (i) prudent industry maintenance and repair standards, (ii) such maintenance and repair standards used by the Borrower or any of its Affiliates for similar property owned or leased by it, and (iii) all material Requirements of Law and Insurance Requirements, and in the event that any Requirement of Law requires any alteration, replacement or addition of or to any Part of the Borrower Collateral, the Borrower will conform therewith at its own expense;

(b) (i) conduct all scheduled maintenance of the Borrower Collateral in conformity with the Borrower's and its Affiliates' past practices, and prudent industry maintenance and repair standards, (including, without limitation, the Borrower's and its Affiliates' maintenance program for such equipment) and (ii) maintain such Borrower Collateral so as to preserve its remaining economic useful life, utility and residual value; and

(c) cause the Borrower Collateral to continue to have at all times the capacity and functional ability to perform, on a continuing basis (subject to normal interruption in the ordinary course of business for maintenance, inspection, service, repair and testing) and in commercial operation, the functions for which it was specifically designed, other than any Casualty pursuant to which the Borrower has paid the Casualty Amount or is rebuilding the affected portion of the Borrower Collateral pursuant to Section 8.1 of the Loan Agreement.

The Borrower shall prepare and deliver to Collateral Agent and the Lenders within 30 Business Days prior to the required date of filing (or, to the extent permissible, file on behalf of Collateral Agent and the Lenders) any and all material reports to be filed by Collateral Agent or any Lender with any Governmental Authority by reason of the security interest of the Collateral Agent or any Lender in the Borrower Collateral. Each Lender agrees to inform promptly the Borrower of any request for such reports received by it. The Borrower shall maintain or cause to be maintained, all records, logs and other materials required by any Governmental Authority having jurisdiction over the Borrower Collateral. Subject to the provisions of Section 13.17 of the Loan Agreement and applicable Gaming Laws, the Borrower shall permit Collateral Agent and each Lender to inspect, during normal business hours and upon notice within 5 Business Days, the Borrower Collateral and any and all records, logs and other materials maintained by the Borrower or any of its Affiliates in respect of the Borrower Collateral; *provided* that from and after the occurrence of a Security Agreement Event of Default, all

costs and expenses of Collateral Agent or any Lender in connection with such inspection shall be borne by the Borrower. The Borrower hereby waives any right now or hereafter conferred by law to make repairs on the Borrower Collateral at the expense of Collateral Agent or any Lender.

Section 4.4. Alterations, Modifications, etc. In case the Borrower Collateral, or any item of equipment, part or appliance therein (each, a "Part") is required to be altered, added to, replaced or modified in order to comply with any Requirements of Law (a "Required Alteration") pursuant to **Section 4.1** or **4.3** hereof, the Borrower agrees to make such Required Alteration at its own expense. The Borrower shall have the right to make any modification, alteration or improvement to the Borrower Collateral (herein referred to as a "Permitted Modification"), or to remove any Part which has become worn out, broken or obsolete, *provided* in each case that the Borrower continues to be in compliance with **Sections 4.1** and **4.3** hereof and that such action will not materially decrease the economic value of the Borrower Collateral or impair its originally intended use or function or decrease its economic useful life and in any event, will not decrease the Fair Market Value of the Borrower Collateral throughout the Loan Term. In the event any Permitted Modification (i) is readily removable without impairing the value or use which the Borrower Collateral would have had at such time had such Part not been affixed or placed to or on such Borrower Collateral (a "Removable Part"), (ii) is not a Required Alteration and (iii) is not a Part which replaces any Part originally incorporated or installed in or attached to such Borrower Collateral on the date on which such Borrower Collateral became subject to this Security Agreement, or any Part in replacement of or substitution for any such original Part (each an "Original Part"), any such Permitted Modification, if no Security Agreement Event of Default is continuing, shall be and remain the property of the Borrower that is not subject to the Lien of this Security Agreement and may be removed by the Borrower (a "Borrower Part"). To the extent such Permitted Modification is not a Removable Part, or is a Required Alteration or an Original Part, and, to the extent a Removable Part is not the property of the Borrower that is not subject to the Lien of this Security Agreement because of the continuance of a Security Agreement Event of Default, the same shall immediately and automatically be and become subject to the Lien of this Security Agreement. Any Required Alterations, and any Parts installed or replacements made by the Borrower upon any Borrower Collateral pursuant to its obligation to maintain and keep the Borrower Collateral in good order, operating condition and repair under **Section 4.3** (collectively, "Replacement Parts") and all other Parts which become the property of the Borrower shall be considered, in each case, accessions to such Borrower Collateral and a security interest therein shall be immediately and automatically vested in Collateral Agent for the benefit of the Lenders. All Replacement Parts shall be free and clear of all Liens (other than Permitted Liens) and shall be in as good an operating condition as, and shall have a value and utility at least equal to, the Parts replaced, assuming such replaced Parts and the Borrower Collateral were immediately prior to such replacement or the event or events necessitating such replacement in the condition and repair required to be maintained by the terms hereof. Any Part at any time removed from any of the Borrower Collateral shall remain subject to the interests of Collateral Agent and the Lenders under the Loan Documents, no matter where located, until such time as such Part shall be replaced by a Part which has been incorporated or installed in or attached to such Borrower Collateral and which meets the requirements for a Replacement Part specified above. No later than 30 days after the end of each fiscal quarter of the Borrower, the Borrower shall deliver to Collateral Agent for the benefit of the Lenders, a Borrower Security Agreement Supplement evidencing the grant by the Borrower of a security interest in such Replacement Part to Collateral Agent for the benefit of the Lenders, for each Replacement Part not previously evidenced by a Borrower Security Agreement Supplement and such other documents in respect of such Part or Parts and to the extent, as Collateral Agent may reasonably request in order to confirm that a security interest to such Part or Parts has passed to Collateral Agent for the benefit of the Lenders, as hereinabove provided. Any such Replacement Part, regardless of whether evidenced by a Borrower Security Agreement Supplement, shall become subject to this Security Agreement and shall be deemed part of the Borrower Collateral, for all purposes thereof to the same extent as the Parts originally

incorporated or installed in the Borrower Collateral, and a security interest to such Replacement Part shall thereupon vest in the Collateral Agent. All replacements pursuant to this **Section 4.4** shall be purchased by the Borrower with its own funds. There shall be no obligation on the part of any Lender to pay for or otherwise finance any such replacement.

Section 4.5. Identifying Numbers and Registration; Legend; Changes; Inspection. (a) The Borrower, at its own expense, will cause each Item of Gaming Equipment to be kept numbered with the identification number as shall be set forth on Schedule A to the applicable Security Agreement Supplement.

(b) The Borrower will not change the identification number of any Item of Equipment unless and until (i) a statement of new number or numbers to be substituted therefor shall have been delivered to the Collateral Agent and filed, recorded and deposited by the Borrower in all public offices where the Security Agreement shall have been filed, recorded and deposited or any financing statement has been filed in respect thereof and (ii) the Borrower shall have furnished the Collateral Agent an opinion of counsel in form and substance reasonably satisfactory to the Required Lenders to the effect that such statement has been so filed, recorded and deposited and that no other filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to perfect the rights and interests of the Collateral Agent in such Items of Equipment. The Equipment may be lettered with the names or initials or other insignia used by the Borrower or any lessee. Upon the request of Collateral Agent and subject to applicable Gaming Laws, the Borrower shall make the Items of Equipment available to Collateral Agent, its agents, representatives or assignees for inspection at their then location and shall also make the Borrower's books, manuals, logs, records and other information pertaining to the Items of Equipment available for inspection and permit such parties to make copies thereof, in each case, upon reasonable notice, at any time during regular business hours and as often as requested (but not so as to materially interfere with the business of the Borrower), *provided* that all costs and expenses of Collateral Agent in connection with such inspection shall be borne by the inspecting party unless a Security Agreement Event of Default has occurred and is continuing at the time of such inspection, in which case all such costs and expenses shall be borne by the Borrower.

Section 4.6. Liens. The Borrower will not directly or indirectly create, incur, assume or suffer to exist any Lien (other than Permitted Liens) on or with respect to the Borrower Collateral or any Part thereof. The Borrower, at its own expense, will promptly pay, satisfy and otherwise take such actions as may be necessary to keep the Borrower Collateral free and clear of, and to duly discharge or eliminate or bond in a manner satisfactory to Required Lenders, any such Lien not excepted above if the same shall arise at any time. The Borrower will notify Collateral Agent and each Lender in writing within 5 Business Days upon becoming aware of any Tax or other Lien (other than any Lien excepted above) that shall attach to the Borrower Collateral, and of the full particulars thereof. Without limiting the foregoing, the Borrower shall not assign or pledge any of its rights under any Lease to any Person other than Collateral Agent for the benefit of the Lenders.

Section 4.7. Replacements and Substitutions. (a) In addition to the rights of the Borrower under **Section 4.4**, the Borrower shall have the option at any time to replace any Item or Items of Equipment (a "Replaced Item" or "Replaced Items") with a substitute Item or Items of Equipment (a "Substitute Item" or "Substitute Items"), subject to the following conditions:

- (i) no Security Agreement Event of Default shall have occurred and be continuing;
- (ii) with respect to Gaming Equipment, the Substitute Item or Substitute Items shall be located at the Project;
- (iii) the Substitute Item or Substitute Items shall be the same general type, year of construction (or a later year of construction), useful life, function, utility, state of repair and

operating condition as the portion of the Replaced Item or Replaced Items, must have a Fair Market Value of not less than the Fair Market Value of the Replaced Item or Replaced Items and be free and clear of any Liens other than Permitted Liens assets, as described in the Appraisal delivered pursuant to **Section 6.17** of the Loan Agreement;

(iv) the Collateral Agent shall have received a certificate from the Administrative Agent confirming that such substitution complies with the terms of the Wynn Credit Agreement; and

(v) prior to the date of any such substitution, the Borrower shall replace such Replaced Item or Replaced Items by complying with the terms of Section 8.1 of the Loan Agreement to the same extent as if a Casualty or a series of Casualties had occurred with respect to such Replaced Item or Replaced Items, and the Collateral Agent shall release its Lien on the Replaced Item or Replaced Items in the same manner as provided in said Section 8.1 of the Loan Agreement.

(b) All replacements pursuant to **Section 4.7(a)** shall be purchased by the Borrower with its own funds. There shall be no obligation on the part of the Collateral Agent or any Lender to pay for or otherwise finance any such replacement. No termination of this Security Agreement with respect to any Item of Equipment as contemplated by this **Section 4.7** shall result in any reduction of the Borrower's obligation to pay the Loan Balance or any Interest thereon.

SECTION 5. CERTIFICATE, SCHEDULES AND REPORTS.

The Borrower will from time to time, as the Collateral Agent or any Lender may reasonably request, deliver to the Collateral Agent and the Lenders such schedules, certificates and reports respecting all or any of the Borrower Collateral at the time subject to the security interest hereunder, and the items or amounts received by the Borrower in full or partial payment or otherwise as proceeds of any of the Borrower Collateral, all to such extent as the Collateral Agent may request. Any such schedule, certificate or report shall be executed by a duly authorized officer of Borrower and shall be in such form and detail as the Collateral Agent, at the direction of the Required Lenders, may reasonably specify.

SECTION 6. ADDITIONAL AGREEMENTS OF BORROWER.

The Borrower agrees, that, until all of the Liabilities are paid in full, the Borrower will perform and fulfill each of the following agreements:

(a) The Borrower (1) hereby authorizes the filing of such financing statements, continuation statements or amendments thereof or supplements thereto and other documents (and will pay the cost of filing or recording the same in all public offices deemed necessary by the Lenders) and the doing of such other acts and things, all as any Lender or the Collateral Agent may from time to time request, to establish and maintain a valid first security interest in the Borrower Collateral to secure the payment of the Liabilities, including, without limitation, deposit with the Collateral Agent of any certificate of title issuable with respect to any of the Borrower Collateral and notation thereon of the security interest hereunder (and any carbon, photographic or other reproduction of this Security Agreement or of any such financing statement shall be sufficient for filing as a financing statement) and (2) will, at the time of each Advance and contemporaneously with the Responsible Officer's certificate required pursuant to Section 6.2 of the Loan Agreement prepared with respect to the annual financial statements referenced in Section 6.1(a) of the Loan Agreement provide to the Lenders and the Collateral Agent an opinion of counsel (which may be the opinion of the general counsel/chief legal officer of the Borrower) stating that, in the opinion of such counsel, this Security Agreement and the UCC filings and other agreements or documents executed in connection with this Security Agreement have been, and remain, properly recorded or filed for record so as to make effective of record the lien intended to be created hereby and thereby.

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(b) The Borrower will keep or cause to be kept all of the Gaming Equipment at the Project unless the Collateral Agent, upon being directed to do so by the Required Lenders, shall otherwise consent in writing and all necessary licenses and permits shall have been obtained.

(c) The Borrower will not change its name, state of organization, legal form or do business under any other name without at least 30 days' prior written notice thereof to the Lenders and the Collateral Agent and will not change the location of its principal executive offices or places of business, except for a change to another location within the continental limits of the United States of America and within a jurisdiction in which the UCC is in effect, of which the Lenders and the Collateral Agent shall have been given at least 30 days' prior written notice.

(d) The Borrower will reimburse the Collateral Agent and Lenders upon demand for all reasonable costs and expenses, including reasonable attorney's fees and legal expenses (including allocated costs of internal counsel), incurred by the Collateral Agent in seeking to collect or enforce any right under this Security Agreement or the Borrower Collateral and, in case of a Security Agreement Event of Default, in seeking to collect payments of principal, premium, if any, and interest on any Note and all other Liabilities and to enforce rights hereunder, including expenses of any repairs to any realty or other property to which any of the Borrower Collateral may be affixed or be a part.

(e) The Borrower shall cause each insurance policy required to be maintained pursuant to the Loan Agreement to be in full force and effect.

SECTION 7. [RESERVED].

SECTION 8. DEFAULTS AND REMEDIES.

Section 8.1. Defaults. (a) The occurrence, or the existence of any Event of Default under the Loan Agreement, shall constitute an "Security Agreement Event of Default" hereunder.

(b) With respect to all of the Borrower Collateral, upon the occurrence and during the continuation of any Security Agreement Event of Default hereunder, the Collateral Agent shall, subject to the FF&E Intercreditor Agreement, have, in addition to all other rights provided herein or by law, the rights and remedies of a secured party under the UCC (regardless of whether the UCC is the law of the jurisdiction where the rights or remedies are asserted and regardless of whether the UCC applies to the affected Borrower Collateral), and further the Collateral Agent may, without demand and without advertisement, notice, hearing or process of law, all of which the Borrower hereby waives, at any time or times, sell and deliver any or all Borrower Collateral held by or for it at public or private sale, for cash, upon credit or otherwise, at such prices and upon such terms as the Collateral Agent deems advisable, in its sole discretion, *provided* that said disposition complies with any and all Requirements of Law. In addition to all other sums due the Collateral Agent or any Lender hereunder, the Borrower shall pay the Collateral Agent and any Lender all costs and expenses incurred by the Collateral Agent or such Lender, including a reasonable allowance for attorneys' fees and court costs, in obtaining, liquidating or enforcing payment of the Borrower Collateral or Liabilities or in the prosecution or defense of any action or proceeding by or against the Collateral Agent such Lender or the Borrower concerning any matter arising out of or connected with this Agreement or the Borrower Collateral or Liabilities, including without limitation any of the foregoing arising in, arising under or related to a case under the United States Bankruptcy Code (or any successor statute). Any requirement of reasonable notice shall be met if such notice is personally served on or mailed, postage prepaid, to the Borrower in accordance with **Section 9.3** hereof at least 10 days before the time of sale or other event giving rise to the requirement of such notice; however, no notification need be given to the Borrower if the Borrower has signed, after an Security Agreement Event of Default hereunder has occurred, a statement renouncing any right to notification of sale or other intended disposition. The Collateral Agent shall not be obligated to make any sale or other disposition of the Borrower

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Collateral regardless of notice having been given. The Collateral Agent or any Lender may be the purchaser at any such sale. To the extent permitted by applicable law, Borrower hereby waives all of its rights of redemption from any such sale. Subject to the provisions of applicable law, the Collateral Agent may postpone or cause the postponement of the sale of all or any portion of the Collateral by announcement at the time and place of such sale, and such sale may, without further notice, be made at the time and place to which the sale was postponed or the Collateral Agent may further postpone such sale by announcement made at such time and place.

(c) With respect to all of the Borrower Collateral, without in any way limiting the foregoing, the Collateral Agent shall, upon the occurrence and during the continuation of any Security Agreement Event of Default hereunder, have the right, in addition to all other rights provided herein or by law, subject to applicable Gaming Laws, to take physical possession of any and all of the Borrower Collateral and anything found therein, the right for that purpose to enter without legal process any premises where such Borrower Collateral may be found (provided such entry be done lawfully), and the right to maintain such possession on the Borrower's premises (the Borrower hereby agreeing to lease such premises without cost or expense to the Collateral Agent or its designee if the Collateral Agent so requests) or to remove the Borrower Collateral or any part thereof to such other places as the Collateral Agent may desire. Upon the occurrence and during the continuation of any Security Agreement Event of Default hereunder, the Borrower shall, upon the Collateral Agent's demand, assemble the Borrower Collateral and make it available to the Collateral Agent at a place reasonably designated by the Collateral Agent. If the Collateral Agent exercises its right to take possession of the Borrower Collateral, the Borrower shall also at its expense perform any and all other steps reasonably requested by the Collateral Agent to preserve and

protect the security interest hereby granted in such Borrower Collateral, such as placing and maintaining signs indicating the security interest of the Collateral Agent, appointing overseers for such Borrower Collateral and maintaining inventory records.

(d) If Collateral Agent elects to require the Borrower to assemble and deliver each Item of Equipment, the Borrower shall, at its own expense, forthwith deliver (to the extent permitted under any Requirements of Law) exclusive possession of such Items of Equipment to Collateral Agent, at a location or locations reasonably designated by Collateral Agent (subject to the approval of the Nevada State Gaming Control Board if such location is outside the State of Nevada) in the 48 contiguous United States, (*provided, however*, that the Borrower shall not be required to deliver Items of Equipment consisting of gaming devices to a location in a jurisdiction where possession of such Items of Equipment is unlawful) together with a copy of an inventory list of such Items of Equipment then subject to the Borrower Security Agreement, all then current plans, specifications and operating, maintenance and repair manuals in the possession of the Borrower and its Affiliates and relating to such Items of Equipment that have been received or prepared by the Borrower, appropriately protected and in the condition required by **Section 4** (and in any event in condition to be placed in immediate revenue service) and free and clear of all Liens other than Permitted Liens. In addition, the Borrower shall, for 90 days after delivery of such Items of Equipment, cause to be (i) maintained such Items of Equipment in the condition required by **Section 4** and free and clear of all Liens other than Permitted Liens, (ii) stored such Items of Equipment without cost to Collateral Agent or any Lender, and (iii) kept all of such Items of Equipment insured in accordance with Section 8.2 of the Loan Agreement. This paragraph shall survive termination of this Security Agreement.

(e) Failure by the Collateral Agent to exercise any right, remedy or option under this Agreement or any other agreement between the Borrower and the Collateral Agent or provided by law, or delay by the Collateral Agent in exercising the same, shall not operate as a waiver; no waiver hereunder shall be effective unless it is in writing, signed by the party against whom such waiver is sought to be enforced and then only to the extent specifically stated. Neither the Collateral Agent nor any party acting as attorney for the Collateral Agent shall be liable hereunder for any acts or omissions or for any error of judgment or mistake of fact or law other than their gross negligence or willful misconduct.

The rights and remedies of the Collateral Agent and the Lenders under this Agreement shall be cumulative and not exclusive of any other right or remedy which the Collateral Agent or the Lenders may have.

Section 8.2. Sale of Borrower Collateral. In addition to the remedies set forth in **Section 8.1**, if any Security Agreement Event of Default shall occur, subject to the Gaming Laws, Collateral Agent may, but is not required to, sell the Borrower Collateral in one or more sales. Any Lender or the Collateral Agent may purchase all or any part of the Borrower Collateral at such sale. The Borrower acknowledges that sales for cash or on credit to a wholesaler, retailer or user of such Borrower Collateral, or at public or private auction, are all commercially reasonable. Any notice required by law of intended disposition by Collateral Agent shall be deemed reasonable and properly given if given at least 10 days before such disposition.

Section 8.3. Application of Sale Proceeds. All payments received and amounts held or realized by Collateral Agent at any time when a Security Agreement Event of Default shall be continuing as well as all payments or amounts then held or thereafter received by Collateral Agent and the proceeds of sale pursuant to **Section 8.2** shall be distributed to the Collateral Agent for distribution in accordance with Section 3.8 of the Loan Agreement.

Section 8.4. Power of Attorney. The Borrower unconditionally and irrevocably appoints Collateral Agent as its true and lawful attorney-in-fact, with full power of substitution, to the extent permitted by Requirements of Law, in its name and stead and on its behalf, solely for the purpose of effectuating any sale, assignment, transfer or delivery under this **Section 8**, if a Security Agreement Event of Default occurs and is continuing, whether pursuant to foreclosure or power of sale or otherwise, and in connection therewith and during a Security Agreement Event of Default to execute and deliver all such deeds, bills of sale, assignments, releases (including releases of this Agreement on the records of any Authority) and other proper instruments as Collateral Agent may reasonably consider necessary or appropriate. The Borrower ratifies and confirms all that such attorney or any substitute shall lawfully do by virtue hereof. If requested by Collateral Agent or any purchaser, the Borrower shall ratify and confirm any such lawful sale, assignment, transfer or delivery by executing and delivering to Collateral Agent or such purchaser, all deeds, bills of sale, assignments, releases and other proper instruments to effect such ratification and confirmation as may be designated in any such request.

Section 8.5. Remedies Cumulative; Consents. To the extent permitted by, and subject to the mandatory requirements of, any Requirements of Law, each and every right, power and remedy herein specifically given to Collateral Agent or otherwise in this Agreement shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by Collateral Agent, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any right, power or remedy. Collateral Agent's or the Lenders' consent to any request made by the Borrower shall not be deemed to constitute or preclude the necessity for obtaining Collateral Agent's or the Lenders' consent in the future to all similar requests. To the extent permitted by any Requirements of Law, the Borrower hereby waives any rights now or hereafter conferred by statute or otherwise that may require Collateral Agent or the Lenders to sell, lease or otherwise use the Equipment, any Item of Equipment or any Part thereof in mitigation of Collateral Agent's, or the Lenders' damages upon the occurrence of a Security Agreement Event of Default or that may otherwise limit or modify any of Collateral Agent's or the Lenders' rights hereunder.

Section 8.6. Allocation of Borrower Collateral. All cash proceeds received by the Collateral Agent in respect of any sale of, collection from, or other realization upon all or any part of the Borrower Collateral shall be held by the Collateral Agent, and shall be promptly paid over (after payment of any amounts payable to the Collateral Agent pursuant to **Section 8.7**) by the Collateral Agent to the Lenders, in accordance with Section 3.8 of the Loan Agreement. Any surplus of such cash or cash proceeds held by the Collateral Agent and remaining after payment in full of all the Liabilities shall be paid over to the Borrower or to whosoever may be lawfully entitled to receive such surplus.

Section 8.7. Compensation and Indemnity. The Borrower shall pay to the Collateral Agent such compensation as set forth in the Loan Agreement. The Borrower shall reimburse the Collateral Agent upon request for all reasonable disbursements, expenses and advances incurred or made by the Collateral Agent without negligence or bad faith on its part. Such expenses shall include the reasonable compensation and expenses of the Collateral Agent's agents, experts and counsel.

The Borrower shall indemnify the Collateral Agent, its directors, officers, agents and employees for, and hold each of them harmless against, any loss or liability, cost or expense incurred by them without negligence or bad faith on their part in connection with the acceptance or administration of this Security Agreement and its duties under this Security Agreement and the Notes, including, without limitation, the costs and expenses of defending itself against any claim or liability and of complying with any process served upon it or any of its officers in connection with the exercise or performance of any of its powers or duties under this Security Agreement and the Notes.

To secure the Borrower's payment obligations in this **Section 8.7**, the Collateral Agent shall have a lien prior to the Lenders on all money or property held or collected by the Collateral Agent, in its capacity as Collateral Agent, except money or property held in trust to pay principal of, premium, if any, and interest on particular Notes.

If the Collateral Agent incurs expenses or renders services after the occurrence of a Security Agreement Event of Default, the expenses and the compensation for the services will be intended to constitute expenses of administration under Title 11 of the United States Bankruptcy Code or any applicable federal or state law for relief of debtors.

The provisions of this **Section 8.7** shall survive the resignation or removal of the Collateral Agent and termination of this Security Agreement.

SECTION 9. GENERAL PROVISIONS.

Section 9.1. Document. This Security Agreement is executed pursuant to the Loan Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions thereof; *provided, however*, that unless expressly provided otherwise, the duties and obligation of the Collateral Agent shall be determined solely by this Security Agreement and the Collateral Agent shall have no responsibility or obligation to perform any duties or obligations under, or to monitor the performance of the duties or obligations of the Borrower under, the Loan Agreement.

Section 9.2. Amendments; Etc. No amendment to or waiver of any provision of this Security Agreement nor consent to any departure by the Borrower herefrom, shall in any event be effective unless the same shall be in writing and signed by the Collateral Agent, at the direction of the Required Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 9.3. Notices. All notices and other communications provided for hereunder shall be in writing (including telegraphic and facsimile communication) and, if to the Lenders, delivered in accordance with Section 13.6 of the Loan Agreement, or in the case of the Collateral Agent or the

Borrower, delivered to the respective addresses as set forth beneath each party's name on the signature pages hereto.

Section 9.4. Section Captions. Section captions used in this Security Agreement are for convenience of reference only, and shall not affect the construction of this Security Agreement.

Section 9.5. Severability; No Waiver. Wherever possible each provision of this Security Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Security Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Security Agreement. No delay on the part of the Collateral Agent in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by the Collateral Agent of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy.

Section 9.6. Governing Law. THIS SECURITY AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND THE RIGHTS OF THE PARTIES SHALL BE GOVERNED BY, THE LAW OF THE STATE OF NEW YORK EXCLUDING CHOICE-OF-LAW PRINCIPLES OF THE LAW OF SUCH STATE THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF A JURISDICTION OTHER THAN SUCH STATE, SUBJECT TO THOSE MANDATORY PROVISIONS OF NEVADA LAW GOVERNING PERFECTION, THE EFFECT OF PERFECTION OR NON-PERFECTION, AND THE PRIORITY OF A SECURITY INTEREST IN THE BORROWER COLLATERAL.

Section 9.7. Counterparts. This Security Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which shall together constitute but one and the same agreement.

[Signature Pages Begin on Next Page]

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

WYNN LAS VEGAS, LLC,
a Nevada limited liability company, as the Borrower

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company, its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company, its sole member

By: Wynn Resorts, Limited,
a Nevada corporation, its sole member

By: /s/ STEPHEN A. WYNN

ACCEPTED AS OF THE DATE FIRST WRITTEN ABOVE

WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION, as Collateral Agent for Lenders

By /s/ C. SCOTT NIELSEN

Its Trust Officer

Notice Address: 299 South Main Street, 12th Fl.
Salt Lake City, UT 84111

Attention: Corporate Trust Services
Telephone: (801) 246-5630
Telefacsimile: (801) 246-5053

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**SCHEDULE A TO
SECURITY AGREEMENT**

DESCRIPTION OF THE ELIGIBLE BORROWER COLLATERAL

DESCRIPTION OF EQUIPMENT*

1. Communication Equipment
2. Elevators and Escalators
3. Electrical Generators and Power Supplies
4. Furniture
5. Fixtures
6. Gaming Equipment
7. House keeping Equipment
8. HVAC Equipment
9. Laundry Equipment
10. Maintenance Equipment
11. Restaurant Equipment
12. Security and surveillance Equipment
13. Signage
14. Theater Equipment
15. Vaults
16. Water systems

* additions and deletions to be made by the Borrower and the Lenders

**EXHIBIT A TO
SECURITY AGREEMENT**

FORM OF THE BORROWER SECURITY AGREEMENT SUPPLEMENT

Security Agreement Supplement No. (this "Security Agreement Supplement No. ") dated , 20 , by Wynn Las Vegas, LLC, a Nevada limited liability company (the "Borrower"), in favor of Wells Fargo Bank Nevada, National Association, a national banking association, as Collateral Agent (being referred to herein, together with any successor(s) thereto in such capacity, as the "Collateral Agent") for the Lenders. Capitalized terms used herein and not

otherwise defined shall have the meanings given to such terms in the Security Agreement dated as of October 30, 2002, between the Borrower and the Collateral Agent, a copy of which is attached hereto.

WITNESSETH:

The Loan Agreement provides for the execution and delivery from time to time of supplements to the Security Agreement substantially in the form hereof which shall particularly describe the Borrower Collateral and shall specifically grant a security interest in the Borrower Collateral to the Collateral Agent.

The Security Agreement relates to the Borrower Collateral described in **Schedule A** hereto, Schedule A to the Security Agreement and each Schedule A attached to each other Security Agreement Supplement attached to the attached Security Agreement.

The Borrower hereby assigns and pledges to the Collateral Agent, and hereby grants to the Collateral Agent, a lien and security interest in and to all of the Borrower Collateral, whether now or hereafter existing or acquired, including the Borrower Collateral more particularly described in **Schedule A** hereto.

TO HAVE AND TO HOLD the aforesaid property unto the Collateral Agent, its successors and assigns forever, upon the terms and conditions set forth in the Security Agreement to secure the payment of the Liabilities.

This Supplement shall be construed in connection with and as part of the Security Agreement and all terms, conditions and covenants contained in the Security Agreement, except as herein modified, shall be and remain in full force and effect.

Any and all notices, requests, certificates and other instruments executed and delivered after the execution and delivery of this Security Agreement Supplement No. may refer to the "Security Agreement" without making specific reference to this Security Agreement Supplement No. , but nevertheless all such references shall be deemed to include this Security Agreement Supplement No. unless the context shall otherwise require.

Section 1.1. Counterparts. This Supplement No. may be executed and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Supplement.

Section 1.2. Governing Law. THIS SECURITY SUPPLEMENT NO. AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND THE RIGHTS OF THE PARTIES SHALL BE GOVERNED BY, THE LAW OF THE STATE OF NEW YORK EXCLUDING CHOICE-OF-LAW PRINCIPLES OF THE LAW OF SUCH STATE THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF A JURISDICTION OTHER THAN SUCH STATE, SUBJECT TO THE MANDATORY PROVISIONS OF NEVADA LAW GOVERNING PERFECTION, THE EFFECT OF PERFECTION OR NON-PERFECTION, AND THE PRIORITY OF A SECURITY INTEREST IN THE BORROWER COLLATERAL

Section 1.3. Headings. Any headings or captions preceding the text of the several sections hereof are intended solely for convenience of reference and shall not constitute a part of this Supplement No. nor shall they affect its meaning, construction or effect.

Section 1.4. The Collateral Agent. The Collateral Agent shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Security Agreement Supplement or for or in respect of the recitals contained herein, all of which are made solely by the Borrower.

[Signature Pages Begin on Next Page]

IN WITNESS WHEREOF, the Borrower has caused this Security Agreement Supplement No. to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

WYNN LAS VEGAS, LLC,
a Nevada limited liability company, as the Borrower

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company, its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company, its sole member

By: Wynn Resorts, Limited,
a Nevada corporation, its sole member

By: _____

Name:
Title:

Accepted by
WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION, as
Collateral Agent for Lenders

By _____
Its

Notice Address:

Attention:
Telephone:
Telefacsimile:

SCHEDULE A
DESCRIPTION OF THE BORROWER COLLATERAL

QuickLinks

[Exhibit 10.11](#)

[BORROWER SECURITY AGREEMENT Dated as of October 30, 2002 Between WYNN LAS VEGAS, LLC, as Borrower and WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION, as Collateral Agent for the Lenders](#)

INTERCOMPANY NOTE

October 30, 2002

FOR VALUE RECEIVED, WORLD TRAVEL, LLC, a Nevada limited liability company (the "Payor"), hereby promises to pay on demand to the order of WYNN LAS VEGAS, LLC, a Nevada limited liability company, or its registered assigns (the "Payee"), a principal sum equal to \$38,000,000 in lawful money of the United States of America in same day or immediately available funds, at such location in the United States of America as the Payee shall from time to time designate, or such lesser principal amount as shall remain outstanding on the loan made by the Payee to the Payor.

On demand from the Collateral Agent (as defined below), the Payor promises to pay interest to the Payee on the outstanding principal hereof for the period from the date hereof until payment in full thereof and, to the extent permitted by law, overdue interest from their due dates, in each case at the rate per annum equal to the interest rate in effect under Section 3.5 of the Loan Agreement dated October 30, 2002 (the "Loan Agreement") among the Payee, Wells Fargo Bank Nevada, National Association, not in its individual capacity, but solely as Collateral Agent (the "Collateral Agent") and the lenders named in Schedule IA1 thereto.

This Note is the "Intercompany Note" referred to in the Aircraft Security Agreement, dated as of October 30, 2002 (the "Aircraft Security Agreement") from Wells Fargo Bank Northwest, National Association, not in its individual capacity, but solely as Trustee of that certain trust created under the Trust Agreement dated as of May 10, 2002 (in such capacity, the "Owner") and the Payor to the Payee, and evidences indebtedness incurred by the Payor to the Payee. This Note is secured pursuant to the terms of the Aircraft Security Agreement and reference is made to the Aircraft Security Agreement for a statement of certain provisions relating to this Note.

The outstanding principal balance of the loan evidenced by this Note shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are expressly waived by the Payor, upon the occurrence of an "Event of Default" under and as defined in either the Loan Agreement or the Aircraft Security Agreement.

The Payee is hereby authorized (but not required) to record all repayments or prepayments hereof, in its books and records, and any such recordation shall constitute *prima facie* evidence of the accuracy of the information so recorded, absent manifest error.

Payments of both principal and interest are to be made without setoff, counterclaim or deduction of any kind.

This Note is also the "Intercompany Note" referred to in the Assignment and Assumption Agreement, dated as of October 30, 2002 executed by the Payee in favor of the Collateral Agent (as amended, modified or supplemented from time to time, the "Borrower Aircraft Assignment") to secure the obligations of the Payee under the Loan Agreement. This Note and the Aircraft Security Agreement have been assigned by the Payee pursuant to such Borrower Aircraft Assignment. The Payor hereby acknowledges and agrees that the Collateral Agent, pursuant to the Borrower Aircraft Assignment, may exercise all rights provided therein with respect to this Note and the Aircraft Security Agreement. The Payor further agrees that all rights of the Payee hereof in, to and under this Note and the Aircraft Security Agreement shall pass to and may be exercised only by the Collateral Agent pursuant to the Borrower Aircraft Assignment; and the Payor will not set up any claim against the Payee hereof as a defense, counterclaim or setoff to any action brought by the Collateral Agent for the unpaid balance owed hereunder and also agrees to so pay all amounts, including without limitation, all interest and principal directly to the Collateral Agent upon receipt by it of written notice to do so by the Collateral Agent. In the event of any pre-payment of this Note, the Payor will only pay amounts due hereunder to the Collateral Agent and will not pay any such amounts to the Payee or any other person or entity and Payor acknowledges that this Note may not be amended except with the written consent of the Collateral Agent.

THE PAYOR AGREES THAT ANY CLAIM BROUGHT BY THE PAYEE OR ITS ASSIGNEE OR PLEDGEE ARISING OUT OF THIS NOTE SHALL BE SUBJECT TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK. THIS NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

WORLD TRAVEL, LLC,
a Nevada limited liability company, as the Payor

By: WYNN LAS VEGAS, LLC,
a Nevada limited liability company, its sole member

By: WYNN RESORTS HOLDINGS, LLC,
a Nevada limited liability company, its sole member

By: VALVINO LAMORE, LLC,
a Nevada limited liability company, its sole member

By: WYNN RESORTS,
LIMITED,
a Nevada corporation, its sole member

By: _____

Name:

Title:

QuickLinks

[Exhibit 10.12](#)

[INTERCOMPANY NOTE](#)

AIRCRAFT SECURITY AGREEMENT

Dated as of October 30, 2002

Among

**WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION,
not in its individual capacity, but solely as Trustee,**

WORLD TRAVEL, LLC

and

WYNN LAS VEGAS, LLC

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SCHEDULE A—Description of Aircraft Collateral

EXHIBIT A—Form of Aircraft Security Agreement Supplement

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Aircraft Security Agreement

AIRCRAFT SECURITY AGREEMENT

THIS AIRCRAFT SECURITY AGREEMENT (this "*Security Agreement*") made as of October 30, 2002, by WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, not in its individual capacity, but solely as Trustee (in such capacity, the "*Owner*") of that certain trust created under the Trust Agreement (the "*Aircraft Trust*") dated as of May 10, 2002 with and World Travel, LLC, a Nevada limited liability company ("*World Travel*") as Trustor, and World Travel in favor of WYNN LAS VEGAS, LLC, a Nevada limited liability company (being referred to herein, together with any successor(s) thereto in such capacity, as the "*Company*").

W I T N E S S E T H :

WHEREAS, pursuant to that certain Business Loan Agreement dated as of February 28, 2002, World Travel borrowed (the "*Original Loan*") from Bank of America, N.A. funds to pay the purchase price of the Aircraft (as hereinafter defined);

WHEREAS, pursuant to that certain Mortgage, Security Agreement and Assignment dated as of February 28, 2002, (the "*Mortgage*") recorded by the FAA on March 14, 2002 as conveyance no. H105055 World Travel granted Bank of America, N.A. a lien on the Aircraft to secure its obligations under the Original Loan;

WHEREAS, pursuant to that certain Assignment and Assumption Agreement dated May 10, 2002 between World Travel and the Owner, recorded by the FAA on June 3, 2002 as conveyance no. GG027466 the Owner assumed the obligations of World Travel under the Mortgage;

WHEREAS, pursuant to that certain Amended and Restated Operating Agreement dated as of October 30, 2002, (the "*Aircraft Operating Agreement*") World Travel has been granted an exclusive license to possess, use and operate the Aircraft and has assumed certain obligations in connection therewith;

WHEREAS, pursuant to the terms of the Loan Agreement dated as of October 30, 2002 (as amended from time to time, the "*Loan Agreement*"), among the Company and the several lenders listed in Schedule IA1 attached thereto (together with each successive lender thereunder, the "*Lenders*"), the Company has agreed to borrow, and the Lenders have agreed to lend, subject to certain conditions, up to \$188,500,000;

WHEREAS, pursuant to the terms of the Intercompany Note dated as of October 30, 2002 (as amended from time to time, the "*Intercompany Note*"), from World Travel to the Company, World Travel will borrow from the Company the funds necessary to repay the Original Loan and for Bank of America, N.A. to release the Mortgage;

WHEREAS, as a condition precedent to making its loan to World Travel, the Company has required that the Owner and World Travel enter into this Security Agreement;

WHEREAS, as a condition precedent to making their loans, the Lenders have required that World Travel guaranty the obligations of the Company under the Loan Agreement;

WHEREAS, as a further condition precedent to making their loans, the Lenders have required that the Company assign to a collateral agent on their behalf its interests in this Security Agreement and in the Intercompany Note; and

WHEREAS, therefore, the Owner and World Travel wish to execute, deliver and perform, and have each duly authorized the execution, delivery and performance of, this Security Agreement.

NOW, THEREFORE, the Owner and the Company hereby agree as follows:

SECTION 1. DEFINITIONS.

Section 1.1. Loan Agreement Definitions. Unless otherwise defined herein or the context otherwise requires, terms used in this Security Agreement, including its preamble and recitals, have the meanings provided in Appendix I to the Loan Agreement.

Section 1.2. UCC Definitions. Unless otherwise defined herein (including those terms defined in Appendix I to the Loan Agreement) or the context otherwise requires, terms for which meanings are provided in the UCC are used in this Security Agreement, including its preamble and recitals, with such meanings.

SECTION 2. SECURITY INTEREST.

Section 2.1. Grant of Security. As security for the payment and performance of all obligations of World Travel under the Intercompany Note and any other Loan Document to which it is party or agreement or document related to any Loan Document (hereinafter, collectively, the "*World Liabilities*"), the Owner and World Travel (as Trustor under the Aircraft Trust) hereby transfer, assign and pledge to the Company, and grant to the Company, a continuing first and prior security interest in and to, all of the Owner's and World Travel's respective right, title and interest in (i) the Aircraft, including, without limitation, the Airframe and Engines, listed on **Schedule A** hereto and each Schedule A to each Aircraft Security Agreement Supplement executed pursuant to **Section 7.1**, whether now or hereafter existing or acquired by the Owner or World Travel or in which the Owner or World Travel now has or at any time in the future may acquire any right, title or interest, (ii) the Aircraft Contracts, to the extent that such contracts are assignable, (iii) contracts and warranties including, without limitation, the Las Vegas Jet Lease and the Aircraft Operating Agreement, necessary to operate and maintain the Aircraft or otherwise specifically related to the Aircraft, to the extent that such contracts are assignable, (iv) any rights to Liquidated Damages, rebates, offset or other warranty payments, or assignment under a purchase order, invoice or purchase agreement with any manufacturer of or contractor for any portion of the foregoing, to the extent that such rights are assignable, (v) all insurance policies relating to the Aircraft required to be maintained pursuant to any Loan Document, (vi) all logs, manuals, books, records, writings, databases, information and other property relating to, used or useful in connection with, evidencing, embodying, incorporating or referring to, any of the foregoing and (vii) all proceeds from the sale of any or all of the foregoing, and to the extent not otherwise included, all payments under insurance (whether or not the Owner or World Travel is the loss payee thereof) or any indemnity, warranty or guarantee payable by reason of loss or damage to or otherwise with respect to any of the foregoing (collectively, the "*Aircraft Collateral*").

Section 2.2. Continuing Security Interest. This Security Agreement shall create a continuing security interest in the Aircraft Collateral and shall (a) remain in full force and effect until payment in full of all World Liabilities, (b) be binding upon the Owner and World Travel, their respective successors, transferees and assigns, and (c) inure, together with the rights and remedies of the Company hereunder, to the benefit of the Company. Without limiting the generality of the foregoing **clause (c)**, the Company may assign or otherwise transfer (in whole or in part) the Intercompany Note held by it to the Collateral Agent on behalf of the Lenders, and the Collateral Agent shall thereupon become vested with all the rights and benefits in respect thereof granted to the Company under any Loan Document (including this Security Agreement) or otherwise.

Upon the payment in full of all World Liabilities, the security interest granted herein shall terminate and all rights to the Aircraft Collateral granted thereby shall revert to the Owner and World Travel, respectively. Upon any such termination, the Company will, at the request and at the sole expense of World Travel, execute and deliver to the Owner and World Travel such documents as the Owner and World Travel shall reasonably request to evidence such termination.

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Section 2.3. The Owner and World Travel Remain Liable. Anything herein to the contrary notwithstanding:

(a) the Owner and World Travel shall remain liable under the contracts and agreements included in the Aircraft Collateral to the extent set forth therein, and shall perform all of its duties and obligations under such contracts and agreements to the same extent as if this Security Agreement had not been executed,

(b) the exercise by the Company, or its assigns, of any of its rights hereunder shall not release the Owner or World Travel from any of its duties or obligations under any such contracts or agreements included in the Aircraft Collateral, and

(c) the Company shall not have any obligation or liability under any such contracts or agreements included in the Aircraft Collateral by reason of this Security Agreement, nor shall the Company be obligated to perform any of the obligations or duties of the Owner or World Travel thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

Section 2.4. Consent and Acknowledgement. Anything herein to the contrary notwithstanding, the Owner and World Travel hereby acknowledge and agree that:

(i) the rights and powers of the Company under this Security Agreement and the Intercompany Note are being assigned concurrently with the execution hereof to the Collateral Agent for the benefit of the Lenders pursuant to the Borrower Aircraft Assignment;

(ii) notwithstanding any action or inaction by World Travel or the Owner, the occurrence and continuance of an Event of Default under the Loan Agreement shall constitute an Aircraft Event of Default under each of this Security Agreement and the Intercompany Note; and

(iii) upon the occurrence and continuance of a default under the Intercompany Note or an Aircraft Event of Default under this Security Agreement, the Collateral Agent, as assignee of the Company, may exercise all of the rights, remedies and powers of the Company set forth in the Intercompany Note and this Security Agreement, including without limitation, the right to demand payment on the Intercompany Note and the exercise of remedies set forth in **Section 8**.

SECTION 3. WARRANTIES.

(a) The Owner hereby represents and warrants to the Company, the Collateral Agent and each Lender that:

(i) the Owner (A) is, and will remain, duly organized, existing and in good standing and will remain the Trustee of the Aircraft Trust Agreement pursuant to the terms of the Aircraft Trust Agreement and (B) is and will be the lawful owner of all of the Aircraft Collateral, free of all liens and claims

whatsoever, other than Permitted Liens, with full power and authority to execute this Security Agreement and perform the obligations of the Owner hereunder and to subject the Aircraft Collateral to the security interest hereunder;

(ii) all information with respect to the Aircraft Collateral and the Owner set forth in any schedule, certificate or other writing at any time heretofore or hereafter furnished by the Owner to the Company, the Collateral Agent or any Lender and all other written information heretofore or hereafter furnished by the Owner to the Company, the Collateral Agent or any Lender, is and will be true and correct in all material respects as of the date furnished, unless it refers by its terms to a specific date, then as of that date;

(iii) on the Initial Advance Date (i) the Aircraft has been duly certificated by the Federal Aviation Administration as to type and airworthiness and (ii) the Owner has granted exclusive use and possession of the Aircraft to World Travel under the Aircraft Operating Agreement;

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(iv) the Owner is a "citizen of the United States" pursuant to 49 U.S.C. Subtitle VII of the United States Code, as amended (the "FAA Act"), and the regulations thereunder and is properly qualified under the FAA Act and all applicable regulations to hold title to the Aircraft;

(v) the Owner has its chief executive office at the location set forth below its signature on the signature page;

(vi) the Aircraft Trust Agreement and this Security Agreement have been duly authorized, executed and delivered and constitute legal, valid and binding agreements against the Owner and constitute legal, valid and binding agreements enforceable under all applicable laws in accordance with their terms, except to the extent that the enforcement of remedies may be limited under applicable bankruptcy and insolvency laws;

(vii) no approval or consent or withholding of objections is required from any governmental authority or instrumentality or any other entity with respect to the entry into, or performance by, the Owner of the this Security Agreement or the Aircraft Trust Agreement, except such as have already been obtained; and

(viii) the entry into and performance of the Aircraft Trust Agreement and this Security Agreement by the Owner will not violate the Owner's organizational documents, or any judgment, order, law or regulation applicable to the Owner, or result in any breach or constitute a default under, or result in the creation of, any lien, claim or encumbrance on any of the Owner's property (except for liens in favor of the Company and the Collateral Agent) pursuant to, any indenture mortgage, deed of trust, bank loan, credit agreement, or other agreement or instrument to which the Owner is a party.

(b) World Travel hereby represents and warrants to the Company, the Collateral Agent and each Lender that:

(i) this Security Agreement creates a valid first priority security interest in the Aircraft Collateral securing payment and performance of the World Liabilities and that all filings and other action necessary to perfect such security interest have been taken;

(ii) all information with respect to the Aircraft Collateral and World Travel set forth in any schedule, certificate or other writing at any time heretofore or hereafter furnished by World Travel to the Company, the Collateral Agent or any Lender and all other written information heretofore or hereafter furnished by World Travel to the Company, the Collateral Agent or any Lender, is and will be true and correct in all material respects as of the date furnished, unless it refers by its terms to a specific date, then as of that date;

(iii) on the Initial Advance Date (i) the Aircraft has been duly certificated by the Federal Aviation Administration as to type and airworthiness and (ii) World Travel has granted authority to operate the Aircraft to Las Vegas Jet pursuant to the Las Vegas Jet Lease;

(iv) the Aircraft is hangared in the location set forth in **Schedule A** hereto;

(v) all action for registration of the Aircraft which is necessary in light of World Travel's intended use thereof has been taken;

(vi) all licenses, approvals, authorizations, consents and permits required for the use and operation of such Aircraft have been obtained from the appropriate Governmental Agency having jurisdiction (including, without limitation, the FAA or the United States Department of Transportation) or from private parties, as the case may be;

(vii) there are no patents, patent rights, trademarks, service marks, trade names, copyrights, licenses or other intellectual property rights with respect to the Aircraft that are necessary for the operation of the Aircraft and that have not been obtained;

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(viii) the Aircraft Trust Agreement and this Security Agreement have been duly authorized, executed and delivered and constitute legal, valid and binding agreements against World Travel and constitute legal, valid and binding agreements enforceable under all applicable laws in accordance with their terms, except to the extent that the enforcement of remedies may be limited under applicable bankruptcy and insolvency laws;

(ix) no approval or consent or withholding of objections is required from any governmental authority or instrumentality or any other entity with respect to the entry into, or performance by, World Travel of the this Security Agreement or the Aircraft Trust Agreement, except such as have already been obtained; and

(x) the entry into and performance of the Aircraft Trust Agreement and this Security Agreement by World Travel will not violate the World Travel's organizational documents, or any judgment, order, law or regulation applicable to World Travel, or result in any breach or constitute a default under, or result in the creation of, any lien, claim or encumbrance on any of World Travel's property (except for liens in favor of the Company and the Collateral Agent) pursuant to, any indenture mortgage, deed of trust, bank loan, credit agreement, or other agreement or instrument to which World Travel is a party.

The Owner and World Travel covenant and agree as follows:

Section 4.1. Possession and Use of Aircraft; Compliance with Laws. The Owner and World Travel agree that the Aircraft will be used and operated in compliance with all applicable Requirements of Law. Neither the Owner nor World Travel shall use the Aircraft or any part thereof for any purpose or in any manner that would materially adversely affect the Fair Market Value, the utility of the Aircraft as a passenger aircraft or the remaining useful life of such Aircraft, ordinary wear and tear and depreciation excepted. The Owner and World Travel shall procure and maintain in effect airworthiness certificates related to Aircraft and all licenses, registrations, certificates, permits, approvals and consents required by any Requirement of Law or by any Governmental Authority necessary for the ownership, delivery, installation, maintenance, repair, use and operation of the Aircraft. Neither the Owner nor World Travel shall (a) use, operate, or maintain the Aircraft or any portion thereof in violation of **Section 4.3** or any Insurance Requirement; (b) lease, assign or otherwise permit the use of any of the Aircraft except as may be permitted by **Section 4.2**; or (c) except as set forth in **Section 4.2** or in the Loan Agreement, sell, assign or transfer any of its rights or in any of the Aircraft, or directly or indirectly create, incur or suffer to exist any Lien on any of its rights hereunder or in any of the Aircraft, except for Permitted Liens. The Owner and World Travel agree that the Aircraft will be operated at all times by a pilot whose certification is in compliance with all applicable Requirements of Law and any Insurance Requirement, including the necessary minimum "total pilot hours" and the minimum "pilot-in command hours". At all times during the term of this Security Agreement, the Owner and World Travel agree not to operate or locate the Aircraft, or allow the Aircraft to be operated or located, in or over any country or jurisdiction (each, a "Restricted Jurisdiction") for which any of the "Specified Directives" (as defined below) would prohibit the aircraft from being operated or located in, or over. In addition, the Owner and world Travel agree not to violate, or permit the violation of, such Specified Directives and the Owner and World Travel also agree to prohibit any national of such Restricted Jurisdiction from operating the Aircraft. The term "Specified Directives" shall mean any United States export or other law or United Nations security council directive, including without limitation, the Trading With the Enemy Act, 50 U.S.C. App. Sections 1 *et seq.*, the International Emergency Economic Powers Act, 50 U.S.C. App. Sections 1701 *et seq.*, and the Export Administration Act, 50 U.S.C. App. Sections 2401 *et seq.*

Notwithstanding anything contained in the paragraph set forth immediately above, the Owner and World Travel hereby further agree not to (i) operate the Aircraft or permit the Aircraft to be operated

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except in operations for which the Owner and World Travel (or any lessee or other Person permitted by the provisions of **Section 4.2** hereof to operate the Aircraft) is duly authorized by the Federal Aviation Administration or other governmental authority having jurisdiction over the Aircraft; (ii) use or permit the Aircraft to be used for a purpose for which the Aircraft is not designed or reasonably suitable; and (iii) operate, use or locate the Aircraft, or suffer the Aircraft to be operated, used or located (A) and in any area excluded from coverage by any insurance required by the Insurance Requirements, (B) any country with which the United States shall not have full diplomatic relations, or (C) in any recognized or threatened area of hostilities. The Owner and World Travel hereby further agree to operate the Aircraft, or permit the Aircraft to be operated, predominately for business purposes.

Section 4.2. Leases and Assignments. Except for leases permitted by this **Section 4.2**, neither the Owner nor World Travel may assign, lease, mortgage, pledge or otherwise transfer to any Person, at any time, in whole or in part, any of its rights, title or interest in, or obligations to or under this Security Agreement, any other Loan Document or to any portion of the Aircraft. Each lease entered into in accordance with this **Section 4.2** shall be referred to as an "Aircraft Lease." The Owner and World Travel may, so long as no Aircraft Event of Default exists, lease all or any portion of the Aircraft to one or more of World Travel's Affiliates. With respect to any Aircraft Lease permitted under this **Section 4.2**, neither the Owner nor World Travel shall lease any portion of the Aircraft to any Person who shall then be engaged in any proceedings for relief under any bankruptcy or insolvency law or laws relating to the relief of debtors.

No Aircraft Lease hereunder will (a) discharge or diminish any of the Owner's or World Travel's obligations to Company hereunder or the Owner's or World Travel's obligations to any other Person under any other Loan Document, and the Owner and World Travel shall remain directly and primarily liable under this Security Agreement and any other Loan Document to which it is a party with respect to all of the Aircraft Collateral or (b) extend beyond the last day of the Loan Term. Each Aircraft Lease permitted hereby shall be in writing and shall expressly provide that: (i) the Aircraft Lease and the lessee's rights thereunder are subject and subordinate to this Security Agreement and the rights of the Company and the Collateral Agent hereunder, including, without limitation, the right of the Company to inspect and take possession of the Aircraft from time to time, (ii) the lessee agrees to surrender possession of the Aircraft at the election of the Company (or its assignees) after an Aircraft Event of Default; (iii) the lessee will use the Aircraft in full compliance with all of the terms and conditions contained in the Aircraft Security Agreement, (iv) the lessee waives any right that it might have to any notice of the Company's (or its assignee's) intention to inspect, take possession of, or exercise any other right or remedy in respect of the Aircraft under this Security Agreement, (v) the lessee waives, as against the Company (or its assignee's), all rights to any set-off, defense, counterclaim, or cross-claim that it may hold against the Company, and (vi) the lessee acknowledges that, upon an Aircraft Event of Default it shall have no further rights in and to the Aircraft; *provided*, that the Las Vegas Jet Lease shall be deemed to comply with the terms of this **Section 4.2** so long as Las Vegas Jet shall deliver a consent in form and substance satisfactory to the Required Lenders. Any Aircraft Lease that does not contain the foregoing language shall not be permitted by this **Section 4.2**.

World Travel shall give the Company and the Collateral Agent prompt, and in any event within 5 Business Days thereof, written notice of any Aircraft Lease permitted under this **Section 4.2**, and shall promptly provide the Company and the Collateral Agent with a fully executed copy of each document evidencing such Aircraft Lease, together with a Certificate of a Responsible Officer of the Owner that such Aircraft Lease complies with this **Section 4.2**.

Section 4.3. Maintenance. At all times, World Travel shall, at its own cost and expense:

(a) keep, repair, maintain and preserve the Aircraft in good order and operating condition and repair as existing on the Initial Advance Date, ordinary wear and tear excepted, and in conformance with (i) prudent industry maintenance and repair standards, (ii) such maintenance and repair standards used by World Travel or any of World Travel's Affiliates for similar property owned or leased by it, and (iii) all Requirements of Law and Insurance Requirements, and in the event that any Requirement of Law requires any alteration, replacement or addition of or to any Aircraft Part, and World Travel will conform therewith at its own expense;

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(b) (i) conduct all scheduled maintenance of the Aircraft in conformity with World Travel's and World Travel's Affiliates' past practices, and prudent industry maintenance and repair standards, (including, without limitation, World Travel's and World Travel's Affiliates' maintenance program for such

equipment) and (ii) maintain such Aircraft so as to preserve its remaining economic useful life, utility and residual value; and

(c) cause the Aircraft to continue to have at all times the capacity and functional ability to perform, on a continuing basis (subject to normal interruption in the ordinary course of business for maintenance, inspection, service, repair and testing) and in commercial operation, the functions for which it was specifically designed, other than any Casualty pursuant to which the Company has paid the Casualty Amount or is causing the rebuilding the affected portion of the Aircraft pursuant to **Section 7.1**.

The Owner and World Travel shall prepare and deliver to Company, with copies to the Collateral Agent, within 30 Business Days prior to the required date of filing (or, to the extent permissible, file on behalf of Company) any and all material reports to be filed by Company with any Governmental Authority by reason of the security interest of the Company in the Aircraft Collateral. The Company agrees to inform the Owner and World Travel of any request for such reports received by it. The Owner and World Travel shall maintain or cause to be maintained, all records, logs and other materials required by any Governmental Authority (including, without limitation, each applicable Aeronautics Authority with respect to the Aircraft) having jurisdiction over the Aircraft. The Owner and World Travel shall permit Company, the Collateral Agent and each Lender to inspect, during normal business hours and upon notice within 24 hours (so long as the Aircraft is not in service at such time, in which event 5 Business Days notice shall be required), the Aircraft Collateral and any and all records, logs and other materials maintained by the Owner, World Travel or any of World Travel's Affiliates in respect of the Aircraft Collateral; *provided* that from and after the occurrence of an Aircraft Event of Default, all costs and expenses of Company, the Collateral Agent or any Lender in connection with such inspection shall be borne by the Owner and World Travel. The Owner and World Travel hereby waive any right now or hereafter conferred by law to make repairs on the Aircraft Collateral at the expense of Company.

In addition to the foregoing provisions of this **Section 4.3** World Travel shall, at its own cost and expense, service, repair, maintain and overhaul, test or cause the same to be done to the Airframe and each Engine (i) so as to keep the Airframe and Engines in such operating condition as may be necessary to enable the airworthiness certification of the Aircraft to be maintained in good standing at all times under the applicable rules and regulations of the FAA, and (ii) in accordance with the FAA-approved maintenance program for corporate aircraft and BMW Rolls Royce engines. The Owner and World Travel shall maintain, or cause to be maintained, with respect to each Aircraft all records, logs and other materials required by the Department of Transportation or the FAA or any other Aeronautics Authority having jurisdiction over the Aircraft to be maintained in respect of the Aircraft, all such records, logs or materials to be in the English language, and shall promptly furnish to Company upon Company's request such information as may be required to enable Company to file any reports required to be filed with any Authority because of Company's interest in the Aircraft.

Section 4.4. Alterations, Modifications, Etc. In case the Aircraft, or any item of equipment, part or appliance therein (each, an "Aircraft Part") is required to be altered, added to, replaced or modified in order to comply with any Requirements of Law (a "Required Aircraft Alteration") pursuant to **Sections 4.1** or **4.3** hereof, the Owner and World Travel agree to make or cause to be made such Required Aircraft Alteration at its own expense. The Owner and World Travel shall have the right to make any modification, alteration or improvement to the Aircraft (herein referred to as a "Permitted Aircraft Modification"), or to remove any Aircraft Part which has become worn out, broken or obsolete, *provided* in each case that the Owner and World Travel continue to be in compliance with **Sections 4.1** and **4.3** hereof and that such action will not materially decrease the economic value of the Aircraft or

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impair its originally intended use or function or decrease its economic useful life and in any event, will not decrease the Fair Market Value of the Aircraft throughout the Loan Term. In the event any Permitted Aircraft Modification (i) is readily removable without impairing the value or use which the Aircraft would have had at such time had such Aircraft Part not been affixed or placed to or on the Aircraft (a "Removable Aircraft Part"), (ii) is not a Required Aircraft Alteration and (iii) is not an Aircraft Part which replaces any Aircraft Part originally incorporated or installed in or attached to such Aircraft Collateral on the date on which such Aircraft Collateral became subject to this Security Agreement, or any Aircraft Part in replacement of or substitution for any such original Part (each an "Original Aircraft Part"), any such Permitted Aircraft Modification, if no Aircraft Event of Default is continuing, shall be and remain the property of the Owner that is not subject to the Lien of this Security Agreement and may be removed by the Owner (a "World Aircraft Part"). To the extent such Permitted Aircraft Modification is not a Removable Aircraft Part, or is a Required Aircraft Alteration or an Original Aircraft Part, and, to the extent a Removable Aircraft Part is not the property of the Owner that is not subject to the Lien of this Security Agreement because of the continuance of an Aircraft Event of Default, the same shall immediately and automatically be and become subject to the Lien of this Security Agreement. Any Required Aircraft Alterations, and any Aircraft Parts installed or replacements made by the Owner upon any Aircraft Collateral pursuant to its obligation to maintain and keep the Aircraft Collateral in good order, operating condition and repair under **Section 4.3** (collectively, "Replacement Aircraft Parts") and all other Parts which become the property of the Owner shall be considered, in each case, accessions to such Aircraft Collateral and a security interest therein shall be immediately and automatically vested in Company. All Replacement Aircraft Parts shall be free and clear of all Liens (other than Permitted Liens) and shall be in as good an operating condition as, and shall have a value and utility at least equal to, the Aircraft Parts replaced, assuming such replaced Aircraft Parts and the Aircraft Collateral were immediately prior to such replacement or the event or events necessitating such replacement in the condition and repair required to be maintained by the terms hereof. Any Aircraft Part at any time removed from any of the Aircraft Collateral shall remain subject to the interests of Company under the Loan Documents, no matter where located, until such time as such Aircraft Part shall be replaced by an Aircraft Part which has been incorporated or installed in or attached to the Aircraft and which meets the requirements for a Replacement Aircraft Part specified above. No later than 45 days after the end of each fiscal quarter of World Travel, World Travel shall deliver to Company, an Aircraft Security Agreement Supplement evidencing the grant by the Owner and World Travel of a security interest in such Replacement Aircraft Part to Company, for each Replacement Aircraft Part not previously evidenced by an Aircraft Security Agreement Supplement and such other documents in respect of such Aircraft Part or Aircraft Parts and to the extent, as Company may reasonably request in order to confirm that a security interest to such Aircraft Part or Aircraft Parts has passed to Company as hereinabove provided. Any such Replacement Aircraft Part, regardless of whether evidenced by an Aircraft Security Agreement Supplement, shall become subject to this Security Agreement and shall be deemed part of the Aircraft Collateral, for all purposes hereof to the same extent as the Aircraft Parts originally incorporated or installed in the Aircraft, and a security interest to such Replacement Aircraft Part shall thereupon vest in the Company. All replacements pursuant to this **Section 4.4** shall be purchased by the Owner or World Travel with its own funds. There shall be no obligation on the part of the Company to pay for or otherwise finance any such replacement.

Section 4.5. Identifying Numbers and Registration; Legend; Changes; Inspection. The Owner and World Travel, each at its own expense, will (i) cause the Airframe and each Engine to be kept numbered with the identification numbers as shall be set forth on Schedule A to the applicable Aircraft Security Agreement Supplement, and (ii) upon the Initial Advance Date, cause the Aircraft to be duly registered in the name of the Owner under the Federal Aviation Act and at all times thereafter to remain so registered. Within 10 days after the Initial Advance Date, the Owner shall cause a metal nameplate identifying the security interest of the Company to be placed in the cockpit of the Airframe

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in a location reasonably adjacent to the airworthiness certificate of the Aircraft, and on each Engine, as follows:

"WYNN LAS VEGAS, LLC, as Secured Party,
as further assigned to
WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION, as Collateral Agent"

Neither the Owner nor World Travel will allow the name or logo of any Person other than the Company or its successors or assigns, to be placed on the Aircraft or any Engine as a designation that might be interpreted as a claim of ownership or of any interest therein, *provided, however*, that the name and/or logo of the Owner, World Travel or any of World Travel's Affiliates may be placed on the Aircraft.

Section 4.6. Liens. The Owner will not directly or indirectly create, incur, assume or suffer to exist any Lien (other than Permitted Liens) on or with respect to the Aircraft Collateral or any Aircraft Part. The Owner and World Travel, each at its own expense, will promptly pay, satisfy and otherwise take such actions as may be necessary to keep the Aircraft Collateral free and clear of, and to duly discharge or eliminate or bond in a manner satisfactory to Company, any such Lien not excepted above if the same shall arise at any time. The Owner and World Travel will notify Company, the Collateral Agent and each Lender in writing within 5 Business Days upon becoming aware of any Tax or other Lien (other than any Lien excepted above) that shall attach to the Aircraft Collateral, and of the full particulars thereof. Without limiting the foregoing, neither the Owner nor World Travel shall assign or pledge any of its rights under any Lease to any Person other than Company.

Section 4.7. Replacements and Substitutions. (a) In addition to the rights of the Owner and World Travel under **Section 4.4**, the Owner and World Travel shall have the option at any time to replace any Aircraft Part (a "Replaced Aircraft Part" or "Replaced Aircraft Parts") with a substitute Aircraft Part (a "Substitute Aircraft Part" or "Substitute Aircraft Parts"), subject to the following conditions:

(i) no Aircraft Event of Default shall have occurred and be continuing;

(ii) the Substitute Aircraft Part or Substitute Aircraft Parts shall be the same general type, year of construction (or a later year of construction), useful life, function, utility, state of repair and operating condition as the portion of the Replaced Aircraft Part or Replaced Aircraft Parts, must have a Fair Market Value of not less than the Fair Market Value of the Replaced Aircraft Part or Replaced Aircraft Parts and be free and clear of any Liens other than Permitted Liens, as described in the Appraisal delivered on the Initial Advance Date; and

(iii) prior to the date of any such substitution, the Owner and World Travel shall replace such Replaced Aircraft Part or Replaced Aircraft Parts by complying with the terms of **Section 7.1** to the same extent as if a Casualty or a series of Casualties had occurred with respect to such Replaced Aircraft Part or Replaced Aircraft Parts, and the Company shall release its Lien on the Replaced Aircraft Part or Replaced Aircraft Parts in the same manner as provided in said **Section 7.1**.

(b) All replacements pursuant to **Section 4.7(a)** shall be purchased by the Owner or World Travel with its own funds. There shall be no obligation on the part of the Company to pay for or otherwise finance any such replacement. No termination of this Security Agreement with respect to any Aircraft Part as contemplated by this **Section 4.7** shall result in any reduction of World Travel's obligation to pay the World Liabilities.

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(c) (i) In addition to the rights of the Owner and World Travel under **Section 4.4**, the Owner or World Travel shall have the option at any time to replace the Aircraft with a substitute Aircraft (the "Replacement Aircraft"), subject to the following conditions:

(A) no Aircraft Event of Default shall have occurred and be continuing;

(B) the Replacement Aircraft shall be the same general type, year of construction (or a later year of construction), useful life, function, utility, state of repair and operating condition as the Aircraft, must have a Fair Market Value of not less than the Allocated Aircraft Value and be free and clear of any Liens other than Permitted Liens, as described in the Appraisal delivered on the Initial Advance Date; and

(C) prior to the date of any such substitution, the Owner or World Travel shall replace the Aircraft by complying with the terms of **Section 7.1** to the same extent as if a Casualty or a series of Casualties had occurred with respect to the Aircraft, and the Company shall release its Lien on the Aircraft in the same manner as provided in said **Section 7.1**.

(ii) All replacements pursuant to **Section 4.7(c)** shall be purchased by the Owner or World Travel with (i) its or World Travel's own funds, (ii) proceeds from the sale of the Aircraft and (iii) Replacement Aircraft Indebtedness approved by the Lenders. No termination of this Security Agreement with respect to the Aircraft as contemplated by this **Section 4.7** shall result in any reduction of World Travel's obligation to pay the World Liabilities.

Section 4.8. Amendments. Neither the Owner nor World Travel will, without the prior written consent of the Collateral Agent, directly or indirectly, agree to any amendment, waiver or termination of the Aircraft Operating Agreement or the Aircraft Trust; *provided, however*, any amendment, waiver or termination of the Aircraft Trust that would affect the registration of the Aircraft with the FAA and any amendment of the Aircraft Operating Agreement that would affect the subordination of the Aircraft Operating Agreement to this Security Agreement or allow World Travel to use or operate the Aircraft in violation of the requirements contained in this Security Agreement, must also be approved in writing by the Required Lenders holding 50% or more of the aggregate Credit Exposure of the Lenders whose Loans were used to refinance the Aircraft.

SECTION 5. CERTIFICATE, SCHEDULES AND REPORTS.

The Owner and World Travel will from time to time, as the Company or any Lender may reasonably request, deliver to the Company, the Collateral Agent and the Lenders such schedules, certificates and reports respecting all or any of the Aircraft Collateral at the time subject to the security interest hereunder, and the items or amounts received by the Owner in full or partial payment or otherwise as proceeds of any of the Aircraft Collateral, all to such extent as the Company may request. Any such schedule, certificate or report shall be executed by a duly authorized officer of the Owner and shall be in such form and detail as the Company, at the direction of the Required Lenders, may reasonably specify.

SECTION 6. ADDITIONAL AGREEMENTS OF THE OWNER AND WORLD TRAVEL.

The Owner and World Travel agree, that, until all of the World Liabilities are paid in full, the Owner and World Travel will perform and fulfill each of the following agreements:

(a) The Owner (1) will execute such financing statements, continuation statements or amendments thereof or supplements thereto and other documents (and World Travel will pay the cost of filing or recording the same in all public offices deemed necessary by the Company) and do such other acts and things, all as the Company may from time to time request, to establish and maintain a valid first security interest in the Aircraft Collateral to secure the payment of the World Liabilities, including, without limitation, deposit with the Company of any certificate of title issuable with respect to any of the Aircraft Collateral and notation thereon of the security interest

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hereunder (and any carbon, photographic or other reproduction of this Security Agreement or of any such financing statement shall be sufficient for filing as a financing statement) and (2) will, at the Initial Advance Date, provide, or will cause to be provided, to the Company, the Lenders and the Collateral Agent an opinion of counsel (which may be the opinion of the general counsel/chief legal officer of World Travel) stating that, in the opinion of such counsel, this Security Agreement and the FAA and UCC filings and other agreements or documents executed in connection with this Security Agreement have been, and remain, properly recorded or filed for record so as to make effective of record the lien intended to be created hereby and thereby.

(b) The Owner will not change its name, change its organizational structure, resign as trustee under the Aircraft Trust Agreement or do business under any other names without at least 25 days' prior written notice thereof from World Travel shall have been delivered to the Company, Lenders and the Collateral Agent and will not change the location of their principal executive offices or places of business, except for a change to another location within the continental limits of the United States of America and within a jurisdiction in which the UCC is in effect, of which the Company, Lenders and the Collateral Agent shall have been given at least 25 days' prior written notice by World Travel.

(c) World Travel will reimburse the Company, the Collateral Agent and Lenders upon demand for all reasonable costs and expenses, including reasonable attorney's fees and legal expenses (including allocated costs of internal counsel), incurred by the Company or the Collateral Agent in seeking to collect or enforce any right under this Security Agreement or the Aircraft Collateral and, in case of an Aircraft Event of Default, in seeking to collect payments of principal, premium, if any, and interest on the Intercompany Note and all other World Liabilities and to enforce rights hereunder, including expenses of any repairs to any realty or other property to which any of the Aircraft Collateral may be affixed or be a part.

(d) The Owner will remain a "citizen of the United States" pursuant to 49 U.S.C. Section 40102(a)(15).

SECTION 7. RISK OF LOSS; INSURANCE.

Section 7.1. Casualty. Upon the occurrence of a Casualty with respect to the Airframe or an Engine, the Owner shall give the Company, the Lenders and Collateral Agent prompt notice thereof (an "*Aircraft Casualty Notice*").

The Company, upon receipt of the Aircraft Casualty Notice, may specify whether it shall:

(a) demand that the Owner pay to Company the Casualty Amount of the Airframe or Engines suffering such Casualty, together with all other Interest then due and owing and, if such amount is paid on a date which is not a Payment Date, an amount equal to the Applicable Administrative Charge with respect to such Casualty Amount on the Casualty Settlement Date; or

(b) permit the Owner to elect to replace the Airframe or an Engine with respect to which the Casualty has occurred pursuant to the following provisions of this **Section 7.1**, *provided* that upon the occurrence and during the continuance of a Default or an Aircraft Event of Default or in the event such Casualty is pursuant to the last sentence of the definition thereof, Company shall be obligated, at the option of the Required Lenders, to require the payments referred to in **clause (a)** above and shall not be entitled to offer any right of election of replacement pursuant to this **clause (b)**.

If Company has elected, or is obligated, to demand payment of the Casualty Amount pursuant to **clause (a)** above, World Travel shall continue to make all payments of interest due under the Intercompany Note until and including the Casualty Settlement Date. Upon payment of the Casualty Amount in respect of the Airframe or an Engine suffering Casualty on such Casualty Settlement Date

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together with all Interest then due and owing and the application thereof pursuant to Section 3.8 of the Loan Agreement, the remaining interest and principal under the Intercompany Note shall be reduced by an amount equal to the product of the scheduled amount of each such payment (determined in each case prior to the receipt of such Casualty Amount), multiplied by the Item Value Fraction of the Airframe or Engine with respect to which the Casualty suffering such Casualty or series of Casualties.

Airframe Replacements—If the Owner elects (by written notice delivered to the Company within 10 Business Days of the Casualty) to replace the Airframe suffering a Casualty, and such replacement is permitted under the foregoing **clause (b)**, the Owner may make subject to this Security Agreement, not later than the Casualty Settlement Date with respect to such Airframe, a Replacement Airframe meeting the suitability standards set forth in Section 8.1 of the Loan Agreement. World Travel shall cause such documents, opinions and deliveries as set forth in Section 8.1 of the Loan Agreement to be executed and delivered to Company in order to subject such Replacement Airframe to this Security Agreement, and upon such execution and delivery and the receipt by Company, such Replacement Airframe shall be deemed an "*Airframe*" for all purposes hereof.

Engine Replacements—If the Owner elects (by written notice delivered to the Company within 10 Business Days of the Casualty) to replace an Engine suffering a Casualty, and such replacement is permitted under the foregoing **clause (b)**, the Owner may make subject to this Security Agreement, not later than the Casualty Settlement Date with respect to such Engine, a Replacement Engine meeting the suitability standards hereinafter set forth in Section 8.1 of the Loan Agreement. World Travel shall cause such documents, opinions and deliveries as set forth in Section 8.1 of the Loan Agreement to be executed and delivered to Company in order to subject such Replacement Engine to this Security Agreement, and upon such execution and delivery and the receipt by the Company, such Replacement Engine shall be deemed an "*Engine*" for all purposes hereof.

Subject to the terms of the Loan Agreement, if (i) the Company has received the amount payable with respect to the Casualty and all other amounts due, or (ii) the Airframe or Engines have been substituted in accordance herewith, and, in each case, no Default or Aircraft Event of Default exists, the Owner shall be

entitled to receive from the Company the proceeds of any recovery in respect of the Airframe or Engines from insurance or otherwise, to the extent recovered by Company, subject to the rights of any insurer insuring the Airframe or Engines as provided herein. In such event, the Company shall execute and deliver to the Owner, or to its assignee or nominee, a release for the Airframe or Engines, and such other documents as may be required to release the Airframe or Engines from the terms of this Security Agreement, in such form as may reasonably be requested by the Owner. All fees, costs and expenses relating to a substitution as described herein shall be borne by the Owner. Except as otherwise provided in this **Section 7.1**, the Owner shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty to any Airframe or Engine prior to or during the term of the Intercompany Note and thereafter until all of the Owner's obligations hereunder are fully performed.

Subject to the terms of the Loan Agreement, any payments (including, without limitation, insurance proceeds) received at any time by Company from any Authority or other party with respect to any loss or damage to any Airframe or Engines not constituting a Casualty (i) up to \$500,000, shall be paid to the Owner, so long as no Default or Aircraft Event of Default shall have occurred and be continuing, for application to repair or replacement of property in accordance with **Sections 7.1** and **4.3** or (ii) in excess of \$500,000, shall be held by Collateral Agent and applied directly in payment of repairs or for replacement of property in accordance with the provisions of **Sections 7.1** and **4.3**, if not already paid by the Owner, or if already paid by Company and no Default or Aircraft Event of Default shall have occurred and be continuing, shall be applied to reimburse the Owner for such payment, and any balance remaining after compliance with said Sections with respect to such loss or damage shall be retained by or disbursed to (as applicable) the Owner.

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THE OWNER HEREBY ASSUMES ALL RISK OF LOSS, DAMAGE, THEFT, TAKING, DESTRUCTION, CONFISCATION, REQUISITION, COMMANDEERING, TAKING BY EMINENT DOMAIN OR CONDEMNATION, PARTIAL OR COMPLETE, OF OR TO THE AIRFRAME AND ENGINES, HOWEVER CAUSED OR OCCASIONED, SUCH RISK TO BE BORNE BY THE OWNER WITH RESPECT TO THE AIRFRAME AND ENGINES. THE OWNER AND WORLD TRAVEL AGREE THAT NO OCCURRENCE SPECIFIED IN THE PRECEDING SENTENCE SHALL IMPAIR, IN WHOLE OR IN PART, ANY OBLIGATION OF WORLD TRAVEL UNDER THE WORLD LIABILITIES.

Section 7.2. Insurance Coverages. To the extent not otherwise maintained by the Company pursuant to Section 8.2 of the Loan Agreement, World Travel shall at all times, at its expense, cause to be carried and maintained with financially sound and reputable insurers, insurance against loss or damage to the Aircraft, of the kinds and in the amounts to be maintained with respect to the Aircraft pursuant to Section 8.2 of the Loan Agreement.

Nothing in this **Section 7.2** shall prohibit Lenders or Collateral Agent from obtaining insurance for its own account and at its own expense and any proceeds payable thereunder shall be payable as provided in the insurance policy relating thereto, *provided* that no such insurance may be obtained which would limit or otherwise adversely affect the coverage or payment of any insurance required to be obtained or maintained by Company pursuant to this **Section 7.2**.

Section 7.3. Insurance Certificates and Policies. To the extent not performed by the Company pursuant to the Loan Agreement, prior to the Initial Advance Date, and thereafter not less than 20 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to **Section 7.2**, the Owner and World Travel shall deliver to Collateral Agent and the Lenders certificates issued by the insurer(s) or insurance broker(s) for the insurance maintained pursuant to **Section 7.2** together with a copy of the insurance policies; *provided, however*, that if the delivery of any certificate is delayed, Company shall not be deemed to be in violation of the obligation to deliver such certificate if, within such 20 day period, Company delivers an executed binder with respect thereto and thereafter delivers the certificate upon receipt thereof.

SECTION 8. DEFAULTS AND REMEDIES.

Section 8.1. Defaults. (a) The occurrence, or the existence of any Event of Default under the Loan Agreement, shall constitute an "Aircraft Event of Default" hereunder.

(b) With respect to the Aircraft Collateral, upon the occurrence and during the continuation of any Aircraft Event of Default hereunder, the Company shall have, in addition to all other rights provided herein or by law, the rights and remedies of a secured party under the FAA or the UCC (regardless of whether the UCC is the law of the jurisdiction where the rights or remedies are asserted and regardless of whether the UCC applies to the affected Aircraft Collateral), and further the Company may, without demand and without advertisement, notice, hearing or process of law, all of which the Owner and World Travel hereby waive, at any time or times, sell and deliver any or all Aircraft Collateral held by or for it at public or private sale, for cash, upon credit or otherwise, at such prices and upon such terms as the Company deems advisable, in its sole discretion, provided that said disposition complies with any and all Requirements of Law. In addition to all other sums due the Company, the Collateral Agent or any Lender, World Travel shall pay the Company, the Collateral Agent and any Lender all costs and expenses incurred by the Company, the Collateral Agent or such Lender, including a reasonable allowance for attorneys' fees and court costs, in obtaining, liquidating or enforcing payment of Aircraft Collateral or World Liabilities or in the prosecution or defense of any action or proceeding by or against the Company, the Collateral Agent, such Lender or the Owner concerning any matter arising out of or connected with this Security Agreement or the Aircraft Collateral or World Liabilities, including without limitation any of the foregoing arising in, arising under or related to a case under the United States Bankruptcy Code (or any successor statute). Any requirement of reasonable notice shall be met if such notice is personally served on or mailed, postage prepaid, to the Owner in accordance with **Section 4** hereof at least 10 days before the time of sale or

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other event giving rise to the requirement of such notice; however, no notification need be given to the Owner if the Owner has signed, after an Aircraft Event of Default hereunder has occurred, a statement renouncing any right to notification of sale or other intended disposition. The Company shall not be obligated to make any sale or other disposition of the Aircraft Collateral regardless of notice having been given. The Company, the Collateral Agent or any Lender may be the purchaser at any such sale. To the extent permitted by applicable law, the Owner hereby waives all of its rights of redemption from any such sale. Subject to the provisions of applicable law, the Company may postpone or cause the postponement of the sale of all or any portion of the Aircraft Collateral by announcement at the time and place of such sale, and such sale may, without further notice, be made at the time and place to which the sale was postponed or the Company may further postpone such sale by announcement made at such time and place.

(c) With respect to all of the Aircraft Collateral, without in any way limiting the foregoing, the Company shall, upon the occurrence and during the continuation of any Aircraft Event of Default hereunder, have the right, in addition to all other rights provided herein or by law, to take physical possession of any and all of the Aircraft Collateral and anything found therein, the right for that purpose to enter without legal process any premises where such Aircraft Collateral

may be found (*provided* such entry be done lawfully), and the right to maintain such possession on the Owner's or World Travel's premises (the Owner and World Travel hereby agreeing to lease such premises without cost or expense to the Company or its designee if the Company so requests) or to remove the Aircraft Collateral or any part thereof to such other places as the Company may desire. Upon the occurrence and during the continuation of any Aircraft Event of Default hereunder, the Owner and World Travel shall, upon the Company's demand, assemble the Aircraft Collateral and make it available to the Company at a place designated by the Company. If the Company exercises its right to take possession of the Aircraft Collateral, the Owner and World Travel shall also at its expense perform any and all other steps reasonably requested by the Company to preserve and protect the security interest hereby granted in such Aircraft Collateral, such as placing and maintaining signs indicating the security interest of the Company, appointing overseers for such Aircraft Collateral and maintaining inventory records.

(d) Failure by the Company to exercise any right, remedy or option under this Security Agreement or any other agreement between the Owner and the Company or provided by law, or delay by the Company in exercising the same, shall not operate as a waiver; no waiver hereunder shall be effective unless it is in writing, signed by the party against whom such waiver is sought to be enforced and then only to the extent specifically stated. Neither the Company nor any party acting as attorney for the Company shall be liable hereunder for any acts or omissions or for any error of judgment or mistake of fact or law other than their gross negligence or willful misconduct. The rights and remedies of the Company and the Lenders under this Agreement shall be cumulative and not exclusive of any other right or remedy which the Company or the Lenders may have.

Section 8.2. Sale of Aircraft Collateral. In addition to the remedies set forth in **Section 8.1**, if any Aircraft Event of Default shall occur, Company may, but is not required to, sell the Aircraft Collateral in one or more sales. Any Lender, the Collateral Agent or the Company may purchase all or any part of the Aircraft Collateral at such sale. The Owner acknowledges that sales for cash or on credit to a wholesaler, retailer or user of such Aircraft Collateral, or at public or private auction, are all commercially reasonable. Any notice required by law of intended disposition by Company shall be deemed reasonably and properly given if given at least 10 days before such disposition.

Section 8.3. Application of Sale Proceeds. All payments received and amounts held or realized by Company at any time when an Aircraft Event of Default shall be continuing as well as all payments or amounts then held or thereafter received by Company and the proceeds of sale pursuant to **Section 8.2** shall be distributed to the Company for distribution in accordance with Section 3.8 of the Loan Agreement.

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Section 8.4. Power of Attorney. The Owner unconditionally and irrevocably appoints Company as its true and lawful attorney-in-fact, with full power of substitution, to the extent permitted by Requirements of Law, in its name and stead and on its behalf, solely for the purpose of effectuating any sale, assignment, transfer or delivery under this **Section 8**, if an Aircraft Event of Default occurs and is continuing, whether pursuant to foreclosure or power of sale or otherwise, and in connection therewith and during an Aircraft Event of Default to execute and deliver all such deeds, bills of sale, assignments, releases (including releases of this Security Agreement on the records of any Authority) and other proper instruments as Company may reasonably consider necessary or appropriate. The Owner ratifies and confirms all that such attorney or any substitute shall lawfully do by virtue hereof. If requested by Company or any purchaser, the Owner shall ratify and confirm any such lawful sale, assignment, transfer or delivery by executing and delivering to Company or such purchaser, all deeds, bills of sale, assignments, releases and other proper instruments to effect such ratification and confirmation as may be designated in any such request.

Section 8.5. Remedies Cumulative; Consents. To the extent permitted by, and subject to the mandatory requirements of any Requirements of Law, each and every right, power and remedy herein specifically given to Company or otherwise in this Agreement shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by Company, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any right, power or remedy. Company's or the Lender's consent to any request made by the Owner shall not be deemed to constitute or preclude the necessity for obtaining Company's or the Lenders' consent in the future to all similar requests. To the extent permitted by any Requirements of Law, the Owner hereby waives any rights now or hereafter conferred by statute or otherwise that may require Company or the Lenders to sell, lease or otherwise use the Aircraft or any part thereof in mitigation of Company's, or the Lenders' damages upon the occurrence of an Aircraft Event of Default or that may otherwise limit or modify any of Company's or the Lenders' rights hereunder.

Section 8.6. Allocation of Aircraft Collateral. All cash proceeds received by the Company in respect of any sale of, collection from, or other realization upon all or any part of the Aircraft Collateral shall be held by the Company, and shall be promptly paid over by the Company to the Collateral Agent to be distributed in accordance with the terms of Section 3.8 of the Loan Agreement.

SECTION 9. GENERAL PROVISIONS.

Section 9.1. Document. This Security Agreement and the Intercompany Note are executed pursuant to the Loan Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions the Loan Agreement.

Section 9.2. Amendments; Etc. No amendment to or waiver of any provision of this Security Agreement nor consent to any departure by the Owner or World Travel herefrom, shall in any event be effective unless the same shall be in writing and signed by the Company, with the consent of the Required Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 9.3. Notices. All notices and other communications provided for hereunder shall be in writing (including telegraphic and facsimile communication) and, if to the Collateral Agent or the Lenders, delivered in accordance with Section 13.6 of the Loan Agreement, or in the case of the Company the Owner or World Travel, delivered to the respective addresses as set forth beneath each party's name on the signature pages hereto.

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Section 9.4. Section Captions. Section captions used in this Security Agreement are for convenience of reference only, and shall not affect the construction of this Security Agreement.

Section 9.5. Severability; No Waiver. Wherever possible each provision of this Security Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Security Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Security Agreement. No delay on the part of the Company in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by the Company of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy.

Section 9.6. Governing Law. THIS SECURITY AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND THE RIGHTS OF THE PARTIES SHALL BE GOVERNED BY, THE LAW OF THE STATE OF NEW YORK EXCLUDING CHOICE-OF-LAW PRINCIPLES OF THE LAW OF SUCH STATE THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF A JURISDICTION OTHER THAN SUCH STATE.

Section 9.7. Counterparts. This Security Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which shall together constitute but one and the same agreement.

Section 9.8. Risk of Loss. AS BETWEEN THE OWNER AND THE COLLATERAL AGENT, AS ASSIGNEE OF THE COMPANY, THE OWNER HEREBY ASSUMES ALL RISK OF LOSS, DAMAGE, THEFT, TAKING, DESTRUCTION, CONFISCATION, REQUISITION, COMMANDEERING, TAKING BY EMINENT DOMAIN OR CONDEMNATION, PARTIAL OR COMPLETE, OF OR TO THE AIRFRAME AND EACH ENGINE, HOWEVER CAUSED OR OCCASIONED, SUCH RISK TO BE BORNE BY THE OWNER WITH RESPECT TO THE AIRFRAME AND EACH ENGINE. THE OWNER AGREES THAT NO OCCURRENCE SPECIFIED IN THE PRECEDING SENTENCE SHALL IMPAIR, IN WHOLE OR IN PART, ANY OBLIGATION OF THE OWNER UNDER THIS SECURITY AGREEMENT.

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Section 9.9. Principal Waivers. All signers and endorsers hereof are to be regarded as principals hereunder, jointly and severally, if more than one. Nothing contained herein shall require the Company or the Collateral Agent, as assignee of the Company, as a condition to exercising and of its rights or remedies hereunder, to first seek or exhaust any remedy against World Travel, its successors or assigns, or any other person obligated with respect to the World Liabilities, or to first foreclose, or exhaust or proceed against any other collateral or security which may be given to secure any of the World Liabilities. The Owner agrees that its liabilities and obligations under this and any other Loan Documents are unconditional, irrespective of and unaffected by any of the following actions or circumstances (regardless of any notice to or consent of the Owner or the Collateral Agent): (i) any extension, renewal, amendment, change, waiver, or other modification of any of the Loan Documents or the Intercompany Note, (ii) the absence of, or delay in, any action to enforce the terms of any Loan Document, the Intercompany Note or this Security Agreement, (iii) the Company's or the Collateral Agent's failure or delay in obtaining any guaranty or other collateral securing the World Liabilities, (iv) the release of, or extension of time for payment or performance by, or any other indulgence granted to World Travel or any other person with respect to the World Liabilities, by operation of law or otherwise, (v) the existence, value, condition, loss, subordination, or release (with or without substitution) of, or failure to have title to or perfect and maintain a security interest in, any other collateral, or the time, place and manner of any sale or other disposition of any other collateral given in connection with the World Liabilities, (vi) World Travel's voluntary or involuntary bankruptcy, assignment for the benefit of creditors, reorganization, or similar proceedings affecting World Travel or its assets, or (vii) any other action or circumstances which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor. The Owner warrants that it has adequate means to obtain from World Travel on a continuing basis financial data and other information regarding World Travel and is not relying upon the Company or the Collateral Agent to provide any such data or other information. Except as expressly provided herein, the Owner waives presentment, demand for payment, notice of nonpayment, protest, notice of protest, and notice of dishonor of the Intercompany Note or of any of the World Liabilities secured hereby.

[Signature Pages Begin on Next Page]

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

WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, not in its individual capacity, except as expressly set forth herein, but solely as trustee, as Owner

By: /s/ C. SCOTT NIELSEN

Name: C. Scott Nielsen
Title: Vice President

Notice Address: 299 Main Street, 12th Fl.
Salt Lake City, UT 84111

Attention: Corporate Trust Services
Telephone: (801) 246-5630
Telefacsimile: (801) 246-5053

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WORLD TRAVEL, LLC,
a Nevada limited liability company, as Trustor under the Aircraft Trust

By: WYNN LAS VEGAS, LLC,
a Nevada limited liability company, its sole member

By: WYNN RESORTS HOLDINGS, LLC,
a Nevada limited liability company, its sole member

By: VALVINO LAMORE, LLC,
a Nevada limited liability company, its sole member

By: WYNN RESORTS, LIMITED,
a Nevada corporation, its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein
Title: Sr. Vice President,
General Counsel & Secretary

Notice Address:

Attention:
Telephone:
Telefacsimile:

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ACCEPTED AS OF THE DATE FIRST WRITTEN ABOVE

WYNN LAS VEGAS, LLC,
a Nevada limited liability company, as the Borrower

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company, its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company, its sole member

By: Wynn Resorts, Limited,
a Nevada corporation, its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein
Title: Senior Vice President, General Counsel & Secretary

Notice Address:

Attention:
Telephone:
Telefacsimile:

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**SCHEDULE A TO
SECURITY AGREEMENT**

DESCRIPTION OF AIRCRAFT COLLATERAL

One Bombardier Inc. model BD-700-1A10 Global Express aircraft bearing manufacturer's serial number 9065 and Federal Aviation Administration Registration Number N711SW (formerly N789TP), including two BMW Rolls Royce BR 710A2-20/01 engines bearing manufacturer's serial numbers 12243 and 12244.

QuickLinks

[Exhibit 10.13](#)

[AIRCRAFT SECURITY AGREEMENT Dated as of October 30, 2002 Among WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, not in its individual capacity, but solely as Trustee, WORLD TRAVEL, LLC and WYNN LAS VEGAS, LLC](#)
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EXHIBIT A TO
SECURITY AGREEMENT

AIRCRAFT SECURITY AGREEMENT SUPPLEMENT

Security Agreement Supplement No. 1 (this "*Security Agreement Supplement No. 1*") dated October 30, 2002, by WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, not in its individual capacity, but solely as Trustee of that certain trust created under the Trust Agreement dated as of May 10, 2002 with World Travel, LLC, a Nevada limited liability company ("*World Travel*"), as Trustor (in such capacity, the "*Owner*") and World Travel, as Trustor under the Aircraft Trust in favor of WYNN LAS VEGAS, LLC, a Nevada limited liability company (being referred to herein, together with any successor(s) thereto in such capacity, as the "*Company*"). Capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Security Agreement dated as of October 30, 2002, among the Owner, World Travel and the Company, a copy of which is attached hereto.

WITNESSETH:

The Loan Agreement and Security Agreement provides for the execution and delivery from time to time of supplements to the Security Agreement substantially in the form hereof which shall particularly describe the Aircraft Collateral and shall specifically grant a security interest in the Aircraft Collateral to the Company.

The Security Agreement relates to the Aircraft Collateral described in Schedule A thereto, Schedule A to the Security Agreement and each Schedule A attached to each other Security Agreement Supplement attached to the attached Security Agreement.

The Owner hereby assigns and pledges to the Company, and hereby grants to the Company, a lien and security interest in and to all of the Aircraft Collateral, whether now or hereafter existing or acquired, including the Aircraft Collateral more particularly described in **Schedule A** hereto.

TO HAVE AND TO HOLD the aforesaid property unto the Company, its successors and assigns forever, upon the terms and conditions set forth in the Security Agreement to secure the payment of the World Liabilities.

This Supplement shall be construed in connection with and as part of the Security Agreement and all terms, conditions and covenants contained in the Security Agreement, except as herein modified, shall be and remain in full force and effect.

Any and all notices, requests, certificates and other instruments executed and delivered after the execution and delivery of this Security Agreement Supplement No. 1 may refer to the "Security Agreement" without making specific reference to this Security Agreement Supplement No. 1, but nevertheless all such references shall be deemed to include this Security Agreement Supplement No. 1 unless the context shall otherwise require.

Section 1.1. Counterparts. This Supplement No. 1 may be executed and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Supplement.

Section 1.2. Governing Law. THIS SECURITY SUPPLEMENT NO. 1 AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND THE RIGHTS OF THE PARTIES SHALL BE GOVERNED BY, THE LAW OF THE STATE OF NEW YORK EXCLUDING CHOICE-OF-LAW PRINCIPLES OF THE LAW OF SUCH STATE THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF A JURISDICTION OTHER THAN SUCH STATE.

Section 1.3. Headings. Any headings or captions preceding the text of the several sections hereof are intended solely for convenience of reference and shall not constitute a part of this Supplement No. 1 nor shall they affect its meaning, construction or effect.

Section 1.4. The Company. The Company shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Security Agreement Supplement or for or in respect of the recitals contained herein, all of which are made solely by the Owner.

[Signature Pages Begin on Next Page]

IN WITNESS WHEREOF, Grantor has caused this Security Agreement Supplement No. 1 to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, not in its individual capacity, except as expressly set forth herein, but solely as trustee, as Owner

By: /s/ C. SCOTT NIELSEN

Name: C. Scott Nielsen
Title: Vice President

WORLD TRAVEL, LLC,
a Nevada limited liability company, as Trustor under the Aircraft Trust

By: WYNN LAS VEGAS, LLC,
a Nevada limited liability company, its sole member

By: WYNN RESORTS HOLDINGS, LLC,
a Nevada limited liability company, its sole member

By: VALVINO LAMORE, LLC,
a Nevada limited liability company, its sole member

By: WYNN RESORTS, LIMITED,
a Nevada corporation, its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein
Title: Senior Vice President, General Counsel & Secretary

Notice Address:

Attention:
Telephone:
Telefacsimile:

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Accepted by

WYNN LAS VEGAS, LLC,
a Nevada limited liability company, as the Borrower

By: Wynn Resorts Holdings, LLC, a Nevada limited liability company, its sole member

By: Valvino Lamore, LLC, a Nevada limited liability company, its sole member

By: Wynn Resorts, Limited, a Nevada corporation, its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein
Title: Senior Vice President, General Counsel & Secretary

Notice Address:

Attention:
Telephone:
Telefacsimile:

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DESCRIPTION OF AIRCRAFT COLLATERAL

One Bombardier Inc. model BD-700-1A10 Global Express aircraft bearing manufacturer's serial number 9065 and Federal Aviation Administration Registration Number N711SW (formerly N789TP), including two BMW Rolls Royce BR 710A2-20/01 engines bearing manufacturer's serial numbers 12243 and 12244.

QuickLinks

[Exhibit 10.14](#)
[EXHIBIT A TO SECURITY AGREEMENT](#)

AIRCRAFT SECURITY AGREEMENT SUPPLEMENT
WITNESSETH
DESCRIPTION OF AIRCRAFT COLLATERAL

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "*Assignment*") entered into by and between WYNN LAS VEGAS, LLC, a Nevada limited liability company, as assignor (the "*Assignor*"), and WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION, not in its individual capacity but solely as Collateral Agent for the benefit of the Lenders, as assignee (together with its permitted successors and assigns, the "*Assignee*"), dated as of October 30, 2002.

WHEREAS, the Assignor and the Assignee are parties to that certain Loan Agreement, dated as of even date herewith (as the same may be amended, supplemented or otherwise modified from time to time, the "*Loan Agreement*"), among the Assignor, as Borrower; the Assignee, as Collateral Agent for the benefit of the Lenders; and the Persons listed on Schedule 1A1 thereto, as Lenders. Capitalized terms not otherwise defined herein shall have the meanings assigned thereto in the Loan Agreement;

WHEREAS, pursuant to the Loan Agreement, the Assignor is obtaining Loans from the Lenders, the proceeds of which are being used, in part, by the Assignor to make an intercompany loan to World Travel, LLC, a Nevada limited liability company ("*World Travel*") evidenced by that certain intercompany note (the "*Intercompany Note*");

WHEREAS, pursuant to the Trust Agreement dated as of May 10, 2002, World Travel contributed, and WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, not in its individual capacity, but solely as Trustee of that certain trust created under the Trust Agreement dated as of May 10, 2002 with World Travel as Trustor (in such capacity, the "*Owner*") became the owner of, the Aircraft more particularly described in **Annex I** hereto;

WHEREAS, pursuant to the Loan Agreement and the Intercompany Note, World Travel will use the proceeds of the Intercompany Note to refinance obligations secured by such Aircraft;

WHEREAS, the Owner and World Travel has executed and delivered that certain Aircraft Security Agreement, dated as of October 30, 2002 (as more particularly described in **Annex I** attached hereto, the "*Security Agreement*"; the Security Agreement and the Intercompany Note shall be hereinafter referred to collectively, as the "*Assigned Agreements*") in favor of the Assignor, which Security Agreement relates to the Aircraft as more particularly described in **Annex I** hereto;

WHEREAS, as a condition precedent to the Lenders making their loans to the Assignor, the Lenders have required that the Assignor fully assign to the Assignee all of the Assignor's rights and obligations under the Assigned Agreements;

WHEREAS, the Assignor desires to assign to the Assignee all of its rights, interests, duties, obligations and liabilities in, to and under the Assigned Agreements and the Assignee desires to accept the assignment of all of the Assignor's rights, interests, duties, obligations and liabilities in, to and under the Assigned Agreements, to the same extent as if the Assignee had executed the Assigned Agreements; and

WHEREAS, it is in the best interests of the Assignor that the Document Closing Date and the Overall Transaction occur and the Assignor has duly authorized the execution, delivery and performance of this Assignment.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce the Lenders to enter into the Overall Transaction as set forth in the Loan Agreement, the parties hereto hereby agree as follows:

SECTION 1. ASSIGNMENT OF ASSIGNED AGREEMENTS.

The Assignor does hereby irrevocably and unconditionally quitclaim, assign, transfer, convey and set over unto the Assignee for the benefit of the Lenders all of the Assignor's rights, title and interests in, to and under the Assigned Agreements. Notwithstanding the foregoing, the Assignee agrees that

unless an Event of Default shall exist under the Loan Agreement, the Assignee shall not exercise the right of the Assignor to demand payment under the Intercompany Note.

SECTION 2. *Acceptance and Representations.*

Section 2.1. The Assignee hereby accepts the assignment contained in **Section 1**, and shall have all the rights and privileges, of the Assignor in, to and under the Assigned Agreements to the same extent as if the Assignee had executed the Assigned Agreements. The Assignee accepts all of the Assignor's rights and interests thereunder.

Section 2.2. The Assignor shall have no rights or privileges, under the Assigned Agreements.

Section 2.3. This Assignment is a present, unconditional, irrevocable and absolute assignment. The Assignor hereby represents and warrants to Assignee as follows:

(A) attached hereto as **Exhibit A** is a true, correct and complete copy of the Security Agreement and all supplements thereto;

(B) attached hereto as **Exhibit B** is a true, correct and complete copy of the Intercompany Note;

(C) (i) the Security Agreement is in full force and effect and constitutes the entire agreement executed by the Owner and World Travel in favor of the Assignor regarding the subject matter therein and (ii) the Intercompany Note is in full force and effect and constitutes the entire agreement executed by World Travel in favor of the Assignor regarding the subject matter therein;

(D) no Default or Event of Default has occurred under the Assigned Agreements;

(E) the Assignor has not previously assigned, hypothecated or otherwise created or allowed to exist any lien or other claim on the Assigned Agreements and has the full legal right to enter into this Assignment; and

(F) upon execution hereof by the Assignor, the Assignee shall succeed to all of the Assignor's right title and interest in and to each Assigned Agreement, free and clear of any liens or other competing claims of any kind.

SECTION 3. GOVERNING LAW.

This Assignment shall be governed by, and construed under, the laws of New York without regard to conflicts of law principles (other than Title 14 of Article V of the New York General Obligations Law).

SECTION 4. COUNTERPARTS.

This Assignment may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument.

SECTION 5. BINDING NATURE.

This Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their respective permitted successors and assigns.

SECTION 6. TERMINATION.

Upon the final indefeasible payment in full and immediately available funds of all Obligations of the Assignor, the Assignee shall, at the written request of the Assignor, re-convey the Intercompany Note and release all of its right, title and interest therein, and take such other actions at the Assignor's expense as the Assignor may request to evidence such release, including without limitation the return

of any other assets pledged as Collateral and the execution and delivery of related instruments of transfer, lien releases, termination statements and similar documents and instruments.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have duly executed this Assignment as of the date first set forth above.

ASSIGNOR: WYNN LAS VEGAS, LLC, a Nevada limited liability company

By: Wynn Resorts Holdings, LLC, a Nevada limited liability company, its sole member

By: Valvino Lamore, LLC, a Nevada limited liability company, its sole member

By: WYNN RESORTS, LIMITED, a Nevada corporation, its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein
Title: Senior Vice President, General Counsel & Secretary

ASSIGNEE: WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION, a national banking association, not in its individual capacity, but solely as Collateral Agent

By: /s/ C. SCOTT NIELSEN

Name: C. Scott Nielsen

Title: Trust Officer

ANNEX I
DESCRIPTION OF ASSIGNED AGREEMENTS

Aircraft Security Agreement, dated as of October 30, 2002 among Wells Fargo Bank Northwest, National Association, not in its individual capacity, but solely as Trustee, Wynn Las Vegas, LLC, a Nevada limited liability company and World Travel, LLC, a Nevada limited liability company.

Intercompany Note dated October 30, 2002 from World Travel LLC, a Nevada limited liability company, to the order of Wynn Las Vegas, LLC, a Nevada limited liability company.

DESCRIPTION OF AIRCRAFT

One Bombardier Inc. model BD-700-1A10 Global Express aircraft bearing manufacturer's serial number 9065 and Federal Aviation Administration Registration Number N711SW (formerly N789TP), including two BMW Rolls Royce BR 710A2-20/01 engines bearing manufacturer's serial numbers 12243 and 12244.

QuickLinks

[Exhibit 10.15](#)

[ASSIGNMENT AND ASSUMPTION AGREEMENT](#)
[ANNEX I DESCRIPTION OF ASSIGNED AGREEMENTS](#)
[DESCRIPTION OF AIRCRAFT](#)

COMPLETION GUARANTY

THIS COMPLETION GUARANTY (this "*Guaranty*") dated as of October 30, 2002, is made by Wynn Completion Guarantor, LLC ("*Completion Guarantor*"), in favor of Deutsche Bank Trust Company Americas, as the Bank Agent acting on behalf of the Bank Lenders and Wells Fargo Bank, National Association, as the Indenture Trustee acting on behalf of the Second Mortgage Note Holder(s). This Guaranty is made and delivered pursuant to the Master Disbursement Agreement (the "*Disbursement Agreement*") dated as of even date herewith among Wynn Las Vegas, LLC, a Nevada limited liability company ("*Wynn Las Vegas*"), Wynn Las Vegas Capital Corp., a Nevada corporation ("*Capital Corp.*"), Wynn Design & Development, LLC, a Nevada limited liability company ("*WDD*" and, jointly and severally with Capital Corp., the "*Company*"), the Bank Agent, the Indenture Trustee, Deutsche Bank Trust Company Americas, as the Disbursement Agent and Wells Fargo Bank Nevada, National Association, as the FF&E Agent. The Bank Agent, the Indenture Trustee and the Lenders under their respective Facility Agreements are hereinafter referred to as the "Lender Beneficiaries" ("*Lender Beneficiaries*") (it being understood that the term "Lender Beneficiaries" shall not include the FF&E Agent or the FF&E Lenders).

RECITALS

A. *The Project.* The Company proposes to develop, construct and operate the Le Rêve Casino Resort, a hotel and casino resort, with related parking structure and golf course facilities, as part of the redevelopment of the site of the former Desert Inn in Las Vegas, Nevada.

B. *Bank Credit Agreement.* Concurrently herewith, Wynn Las Vegas, the Bank Agent, Deutsche Bank Securities, Inc., as advisor, lead arranger and joint book running manager, Banc of America Securities LLC, as advisor, lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as advisor, arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York and Grand Cayman Branches, as arranger and joint documentation agent and the Bank Lenders have entered into the Bank Credit Agreement pursuant to which the Bank Lenders have agreed, subject to the terms thereof and hereof, to provide certain revolving loans to Wynn Las Vegas in an aggregate amount not to exceed \$750,000,000 and certain delay draw term loans to Wynn Las Vegas in an aggregate amount not to exceed \$250,000,000, as more particularly described therein. Of the Bank Revolving Facility amount, \$747,000,000 is intended to finance Project Costs, as more particularly described therein. Valvino, Wynn Resorts Holdings and certain other guarantors have, pursuant to the Bank Guarantee and Collateral Agreement, guaranteed the obligations of Wynn Las Vegas under the Bank Credit Agreement.

C. *Second Mortgage Notes Indenture.* Concurrently herewith, the Company, certain guarantors signatory thereto (including Valvino and Wynn Resorts Holdings) and the Indenture Trustee have entered into the Second Mortgage Notes Indenture pursuant to which the Company will issue the Second Mortgage Notes due 2010 to finance Project Costs, as more particularly described therein.

D. *Disbursement Agreement.* Concurrently herewith, the Company, the Disbursement Agent, the Bank Agent, the Indenture Trustee and the FF&E Agent, have entered into the Disbursement Agreement in order to set forth, among other things, (a) the mechanics for and allocation of the Company's requests for Advances under the various Facilities and from the Company's Funds Account, (b) the conditions precedent to the Closing Date, to the initial Advance and to subsequent Advances, (c) certain common representations, warranties and covenants of the Company in favor of the Funding Agents and the Lenders and (d) the common events of default and remedies.

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E. *Requirement of Guaranty.* The Lender Beneficiaries and the Disbursement Agent have agreed to enter into and consummate the transactions contemplated under the respective Facility Agreements and the Disbursement Agreement on the condition that Completion Guarantor guarantee certain of the Company's obligations under the Disbursement Agreement as provided herein.

F. *Benefit to Completion Guarantor.* Completion Guarantor is a wholly owned subsidiary of Wynn Las Vegas and acknowledges that it will benefit, directly and indirectly, if the Lender Beneficiaries and the Disbursement Agent enter into the respective Facility Agreements and the Disbursement Agreement.

G. *Concurrent Obligations.* The obligations of Completion Guarantor hereunder are being incurred concurrently with the respective obligations of the Company under the Facility Agreements, the guaranties executed by Valvino, Wynn Resorts Holdings and the other guarantors, and the Disbursement Agreement.

H. *Capitalized Terms.* Capitalized terms used but not defined herein shall have the respective meanings given them in Exhibit A to the Disbursement Agreement, and the Rules of Interpretation contained in said Exhibit A shall apply hereto.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and as an inducement to the Lender Beneficiaries and the Disbursement Agent to enter into the Facility Agreements and the Disbursement Agreement, Completion Guarantor hereby consents and agrees as follows:

1. *Guaranty.*

(a) The undersigned Completion Guarantor, as primary obligor and not merely as surety, unconditionally and irrevocably guarantees to (i) the Bank Agent acting on behalf of the Bank Lenders, and (ii) the Indenture Trustee acting on behalf of the Second Mortgage Note Holder(s), (A) the performance by the Company of its obligation under the Disbursement Agreement to achieve Completion on or before the Scheduled Completion Date and thereafter to achieve Final Completion, (B) payment and performance when due, whether by acceleration or otherwise, of the full amount of any and all obligations and liabilities of the Company under Sections 5.8.1, 5.8.3 and the last sentence of Section 5.21 of the Disbursement Agreement (the "*Relevant Provisions*"), and (C) the payment or performance when due of all other "Obligations" (as defined in the Disbursement Agreement) of the Loan Parties under the Credit Agreement and the Second Mortgage Notes Indenture, whether by acceleration or otherwise, together with all expenses incurred by the

Disbursement Agent or the Lender Beneficiaries in enforcing any of such obligations and liabilities or the terms hereof, including, without limitation, reasonable fees and expenses of legal counsel (collectively, the "Obligations"), and agrees that if for any reason the Company shall fail to pay or perform when due any of such Obligations, Completion Guarantor will pay or perform the same forthwith. Notwithstanding any other provision hereof, Completion Guarantor's aggregate liability under this *Section 1(a)*, excluding any amounts payable under *Section 18* below and any amounts transferred from the Completion Guaranty Deposit Account to the Company Funds Account pursuant to *Section 2(e)* below, shall in no event exceed Fifty Million Dollars (\$50,000,000) (the "Liability Cap"). Amounts payable by Completion Guarantor under *Section 18* below and amounts transferred from the Completion Guaranty Deposit to the Company's Funds Account shall be disregarded for purposes of the Liability Cap. Completion Guarantor waives notice of acceptance of this Guaranty and of any obligation to which it applies or may apply under the terms hereof, and waives diligence, presentment, demand of payment, notice of dishonor or non-payment, protest, notice of protest, of any such obligations, suit or taking other action by the Disbursement Agent, the Lender Beneficiaries or Lenders against, and

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giving any notice of default or other notice to, or making any demand on, any party liable thereon (including Completion Guarantor).

(b) This Guaranty is a primary obligation of Completion Guarantor and is an absolute, unconditional, continuing and irrevocable guaranty of payment and not of collectibility and is in no way conditioned on or contingent upon any attempt to enforce in whole or in part the Company's liabilities and obligations to the Funding Agents, the Lenders and the Disbursement Agent. Subject to the Liability Cap set forth in *Section 1(a)* above, if the Company shall fail to pay any of the Obligations as and when they are due, Completion Guarantor shall forthwith pay such Obligations in immediately available funds. Each failure by the Company to pay any Obligations shall give rise to a separate cause of action herewith, and separate suits may be brought hereunder as each cause of action arises.

(c) The Funding Agents or the Lenders may, in accordance with the Financing Agreements, at any time and from time to time (whether or not after revocation or termination of this Guaranty) without the consent of or notice to Completion Guarantor, except such notice as may be required by the Financing Agreements or applicable law which cannot be waived, without incurring responsibility to Completion Guarantor, without impairing or releasing the obligations of Completion Guarantor hereunder, upon or without any terms or conditions and in whole or in part, (i) change the manner, place and terms of payment or change or extend the time of payment of, renew, or alter any Obligation, or any obligations and liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof or in any manner modify, amend or supplement the terms of any Facility Agreement, the Disbursement Agreement (including the Relevant Provisions) or any documents, instruments or agreements executed in connection therewith (in each case, with the consent of the Company if required by such documents) and the guaranty herein made shall apply to the Obligations, changed, extended, renewed, modified, amended, supplemented or altered in any manner; (ii) exercise or refrain from exercising any rights against the Company or others (including Completion Guarantor) or otherwise act or refrain from acting; (iii) add or release any other guarantor from its obligations without affecting or impairing the obligations of Completion Guarantor hereunder; (iv) settle or compromise any Obligations and/or any obligations and liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any obligations and liabilities which may be due to the Lenders or others; (v) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner or in any order any property by whomsoever pledged or mortgaged to secure or howsoever securing the Obligations or any liabilities or obligations (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof and/or any offset thereagainst; (vi) apply any sums by whomsoever paid or howsoever realized to any obligations and liabilities of the Company and the other Loan Parties to the Funding Agents and the Lenders under any of the Financing Agreements in the manner provided therein regardless of what obligations and liabilities remain unpaid; (vii) consent to or waive any breach of, or any act, omission or default under, any Facility Agreement or the Disbursement Agreement (including the obligation to achieve Completion on or before the Scheduled Completion Date, the obligation to achieve Final Completion or the obligation set forth in the Relevant Provisions) or otherwise amend, modify or supplement (with the consent of the Company or other Loan Parties, if required by such documents) any Facility Agreement or the Disbursement Agreement (including the obligation to achieve Completion on or before the Scheduled Completion Date, the obligation to achieve Final Completion, or the obligation set forth in the Relevant Provisions) or any of such other instruments or agreements; and/or (viii) act or fail to act in any manner referred to in this Guaranty which may deprive Completion Guarantor of any right to subrogation which Completion Guarantor may, notwithstanding the provisions of *Section 7*, have against the Company or the

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other Loan Parties to recover full indemnity for any payments made pursuant to this Guaranty or of any right of contribution which Completion Guarantor may have against any other party.

(d) No invalidity, irregularity or unenforceability of the Obligations shall affect, impair, or be a defense to this Guaranty, which is a primary obligation of Completion Guarantor.

(e) This is a continuing Guaranty and all obligations to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. In the event that, notwithstanding the provisions of *Section 1(a)* hereof, this Guaranty shall be deemed revocable in accordance with applicable law, then any such revocation shall become effective only upon receipt by the Bank Agent, the Indenture Trustee and the Disbursement Agent of written notice of revocation signed by Completion Guarantor. No revocation or termination hereof shall affect in any manner rights arising under this Guaranty with respect to Obligations (i) arising prior to receipt by the Bank Agent, the Indenture Trustee and the Disbursement Agent of written notice of such revocation or termination and the sole effect of revocation and termination hereof shall be to exclude from this Guaranty Obligations thereafter arising which are unconnected with Obligations theretofore arising or transactions theretofore entered into or (ii) arising as a result of an Event of Default under the Disbursement Agreement occurring by reason of the revocation or termination of this Guaranty.

(f) (i) Except as otherwise required by law, each payment required to be made by Completion Guarantor hereunder shall be made without deduction or withholding for or on account of Taxes. If such deduction or withholding is so required, Completion Guarantor shall, upon notice thereof from the Bank Agent, the Indenture Trustee or the Disbursement Agent, (A) pay the amount required to be deducted or withheld to the appropriate authorities before penalties attach thereto or interest accrues thereon, (B) on or before the sixtieth (60th) day after payment of such amount, forward to the Bank Agent, the Indenture Trustee and the Disbursement Agent an official receipt evidencing such payment (or a certified copy thereof), and (C) in the case of any such deduction or withholding, forthwith pay to the Disbursement Agent for application in accordance with the Disbursement Agreement such additional amount as may be necessary to ensure that the net amount actually received by the Disbursement Agent free and clear of such Taxes, including any Taxes on such additional amount, is equal to the amount that the Disbursement Agent would have received had there been no such deduction or withholding.

(ii) As used herein, the term "Tax" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Guaranty other than (A) any income, franchise, transfer, inheritance, capital stock or similar tax imposed upon the gross or net income of any Lender by the United States, any state of the United States, any jurisdiction where any Lender is organized and/or the jurisdiction in which is located any office from or at which any Lender is making or maintaining any Loans under the Bank Credit Facility or acquiring the Mortgage Note(s), as the case may be, or receiving any payments under any of the Financing Agreements and (B) any stamp, registration, documentation or similar tax.

2. Completion Guaranty Deposit Account.

(a) As security for Completion Guarantor's obligations hereunder, Completion Guarantor shall, on or prior to the Closing Date, establish or cause to be established the Completion Guaranty Deposit Account and deposit in the Completion Guaranty Deposit Account, in cash or Permitted Investments, Fifty Million Dollars (\$50,000,000).

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(b) The Lender Beneficiaries shall have the right to withdraw funds from the Completion Guaranty Deposit Account at the following times and in the following amounts:

(i) On any date on which the Company is required to (but does not prior to 11:00 a.m. New York, New York time) deposit amounts in the Company's Funds Account or the Disbursement Account, pursuant to *Section 5.8.3* of the Disbursement Agreement, in an amount equal to the lesser of (A) the amount so required to be deposited and (B) the greater of (x) the amount which is permitted to be withdrawn from the Completion Guaranty Deposit Account on such date pursuant to *Section 5.8.3* of the Disbursement Agreement and (y) from and after the initial Advance Under the Bank Credit Facility, such greater amount as may be authorized by the Bank Agent; and

(ii) Pursuant to *Sections 5.8.1, 5.21 and 10.2* of the Disbursement Agreement, upon (A) the occurrence of an Event of Default, (B) the dissolution or liquidation of the Completion Guarantor, or the Completion Guarantor's "Bankruptcy" (as defined in the Second Mortgage Notes Deed of Trust), (C) the breach by Completion Guarantor of any of its obligations hereunder (including its obligations under *Section 5*) or (D) the occurrence of an Event of Loss following which the Company is not allowed to repair or restore the Project, in the full amount of funds then on deposit in the Completion Guaranty Deposit Account.

(c) On the Completion Guaranty Release Date, the Lender Beneficiaries shall release or cause to be released the amounts contemplated in *Section 2.10(d)* of the Disbursement Agreement to, or as directed by, Completion Guarantor. On the Final Completion Date, (i) the Lender Beneficiaries shall release or cause to be released all amounts remaining in the Completion Guaranty Deposit Account to, or as directed by, Completion Guarantor and (ii) this Guaranty shall, except for the provisions set forth in *Sections 7 and 8* below and subject to *Section 19*, be deemed terminated and of no force or effect. The provisions of *Sections 7 and 8* below shall, subject to *Section 19*, survive until all the Financing Agreements Obligations (as defined in *Section 7*) have been paid in full.

(d) Proceeds of any withdrawal from the Completion Guaranty Deposit Account shall (except as provided in *Section 2(c)* above) be applied by the Lender Beneficiaries (i) in the case of a withdrawal under *Section 2(b)(i)* above, to the satisfaction of the Company's obligation to cause funds to be deposited into the Company's Funds Account or the Disbursement Account, as the case may be, pursuant to *Section 5.8.3* of the Disbursement Agreement and (ii) in the case of a withdrawal under *Section 2(b)(ii)* above, as permitted under *Section 7.2* of the Disbursement Agreement, *Section 8* of the Bank Credit Agreement or *Article 6* of the Second Mortgage Notes Indenture and, in any event, as otherwise permitted by *Section 3* hereof.

(e) The Lender Beneficiaries shall withdraw or cause to be withdrawn any interest or other earnings which accrue on amounts on deposit in the Completion Guaranty Deposit Account and shall deposit or cause to be deposited such amounts in the Company Funds Account until applied to pay Project Costs as provided in the Disbursement Agreement.

3. Safekeeping of Completion Guaranty Deposit Account.

(a) Amounts deposited in the Completion Guaranty Deposit Account shall be applied exclusively as provided in this Guaranty and the Lender Beneficiaries shall at all times act and direct the Securities Intermediary under the Completion Guaranty Collateral Account Agreements so as to implement the application of funds provisions and procedures herein set forth. The Lender Beneficiaries are hereby authorized to direct the Securities Intermediary to reduce to cash any Permitted Investment (without regard to maturity) in any account in order to make any application required hereunder. No amount held in the Completion Guaranty Deposit Account

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shall be disbursed or applied except in accordance with the provisions hereof or as required by law.

(b) The Indenture Trustee, the Bank Agent and the Disbursement Agent shall take such actions within their control that they customarily take in the conduct of their business to protect the Completion Guaranty Deposit Account and all cash, funds and Permitted Investments from time to time deposited therein, as well as any proceeds therefrom (collectively, the "Guaranty Collateral") and maintain the same free and clear of all liens, security interests, safekeeping or other charges, demands and claims of any nature whatsoever now or hereafter arising in favor of any parties other than the Project Secured Parties (collectively, "Third Party Claims"); it being understood, however, that the foregoing shall in no way be deemed to be a guaranty or other assurance by the Indenture Trustee, the Bank Agent or the Disbursement Agent that Third Party Claims will not arise.

(c) The Disbursement Agent shall take any other steps from time to time requested by the Bank Agent or Indenture Trustee to confirm or cause the securities intermediary under the Completion Guaranty Collateral Account Agreements to confirm and maintain the priority of the security interests in the Guaranty Collateral.

4. Representations and Warranties.

Completion Guarantor makes the representations and warranties set forth below to the Lender Beneficiaries and the other Lenders as of the date hereof:

(a) Completion Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and to (i) own or hold under lease and operate the properties it purports to own or hold under lease, (ii) carry on its business as now being conducted, (iii) incur indebtedness and create a lien on its property and (iv) to execute, deliver and perform under this Guaranty.

(b) Completion Guarantor has duly authorized, executed and delivered this Guaranty and neither the execution and delivery hereof nor the consummation of the transactions contemplated hereby nor the compliance with the terms hereof (a) does or will contravene the formation documents or any other Legal Requirement then applicable to or binding on Completion Guarantor, (b) does or will contravene or result in any breach or constitute any default under, or result in or require the creation of any Lien upon any of Completion Guarantor's properties or under any agreement or instrument to which Completion Guarantor is a party or by which it or any of its properties may be bound, or (c) does or will require the consent or approval of any Person which has not previously been obtained.

(c) All governmental authorizations and actions necessary in connection with the execution and delivery by Completion Guarantor of this Guaranty and the performance of its Obligations hereunder have been obtained or performed and remain valid and in full force and effect.

(d) This Guaranty constitutes the legal, valid and binding obligation of Completion Guarantor, enforceable against Completion Guarantor (and Completion Guarantor's successors and assigns) in accordance with the terms of this Guaranty, subject to applicable bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights generally and general principles of equity.

(e) The execution, delivery and performance of this Guaranty (i) do not and will not contravene any provisions of Completion Guarantor's certificate of incorporation or bylaws; (ii) do not and will not contravene any law, rule, regulation, order, judgment or decree applicable to or binding on Completion Guarantor or any of its assets or properties; (iii) do not and will not contravene, or result in any breach of or constitute any default under, any agreement or instrument to which Completion Guarantor is a party or by which Completion Guarantor or any of

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its assets or properties may be bound or affected; and (iv) do not and will not require the consent of any Person under any existing law or agreement which has not already been obtained.

(f) There is no pending or, to the best of Completion Guarantor's knowledge, threatened action or proceeding affecting Completion Guarantor before any court, governmental agency or arbitrator, which might reasonably be expected to materially and adversely affect the financial condition, results of operations, business or prospects of Completion Guarantor or the ability of Completion Guarantor to perform its obligations under this Guaranty.

(g) Completion Guarantor possesses all franchises, certificates, licenses, permits and other governmental authorizations and approvals necessary for him to own his properties, conduct its businesses and perform its obligations under this Guaranty.

(h) Completion Guarantor has established adequate means of obtaining financial and other information pertaining to the businesses, operations and condition (financial and otherwise) of the Company and its properties on a continuing basis, and Completion Guarantor now is and hereafter will be completely familiar with the businesses, operations and condition (financial and otherwise) of the Company and its properties.

(i) All quarterly and annual financial statements heretofore delivered by Completion Guarantor to Agent are true, correct and complete, do not fail to disclose any material liabilities, whether direct or contingent, fairly present the financial condition of Completion Guarantor as of the date delivered and are prepared in accordance with generally accepted accounting principles consistently applied.

(j) Completion Guarantor is not an investment company or a company controlled by an investment company, within the meaning of the Investment Company Act of 1940.

(k) (i) Completion Guarantor is not, and will not as a result of the execution and delivery of this Guaranty, be rendered insolvent, (ii) Completion Guarantor does not intend to incur, or believe it is incurring, obligations beyond its ability to pay and (iii) Completion Guarantor's property remaining after delivery and performance of this Guaranty will not constitute unreasonably small capital for its business.

5. *Covenants.* So long as any Obligations are outstanding, Completion Guarantor agrees that:

(a) it will preserve, renew and keep in full force and effect its limited liability company existence and it will not amend, revise or modify its organizational documents;

(b) it will comply with Articles IV, VI and VII of its Articles of Organization;

(c) it will maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Guaranty and will obtain any such consent that may become necessary in the future;

(d) it will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Guaranty;

(e) promptly, and in any event within thirty (30) Banking Days after the obtaining knowledge thereof, Completion Guarantor will give to the Bank Agent, the Indenture Trustee and the Disbursement Agent notice of the occurrence of any litigation or governmental proceeding pending against Completion Guarantor or which relates to this Guaranty; and

(f) it will deliver such other documents and other information reasonably requested by the Bank Agent, the Indenture Trustee or the Disbursement Agent.

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6. *Waiver.* To the fullest extent permitted by law, Completion Guarantor hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including without limitation (a) any right to require the Funding Agents, the Lenders or the Disbursement Agent to proceed against the Company or any other person or to proceed against or exhaust any security held by the Funding Agents, the Lenders or the Disbursement Agent at any time or to pursue any other remedy in the Funding Agents', the Lenders' or the Disbursement Agent's power before proceeding against Completion Guarantor (including any right or claim of right to cause a marshalling of a debtor's assets or to proceed against Completion Guarantor, any debtor or any other guarantor of any debtor's obligations in any particular order, including, without limitation, any right arising under Nevada Revised Statutes Section 40.430)), (b) any defense that may arise by reason of the incapacity, lack of power or authority, death, dissolution, merger, termination or disability of the Company or any other Person or the failure of the Funding Agents, the Lenders or the Disbursement Agent to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of the Company or any other Person, (c) demand, presentment, protest and notice of any kind, including without limitation notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of the Company, the Funding Agents, the Lenders, the Disbursement Agent, any endorser or creditor of the Company or Completion Guarantor or on the part of any other person under this or any other instrument in connection with any obligation or evidence of indebtedness held by the Funding Agents, the Lenders or the Disbursement Agent as collateral or in connection with any Obligations, (d) any defense based upon an election of remedies by the Funding Agents, the Lenders or the Disbursement Agent, including without limitation an election to proceed by non-judicial rather than judicial foreclosure, which destroys or otherwise impairs any subrogation rights which Completion Guarantor may, notwithstanding the provisions of Sections 7 and 8, have against the Company, any right which Completion Guarantor may, notwithstanding the provisions of Sections 7 and 8, have to proceed against the Company for reimbursement, or both, (e) any defense based on any offset against any amounts which may be owed by any Person to Completion Guarantor for any reason whatsoever, (f) any defense based on any act, failure to act, delay or omission whatsoever on the part of the Company or the failure by the Company to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the Financing Agreements, (g) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal provided, that, upon payment in full of the Obligations, this Guaranty shall no longer be of any force or effect, (h) any defense, setoff or counterclaim which may at any time be available to or asserted by the Company against the Funding Agents, the Lenders, the Disbursement Agent, the Construction Consultant or any other Person under any of the Financing Agreements, including in connection with the exercise of any judgment by the Disbursement Agent, the Construction Consultant or any other Person under the Disbursement Agreement or by reason of the delay or failure by the Disbursement Agent or the Construction Consultant or any other Person to perform their duties thereunder, (i) any duty on the part of the Funding Agents, the Lenders or the Disbursement Agent to disclose to Completion Guarantor any facts the Funding Agents, the Lenders or the Disbursement Agent may now or hereafter know about the Company, regardless of whether the Funding Agents, the Lenders or the Disbursement Agent have reason to believe that any such facts materially increase the risk beyond that which Completion Guarantor intends to assume, or have reason to believe that such facts are unknown to Completion Guarantor, or have a reasonable opportunity to communicate such facts to Completion Guarantor, since Completion Guarantor acknowledges that Completion Guarantor is fully responsible for being and keeping informed of the financial condition of the Company and the other Loan Parties and of all circumstances bearing on the risk of non-payment of any obligations and liabilities hereby guaranteed, (j) fact that Completion Guarantor may at any time in the future no longer be a subsidiary of Wynn Las Vegas, (k) any defense based on any change in the time, manner or place of any payment under, or in any other term of, any Facility Agreement, the Disbursement Agreement (including the

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Relevant Provisions) or any other amendment, renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of any Facility Agreement, the Disbursement Agreement (including the Relevant Provisions) or any other Financing Agreement, (l) any defense arising because of the any Funding Agents', any Lender's or the Disbursement Agent's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code, and (m) any defense based upon any borrowing or grant of a security interest under Section 364 of the Federal Bankruptcy Code.

7. *Subordination.* All existing and future indebtedness of the Company and the other Loan Parties to Completion Guarantor is hereby subordinated to all obligations and liabilities of all kinds and nature (including the "Obligations" (as defined in the Disbursement Agreement)) of the Company to the Lender Beneficiaries, including the obligations and liabilities hereby guaranteed (collectively, the "*Financing Agreements Obligations*"). Without the prior written consent of Bank Agent, such subordinated indebtedness shall not be paid or withdrawn in whole or in part, nor shall Completion Guarantor accept any payment of or on account of any such indebtedness until all the Financing Agreements Obligations have been repaid in full. At Bank Agent's request, if an Event of Default under the Disbursement Agreement has occurred and is continuing, Completion Guarantor shall cause Company to pay to Bank Agent for the benefit of the Bank Lenders all or any part of such subordinated indebtedness. Any payment by Company or any other Loan Party in violation of this Guaranty shall be received by Completion Guarantor in trust for Lender Beneficiaries, and Completion Guarantor shall cause the same to be paid to Lender Beneficiaries immediately upon demand by Bank Agent on account of Company's obligations and liabilities hereby guaranteed. Completion Guarantor shall not assign all or any portion of such indebtedness while this Guaranty remains in effect. Any attempted assignment of such indebtedness in violation of the provisions hereof shall be void.

8. *Subrogation.* Until all Financing Agreements Obligations have been paid in full, (a) Completion Guarantor shall not have any right of subrogation and waives all rights to enforce any remedy which the Lender Beneficiaries, the Lenders or the Disbursement Agent now have or may hereafter have against the Company and the other Loan Parties, and waives the benefit of, and all rights to participate in, any security now or hereafter held by the Lender Beneficiaries, the Lenders or the Disbursement Agent from the Company or the other Loan Parties and (b) Completion Guarantor waives any claim, right or remedy which Completion Guarantor may now have or hereafter acquire against the Company or the other Loan Parties that arises hereunder and/or from the performance by the Completion Guarantor hereunder including, without limitation, any claim, remedy or right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim, right or remedy of the Lender Beneficiaries, the Lenders or the Disbursement Agent against the Company or the other Loan Parties, or any security which the Lender Beneficiaries, the Lenders or the Disbursement Agent now have or hereafter acquire, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise.

9. *Bankruptcy.*

(a) So long as any of the Financing Agreements Obligations are owed to the Lender Beneficiaries, Completion Guarantor shall not commence, or join with any other Person in commencing, any bankruptcy, reorganization, or insolvency proceeding against the Company or any other Loan Party. The obligations of Completion Guarantor under this Guaranty shall not be altered, limited or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, reorganization, insolvency, receivership, liquidation or arrangement of the Company or any other Loan Party, or by any defense which the Company or any other Loan Party may have by reason of any order, decree or decision of any court or administrative body resulting from any such proceeding.

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(b) So long as any Financing Agreements Obligations are owed to the Lender Beneficiaries, to the extent of such Financing Agreements Obligations, Completion Guarantor shall file, in any bankruptcy or other proceeding of or against the Company or any other Loan Party in which the filing of proofs of claims is required or permitted by law, all claims which Completion Guarantor may have against the Company or any other Loan Party (but only to the extent) relating to any indebtedness of the Company or such other Loan Party to Completion Guarantor, and hereby assigns to the Bank Agent and the Indenture Trustee, on behalf of the Bank Lenders and the Mortgage Note Holders, respectively, all rights of Completion Guarantor thereunder. If Completion Guarantor does not file any such claim, each of the Bank Agent and the Indenture Trustee as attorney-in-fact for Completion Guarantor, is hereby authorized to do so in the name of Completion Guarantor or, in such Funding Agent's discretion, to assign the claim to a nominee and to cause proofs of claim to be filed in the name of such nominee. The foregoing power of attorney is coupled with an interest and cannot be revoked. The Bank Agent and the Indenture Trustee nominees shall have the sole right to accept or reject any plan proposed in any such proceeding and to take any other action which a party filing a claim is entitled to take. In all such cases, whether in administration, bankruptcy or otherwise, the person authorized to pay such a claim shall pay the same to the Bank Agent and the Indenture Trustee to the extent of any Financing Agreements Obligations which then remain unpaid, and, to the full extent necessary for that purpose, Completion Guarantor hereby assigns to the Bank Agent and the Indenture Trustee all of Completion Guarantor's rights to all such payments or distributions to which Completion Guarantor would otherwise be entitled; provided, however, that Completion Guarantor's obligations hereunder shall not be satisfied except to the extent that the Bank Agent or the Indenture Trustee receives cash by reason of any such payment or distribution. If the Bank Agent or the Indenture Trustee receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty.

10. *Successions or Assignments.*

(a) This Guaranty shall inure to the benefit of the successors or assigns of the Lender Beneficiaries who shall have, to the extent of their interest, the rights of the Lender Beneficiaries hereunder.

(b) This Guaranty is binding upon Completion Guarantor and its successors and assigns. Completion Guarantor is not entitled to assign its obligations hereunder to any other person, and any purported assignment in violation of this provision shall be void.

11. *Waivers.*

(a) No delay on the part of the Lender Beneficiaries, the Lenders or the Disbursement Agent in exercising any of their rights (including those hereunder) and no partial or single exercise thereof and no action or non-action by the Lender Beneficiaries, the Lenders or the Disbursement Agent, with or without notice to Completion Guarantor or anyone else, shall constitute a waiver of any rights or shall affect or impair this Guaranty.

(b) COMPLETION GUARANTOR HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS GUARANTY OR RELATING TO THE SUBJECT MATTER OF THIS GUARANTY AND THE RELATIONSHIP BETWEEN COMPLETION GUARANTOR AND THE LENDER BENEFICIARIES AND THE DISBURSEMENT AGENT THAT IS BEING ESTABLISHED. COMPLETION GUARANTOR ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT THE LENDER BENEFICIARIES AND THE DISBURSEMENT AGENT HAVE ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS GUARANTY, AND THAT THE LENDER BENEFICIARIES AND THE DISBURSEMENT AGENT WILL CONTINUE TO RELY ON

THE WAIVER IN THEIR RELATED FUTURE DEALINGS. COMPLETION GUARANTOR FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

12. *Interpretation.* The section headings in this Guaranty are for the convenience of reference only and shall not affect the meaning or construction of any provision hereof.

13. *Notices.* All notices in connection with this Guaranty shall be given by notice in writing hand-delivered or sent by facsimile transmission or by certified mail return-receipt requested (airmail, if overseas), postage prepaid. All such notices shall be sent to the appropriate telecopier number or address, as the case may be, set forth in *Section 17* below or to such other number or address as shall have been subsequently specified by written notice to the other party, and shall be sent with copies, if any, as indicated below. All such notices shall be effective upon receipt, and confirmation by answerback of any such notice so sent by telecopier shall be sufficient evidence of receipt thereof.

14. *Amendments.* This Guaranty may be amended only with the written consent of the parties hereto.

15. *Jurisdiction; Governing Law.*

(a) Any action or proceeding relating in any way to this Guaranty shall be brought and enforced in the courts of the State of New York in Manhattan or of the United States for the Southern District of New York. Any such process or summons in connection with any such action or proceeding may be served by mailing a copy thereof by certified or registered mail, or any substantially similar form of mail, addressed to Completion Guarantor as provided for notices hereunder.

(b) This Guaranty and the rights and obligations of Agent and of the Completion Guarantor shall be governed by and construed in accordance with the law of the State of New York without reference to principles of conflicts of laws (other than Section 5-1401 of the New York General Obligations Law).

16. *Integration of Terms.* This Guaranty contains the entire agreement between the Completion Guarantor, the Lender Beneficiaries, the Lenders and the Disbursement Agent relating to the subject matter hereof and supersedes all oral statements and prior writing with respect hereto.

17. *Addresses.*

(a) The address of Completion Guarantor for notices is:

Wynn Completion Guarantor, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Ron Kramer
Telephone Number: (702) 733-4123
Telecopier Number: (702) 791-0167

(b) The address of the Bank Agent for notices is:

Deutsche Bank Trust Company Americas
31 West 52nd Street
New York, New York 10019
Attn: George Reynolds
Telephone No.: (646) 324-2112
Telecopier No.: (646) 324-7450

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(c) The address of the Indenture Trustee for notices is:

Wells Fargo Bank, National Association
MAC: N9303-110
Sixth & Marquette
Minneapolis, MN 55479
Attention: Michael Slade
Telephone Number:
Telecopier Number:

(d) The address of the Disbursement Agent for notices is:

Deutsche Bank Trust Company Americas
31 West 52nd Street
New York, New York 10019
Attention: Amy Sinensky
Telephone No.: (212) 469-4063
Telecopier No.: (212) 469-6091

18. *Interest; Collection Expenses.* Any amount required to be paid by Completion Guarantor pursuant to the terms hereof shall bear interest at the highest default rate provided in the Financing Agreement or the maximum rate permitted by law, whichever is less, from the date due until paid in full. If the Lender Beneficiaries or the Disbursement Agent are required to pursue any remedy against Completion Guarantor hereunder, Completion Guarantor shall pay to the Lender Beneficiaries or the Disbursement Agent, as the case may be, upon demand, all reasonable attorneys' fees and expenses all other costs and expenses incurred by the Lender Beneficiaries or the Disbursement Agent in enforcing this Guaranty and such amounts shall not be subject to the Liability Cap under Section 1(a).

19. *Reinstatement of Guaranty.* This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment to or on behalf of the Company or by the Company under the Financing Agreements or by Completion Guarantor hereunder is rescinded or must otherwise be returned by the Lender Beneficiaries, the Lenders or the Disbursement Agent upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of the Company or otherwise, all as though such payment had not been made.

20. *Counterparts.* The Guaranty may be executed in one or more duplicate counterparts, and when executed and delivered by all of the parties listed below shall constitute a single binding agreement.

21. *Disbursement Agent.*

(a) The Lender Beneficiaries may appoint or designate the Disbursement Agent to exercise or enforce their rights and remedies under this Guaranty and to otherwise act on their behalf in all matters related hereto. Completion Guarantor shall respect and treat any and all actions so taken by the Disbursement Agent as if taken by the Lender Beneficiaries.

(b) All references in this Guaranty to the Disbursement Agent shall mean and be construed as the Disbursement Agent acting pursuant to the Disbursement Agreement.

22. *No Benefit to the Company.* This Guaranty is for the benefit of only the Lender Beneficiaries and is not for the benefit of the Company or the other Loan Parties. The Guaranty shall not be deemed to be a contract to make a loan, or extend other debt financing or financial accommodation, for the benefit of the Company or the other Loan Parties, in each case within the meaning of Section 365(e) of the Bankruptcy Code.

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23. *Project Lenders Intercreditor Agreement.* All rights and remedies of the Indenture Trustee hereunder are, as between the Indenture Trustee and the Bank Agent, subject to the terms of the Project Lenders Intercreditor Agreement. This provision is for the benefit of, and may be enforced exclusively by, the Bank Agent and the Bank Lenders only. For the avoidance of doubt, this provision is not for the benefit of the Completion Guarantor and may not, under any circumstances, be enforced by the Completion Guarantor.

IN WITNESS WHEREOF, the Completion Guarantor has caused this Guaranty to be duly executed and delivered as of the day and year first written above.

WYNN COMPLETION GUARANTOR, LLC

By: Wynn Las Vegas, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein

Its: Senior Vice President

Agreed and accepted:

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as the Bank Agent

By: /s/ GEORGE REYNOLDS

Name: George Reynolds

Title: Vice President

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as the Indenture Trustee

By: /s/ MICHAEL G. SLADE

Name: Michael G. Slade

Title: Corporate Trust Officer

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as the Disbursement Agent

By: /s/ GEORGE REYNOLDS

Name: George Reynolds

Title: Vice President

INTERCREDITOR AGREEMENT
(FF&E)

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Bank Agent,

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Indenture Trustee

and

WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION,
as FF&E Agent,

October 30, 2002

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INTERCREDITOR AGREEMENT (FF&E)

THIS INTERCREDITOR AGREEMENT (this "**Agreement**") is made as of October 30, 2002 (the "**Effective Date**"), by and among **DEUTSCHE BANK TRUST COMPANY AMERICAS**, as the Administrative Agent acting on behalf of itself and the Bank Lenders pursuant to the Bank Credit Agreement (in such capacity, the "**Bank Agent**"), **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association in its capacity as Trustee under the Second Mortgage Notes Indenture (in such capacity, the "**Indenture Trustee**") and **WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION**, as the Collateral Agent acting on behalf of itself and the FF&E Lenders pursuant to the FF&E Facility Agreement (in such capacity, the "**FF&E Agent**").

RECITALS:

A. The Project. Wynn Las Vegas, LLC, a Nevada limited liability company (the "**Company**"), proposes to develop, construct and operate the Le Reve Hotel Casino, a large-scale, hotel, casino, golf course and entertainment complex with related ancillary facilities, all as part of the redevelopment on the site of the former Desert Inn Resort & Casino.

B. The Bank Credit Facility. Concurrently herewith, the Company, the Bank Agent, the Bank Lenders and the other parties named therein have entered into the Bank Credit Agreement pursuant to which the Bank Lenders have agreed, subject to the terms thereof, to provide the Bank Credit Facility to the Company.

C. The Second Mortgage Notes Indenture. Concurrently herewith, the Company, Wynn Las Vegas Capital Corp., certain guarantors named therein and the Indenture Trustee have entered into the Second Mortgage Notes Indenture pursuant to which the Company and Wynn Las Vegas Capital Corp. will issue the Second Mortgage Notes.

D. FF&E Facility. Concurrently herewith, the Company, the FF&E Agent and the FF&E Lenders have entered into the FF&E Facility Agreement pursuant to which the FF&E Lenders have agreed, subject to the terms thereof, to provide the FF&E Facility to the Company. The proceeds of the FF&E Facility will be used to acquire the FF&E Component Collateral and the Aircraft Collateral.

E. Financing for the Project. The Company is financing the development of the Project, in part, with the proceeds of the Bank Credit Facility, the FF&E Facility and the Second Mortgage Notes. In addition to certain other collateral and security interests:

(1) the Bank Credit Facility is secured (i) by a first priority lien on the Bank Proceeds Account Collateral and the Hotel/Casino Collateral, and (ii) by a second priority lien on the FF&E Component Collateral, in each case, as more particularly described in *Section 2* hereof;

(2) the Second Mortgage Notes are secured (i) by a first priority lien on the Second Mortgage Notes Proceeds Account Collateral, (ii) by a second priority lien on Hotel/Casino Collateral and (iii) by a third priority lien on the FF&E Component Collateral, in each case, as more particularly described in *Section 2* hereof; and

(3) the FF&E Facility is secured by a first priority lien on (i) the FF&E Account Collateral, (ii) the Aircraft Collateral and (iii) the FF&E Component Collateral, in each case, as more particularly described in *Section 2* hereof.

F. Disbursement Agreement. The Company, the Bank Agent, the Indenture Trustee, the FF&E Agent and the Disbursement Agent, have entered into that certain Master Disbursement Agreement as of an even date herewith (the "**Disbursement Agreement**"), in order to set forth, among other things, (a) the mechanics for and allocation of the Company's request for advances under the various Facilities and from the Company's Funds Account, (b) the conditions precedent to the initial advance and

conditions precedent to subsequent advances, (c) certain common representations, warranties and covenants of the Company in favor of the Funding Agents and (d) common Events of Default and remedies during construction of the Project.

G. Intercreditor Agreement (Project Lenders). The Project Credit Parties have entered into the Project Lenders Intercreditor Agreement in order to set forth certain provisions relating to their respective rights in the Collateral (including the FF&E Component Collateral) securing the obligations of the Company

Group to the Project Credit Parties, the exercise of remedies upon the occurrence of an event of default, the application of proceeds of enforcement and certain other matters.

H. Intercreditor Agreement (FF&E). The Bank Agent, the Indenture Trustee and the FF&E Agent desire to enter into this Agreement in order to set forth certain provisions relating to their respective rights in the FF&E Collateral, the exercise of remedies with respect thereto upon the occurrence of an event of default, the application of proceeds of enforcement and certain other matters.

AGREEMENT:

NOW, THEREFORE, with reference to the foregoing recitals and in reliance thereon, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Credit Parties agree as follows:

1. Definitions and General Provisions.

1.1 Definitions. Except as otherwise expressed and provided herein, all capitalized terms used in this Agreement and its Exhibits and not otherwise defined herein shall have the meanings given to such terms in the Disbursement Agreement. Except as set forth herein, the rules of interpretation set forth in Exhibit A to the Disbursement Agreement shall apply.

1.1.1 Other Terms. The following terms shall have the meanings set forth below:

"**Agreement**" has the meaning given in the *preamble* to this Agreement.

"**Aircraft Collateral**" has the meaning given in the FF&E Facility Agreement.

"**Aircraft Secured Obligations**" means, from time to time, all of the FF&E Secured Obligations other than the FF&E Component Secured Obligations.

"**Bank Agent**" means Deutsche Bank Trust Company Americas or its successor or assignee in its capacity as Administrative Agent under the Bank Credit Agreement.

"**Bank Credit Facility**" means, collectively, the delay draw term loan credit facility and the revolving credit facility (including the letter of credit facility thereunder) described and made available to Wynn Las Vegas by the Bank Lenders pursuant to the Bank Credit Agreement.

"**Bank Financing Agreements**" means the Bank Credit Agreement, the Bank Fee Letter, the Project Lenders Intercreditor Agreement, this Agreement, the Bank Security Documents and any other agreement, document or instrument entered into or delivered by a member of the Company Group on, prior to or after the Closing Date with or to the Bank Agent or the Bank Lenders in connection with the financing of the Project.

"**Bank Proceeds Account Collateral**" means the Bank Proceeds Account and all amounts on deposit therein, any interest earned thereon, and any investments of such amounts made pursuant to the Bank Company Collateral Account Agreement, and any proceeds of the foregoing *except* to the extent such proceeds are deposited into another account pursuant to the terms of the Disbursement Agreement or the Bank Company Collateral Account Agreement.

"**Bank Secured Obligations**" means all Obligations of the Company Group to the Bank Agent and the Bank Lenders under the Bank Credit Facility, the Bank Security Documents and the other Bank

Financing Agreements, including, without limitation, Obligations in respect of Interest Rate Agreements (as defined in the Bank Credit Agreement), but only to the extent that the Bank Credit Agreement permits such Interest Rate Agreement Obligations to be secured by the Bank Security Documents.

"**Bankruptcy Law**" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute and any other state or federal insolvency, reorganization, moratorium or similar law for the relief of debtors now or hereafter in effect.

"**Collateral**" means the following unique and separate categories of property encumbered to secure the Obligations of the Company Group to any of the applicable Secured Parties: (a) the Hotel/Casino Collateral, (b) the FF&E Collateral and (c) the Separate Proceeds Accounts Collateral.

"**Company Group**" means, collectively, the Company and any Affiliate of the Company that from time to time has incurred any Obligations or pledged any Collateral under any Financing Agreement.

"**Credit Party**" or "**Credit Parties**" means, as the context requires, any or all of the Bank Agent, the Indenture Trustee and the FF&E Agent.

"**Default Payoff Option**" means the option granted to the Eligible Payor on behalf of the Project Secured Parties pursuant to *Section 6* hereof to pay off the FF&E Component Secured Obligations.

"**Disbursement Agent**" means Deutsche Bank Trust Company Americas or its successor or assignee in its capacity as Disbursement Agent under the Disbursement Agreement.

"**Disbursement Agreement Default**" means the occurrence and continuance of an Event of Default under, and as defined in, the Disbursement Agreement.

"**Discharge**" means (a) in respect of the Bank Credit Facility, the termination of all commitments to extend credit under the Bank Credit Facility, indefeasible payment in full in cash of the principal of and interest and premium (if any) on all Bank Secured Obligations, termination, cancellation or expiration of all letters of credit issued under the Bank Credit Facility and indefeasible payment in full in cash of all other Bank Secured Obligations that are unpaid at the time the principal and interest are indefeasibly paid in full in cash, (b) in respect of the Second Mortgage Notes, indefeasible payment in full in cash of the principal of and interest and premium (if any) on all Second Mortgage Notes Secured Obligations and indefeasible payment in full in cash of all other Second Mortgage Notes Secured Obligations that are unpaid at the time the principal and interest are indefeasibly paid in full in cash and (c) in respect of the FF&E

Facility, the termination of all commitments to extend credit under the FF&E Facility Agreement, and either (i) the indefeasible payment in full in cash of the principal of and interest and premium (if any) on all FF&E Component Secured Obligations and indefeasible payment in full in cash of all other FF&E Component Secured Obligations that are unpaid at the time the principal and interest are indefeasibly paid in full in cash, in each case in accordance with the terms of this Agreement, or (ii) the indefeasible payment in full in cash of the principal of and interest and premium (if any) on all FF&E Secured Obligations and indefeasible payment in full in cash of all other FF&E Secured Obligations that are unpaid at the time the principal and interest are indefeasibly paid in full in cash, in each case in accordance with the terms of the FF&E Facility Agreement.

"**Effective Date**" has the meaning given in the *preamble* to this Agreement.

"**Eligible Payor**" means (a) from the date of the initial Advance under the Bank Credit Facility until the Discharge of the Bank Secured Obligations, (i) the Bank Agent (acting on behalf of and, to the extent applicable, at the instruction of, the Bank Lenders in accordance with the Bank Financing Agreements) and (ii) from and after the expiration of 180 days following the occurrence of the Event of Default giving rise to the Default Payoff Option, any Person or Persons at any time or from time to time designated by holders of at least 25% in outstanding principal amount of the Second Mortgage

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Notes, voting as a single class, as entitled to exercise the Default Payoff Option and (b) at any other time, any Person or Persons at any time or from time to time designated by the holders of at least 25% in outstanding principal amount of the Second Mortgage Notes, voting as a single class, as entitled to exercise the Default Payoff Option and, in each case, any nominee or designee of the foregoing.

"**Event of Default**" means, as the context requires, (i) a Disbursement Agreement Default, or (ii) the occurrence and continuance of an "Event of Default" by or with respect to the Company under the applicable Financing Agreement that has not been waived by the applicable Credit Party (it being understood that the provisions of *Section 1.2* of this Agreement shall not apply to any such waiver).

"**Exercise Remedies**" or "**Exercise of Remedies**" shall mean, with respect to each Lender, the taking of any action to enforce its rights or remedies against the Company Group following the occurrence of a Potential Default or Event of Default under its respective Financing Agreements, including, without limitation, the termination of a commitment to lend, the acceleration of all or a portion of the Obligations under such Financing Agreements, the filing or initiation of an Insolvency or Liquidation Proceeding against the Company or any other Person within the Company Group, the commencement of any foreclosure proceedings against any Collateral, the repossession of any Collateral, or the appointment or institution of a receiver, custodian or similar official to take custody of any assets of the Company or other members of the Company Group; provided, however, that the term "Exercise Remedies" shall specifically exclude (i) the issuance of any notice of default, (ii) any actions by a Credit Party to suspend (a) any disbursements from any accounts of the Company Group in which such Credit Party has a security interest or (b) Advances under the particular Facility and (iii) the recording of a Notice of Default in the County Recorder's Office of Clark County, Nevada.

"**Facility**" or "**Facilities**" means, as the context requires, any or all of the Bank Credit Facility, the Second Mortgage Notes Proceeds and the FF&E Facility.

"**FF&E Account Collateral**" means the FF&E Proceeds Account, the Company's FF&E Payment Account, and all amounts on deposit therein, any interest earned thereon, and any investments of such amounts made pursuant to the applicable FF&E Collateral Account Agreement, and any proceeds of the foregoing *except* to the extent such proceeds are deposited into another account pursuant to the terms of the Disbursement Agreement or the FF&E Collateral Account Agreement.

"**Facility Agreement**" or "**Facility Agreements**" means, as the context requires, any or all of the Bank Credit Agreement, the Second Mortgage Notes Indenture and the FF&E Facility Agreement.

"**FF&E Agent**" means Wells Fargo Bank Nevada, National Association or its successor or assignee in its capacity as Collateral Agent under the FF&E Facility Agreement.

"**FF&E Collateral**" means the following unique and separate categories of property encumbered to secure all or a portion of the Obligations of the Company Group to the applicable Secured Parties (in each case as set forth in *Section 2*): (a) the Aircraft Collateral, (b) the FF&E Component Collateral and (c) the FF&E Account Collateral; *provided, however*, that upon the release by the FF&E Agent of its security interest in any portion of the FF&E Collateral, the FF&E Collateral shall exclude such released FF&E Collateral.

"**FF&E Component Collateral**" means from time to time, items consisting of the FF&E Component under the Disbursement Agreement (as more specifically set forth from time to time in Exhibit T-3 to the Disbursement Agreement) *other than* (a) the FF&E Account Collateral and (b) the Aircraft Collateral.

"**FF&E Component Secured Obligations**" means, at any time and from time to time, Loans under the FF&E Facility allocated to and in the amount of the Allocated Equipment Value (as defined in the FF&E Facility Agreement), plus all accrued but unpaid interest thereon in accordance with the FF&E Facility Agreement, plus the Applicable Administrative Charge (as defined in the FF&E Facility

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Agreement), if any, allocable to such Allocated Equipment Value, plus any other accrued but unpaid fees or other amounts owed under the FF&E Financing Agreements and allocable to the Allocable Equipment Value.

"**FF&E Financing Agreements**" means the FF&E Facility Agreement, this Agreement, the FF&E Security Documents and any other agreement, document or instrument entered into or delivered by a member of the Company Group on, prior to or after the Closing Date with or to the FF&E Agent or the FF&E Lenders in connection with the financing of the Project.

"**FF&E Secured Obligations**" means all Obligations of the Company Group to the FF&E Agent and the FF&E Lenders under the FF&E Facility Agreement, the FF&E Security Documents and the other FF&E Financing Agreements.

"Hotel/Casino Collateral" means all real and personal property encumbered to secure the Bank Secured Obligations under the Bank Security Documents or the Second Mortgage Notes Secured Obligations under the Second Mortgage Notes Security Documents *other than* (a) the Separate Proceeds Accounts Collateral and (b) the FF&E Collateral, *provided, however*, that upon the release by the Bank Agent and the Indenture Trustee of their respective security interests in any portion of the Hotel/Casino Collateral, the Hotel/Casino Collateral shall exclude such released Hotel/Casino Collateral.

"Indenture Trustee" means Wells Fargo Bank, National Association or its successor or assignee in its capacity as Trustee under the Second Mortgage Notes Indenture.

"Insolvency or Liquidation Proceeding" means (a) any case commenced by or against the Company Group or any Person within the Company Group under any Bankruptcy Law, any other proceeding for the reorganization, recapitalization or adjustment or marshalling of the assets or liabilities of the Company Group or any Person within the Company Group, any receivership or assignment for the benefit of creditors relating to the Company Group or any Person within the Company Group or any similar case or proceeding relative to the Company Group or any Person within the Company Group or their creditors, as such, in each case whether or not voluntary; (b) any liquidation, dissolution, marshalling of assets or liabilities or other winding up of or relating to the Company Group or any Person within the Company Group, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency; or (c) any other proceeding of any type or nature in which substantially all claims of creditors of the Company Group or any Person within the Company Group are determined and any payment or distribution is or may be made on account of such claims.

"Notice of Default" means a notice of default which must be recorded in the official real property records of Clark County, Nevada, in order to commence non-judicial foreclosure of a deed of trust in accordance with applicable Nevada law.

"Project Credit Party" or **"Project Credit Parties"** means, as the context requires, any or both of the Bank Agent and the Indenture Trustee.

"Project Credit Party Agent" means (a) from the date of the initial Advance under the Bank Credit Agreement until the Discharge of the Bank Secured Obligations, the Bank Agent (acting on behalf of, and to the extent applicable, at the instruction of, the Bank Lenders in accordance with the Bank Financing Agreements), and (b) at any other time, the Indenture Trustee (acting on behalf of, and to the extent applicable, at the instruction of, the Second Mortgage Note Holders in accordance with the Second Mortgage Notes Indenture).

"Second Mortgage Notes Financing Agreements" means the Second Mortgage Notes Indenture, the Second Mortgage Notes, the Disbursement Agreement, the Project Lenders Intercreditor Agreement, this Agreement, the Second Mortgage Notes Security Documents and any other agreement, document or instrument entered into or delivered by a member of the Company Group on, prior to or

after the Closing Date with or to the Indenture Trustee or the Second Mortgage Note Holders in connection with the financing of the Project.

"Second Mortgage Notes Proceeds Account Collateral" means the Second Mortgage Notes Proceeds Account and all amounts on deposit therein, any interest earned thereon, and any investments of such amounts made pursuant to the applicable Second Mortgage Notes Company Collateral Account Agreement, and any proceeds of the foregoing *except* to the extent such proceeds are deposited into another account pursuant to the terms of the Disbursement Agreement or the Second Mortgage Notes Company Collateral Account Agreement.

"Second Mortgage Notes Secured Obligations" means all Obligations of the Company Group under the Second Mortgage Notes Indenture, the Second Mortgage Notes, the Second Mortgage Notes Security Documents and the other Second Mortgage Notes Financing Agreements.

"Secured Obligations" means, as the context requires, any or all of the Bank Secured Obligations, the Second Mortgage Notes Secured Obligations and the FF&E Secured Obligations.

"Secured Party" or **"Secured Parties"** means, as the context requires, any or all of the Project Secured Parties, the FF&E Agent and the FF&E Lenders.

"Securities Intermediary" means any entity acting in its capacity as Securities Intermediary under any Collateral Account Agreement.

"Separate Proceeds Accounts Collateral" means, as the context requires, any or all of the Second Mortgage Notes Proceeds Account Collateral, the Bank Proceeds Account Collateral and the FF&E Account Collateral.

"Standstill Period" has the meaning given in *Section 3.5.1* of this Agreement.

1.2 Interpretation. To the extent that reference is made in this Agreement to any term defined in, or to any other provision of, any other agreement, such term or provision shall continue to have the original meaning thereof notwithstanding any termination, expiration or amendment of such other agreement; *provided, however*, that to the extent that the Disbursement Agreement or any other agreement to which all of the Credit Parties are parties is amended in accordance with the terms thereof and hereof, then any references herein to such terms and provisions of such document shall be to such terms or provisions as so amended.

2. FF&E Collateral, Priority of Liens, Subordination and Release.

2.1 Liens and Security Interests on the FF&E Collateral. Each Credit Party agrees that the Secured Parties shall have the benefit of the following liens on and security interests and relative priorities in the FF&E Collateral:

2.1.1 FF&E Collateral for the FF&E Secured Obligations. Subject to the terms of this Agreement, the FF&E Secured Obligations shall be secured by a first priority lien on and security interest in the (a) FF&E Account Collateral, (b) the Aircraft Collateral and (c) the FF&E Component Collateral.

2.1.2 FF&E Collateral for the Bank Secured Obligations. Subject to the terms of this Agreement (and, as between the Bank Agent and the Trustee, the Project Lenders Intercreditor Agreement), the Bank Secured Obligations shall be secured by a second priority lien on and security interest in the FF&E Component Collateral.

2.1.3 FF&E Collateral for Second Mortgage Notes Secured Obligations. Subject to the terms of this Agreement (and, as between the Bank Agent and the Trustee, the Project Lenders Intercreditor Agreement), the Second Mortgage Notes Secured Obligations shall be secured by a third priority lien on and security interest in the FF&E Component Collateral.

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2.2 FF&E Account Collateral and Aircraft Collateral Does Not Secure Bank Facility or Second Mortgage Note Holders. The Bank Agent on behalf of the Bank Lenders and the Trustee on behalf of the Second Mortgage Note Holders acknowledge and agree that FF&E Account Collateral and the Aircraft Collateral secure only the FF&E Secured Obligations, and no Project Secured Party in its capacity as such (it being understood that any such party may also be an FF&E Lender and shall, in its capacity as an FF&E Lender, enjoy all of the rights and protections provided to the FF&E Lenders hereunder and under the other Financing Agreements) shall have, or claim to have, now or at any time hereafter any liens thereon or any security interest therein (other than a judgment lien obtained as an unsecured creditor). Except as provided in *Section 3.5*, nothing in this Agreement shall affect, limit or otherwise restrict the right and ability of the FF&E Agent and the FF&E Lenders to exercise any remedy or enforce other rights (including foreclosure) upon the FF&E Account Collateral and the Aircraft Collateral.

2.3 Hotel/Casino Collateral Does Not Secure FF&E Facility. The FF&E Agent, on behalf of the FF&E Lenders, acknowledges and agrees that the Project Credit Parties have liens on, and security interests in the Hotel/Casino Collateral and that neither the FF&E Agent nor any FF&E Lender in its capacity as such (it being understood that any such party may also be a Project Secured Party, and shall, in its capacity as a Project Secured Party, enjoy all of the rights and protections provided to the Project Secured Parties hereunder and under the other Financing Agreements) shall have or claim to have, now or at any time hereafter, a lien on, or other security interest in or with respect to, any Collateral (other than the FF&E Collateral) referred to in this Agreement or described in the Bank Security Documents or the Second Mortgage Notes Security Documents (other than a judgment lien obtained as an unsecured creditor). Notwithstanding any other provision in any Financing Agreement to the contrary, other than insurance proceeds and proceeds from the sale or other disposition of the FF&E Collateral received in accordance with the terms of this Agreement and the FF&E Security Documents, in no event whatsoever shall the liens and other security interests to be created and perfected by the FF&E Security Documents evidencing and securing the FF&E Secured Obligations attach to any revenues, income, rents or other profits generated by the Project (including, without limitation, any revenues, income, rents or other profits associated with the FF&E Collateral) (other than a judgment lien obtained as an unsecured creditor). Nothing in this Agreement shall affect, limit or otherwise restrict the right and ability of the Bank Agent and the Bank Lenders and (subject to the Project Lenders Intercreditor Agreement) the Indenture Trustee and the Second Mortgage Note Holders to exercise any remedy or enforce other rights (including foreclosure) upon any collateral other than the FF&E Collateral.

2.4 Confirmation of Liens.

2.4.1 Each Credit Party hereto hereby confirms and agrees that the liens and security interests held by or for the benefit of each Secured Party in the Collateral, as provided for in the preceding provisions of this *Section 2* shall secure all Obligations of the Company Group and any Person within the Company Group now or hereafter owing to such Secured Party under the applicable Facility throughout the term of this Agreement, in each case with the priority specified in this *Section 2*, notwithstanding (a) the availability of any other collateral to any Secured Party, (b) the actual date and time of execution, delivery, recording, filing and perfection of any of the Security Documents, or (c) the fact that any lien or security interest created by any of the Security Documents, or any claim with respect thereto, is or may be subordinated, avoided or disallowed in whole or in part under any Bankruptcy Law. All provisions of this Agreement, including but not limited to, all matters relating to the creation, validity, perfection, priority, subordination and release of the liens and security interests intended to be created by the Security Documents and all provisions regarding the allocation and priority of payments with respect to any Facility shall survive any Insolvency or

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Liquidation Proceeding and be fully enforceable by and against each Credit Party hereto during any such proceeding.

2.4.2 In the event of an Insolvency or Liquidation Proceeding, each Credit Party further confirms and agrees that (i) the Obligations due and outstanding under and with respect to each Facility shall include all principal, additional advances permitted hereunder, Protective Advances made by such Credit Party, interest, default interest, LIBOR breakage and swap breakage, post petition interest and all other amounts due thereunder, for periods before and for periods after the commencement of any such proceedings, even if the claim for such amounts is disallowed pursuant to applicable law, and all proceeds from the sale or other disposition of any Collateral shall be paid to the applicable Secured Party (for application in accordance with the applicable Facility) in the order and priority provided for in this *Section 2* with respect to such Collateral notwithstanding the disallowance of any such claim or the invalidity or subordination of any lien on or security interest in such Collateral under applicable law and (ii) it will not request judicial relief or take any other action that would limit, invalidate, avoid or set aside the lien of any other Credit Party on the Collateral or any portion thereof or that would change the lien priorities described in *Section 2.1*.

2.5 Release of Liens.

2.5.1 The FF&E Agent agrees to release its respective liens on and security interests in the FF&E Component Collateral on the date on which the Discharge in respect of the FF&E Facility occurs in accordance with the terms of the FF&E Facility Agreement and this Agreement (including any Discharge of the FF&E Facility in connection with the exercise by the Eligible Payor of the Default Payoff Option in accordance with *Section 6* hereof).

2.5.2 The Bank Agent and the Indenture Trustee agree to release their respective liens on and security interests in the FF&E Component Collateral upon (a) completion of any foreclosure or similar sale of such FF&E Component Collateral in connection with the Exercise of Remedies by the FF&E Agent and the FF&E Lenders or (b) any other sale of the FF&E Component Collateral that is permitted by the Bank Financing Agreements and the Second Mortgage Notes Financing Agreements.

2.5.3 The FF&E Agent, the Bank Agent and the Indenture Trustee agree to release their respective liens on and security interests in the FF&E Component Collateral in connection with any replacement of such FF&E Component Collateral permitted under the FF&E Facility Agreement, the Bank Credit Agreement and the Second Mortgage Notes Indenture. Any replacement items that are permitted under the FF&E Facility

Agreement and the Bank Credit Agreement to constitute FF&E Component Collateral shall constitute FF&E Collateral hereunder and shall be subject to the lien priorities set forth in *Section 2.1* above.

2.5.4 In connection with any release described in this *Section 2.5*, the FF&E Agent, the Bank Agent and/or the Indenture Trustee, as the case may be, agree to execute and deliver any documentation reasonably requested by the other Credit Parties to evidence such lien release.

3. Rights and Limitation of Actions With Respect to the FF&E Collateral.

3.1 Rights and Limitations Applicable to the Project Credit Parties.

3.1.1 Subject to *Section 3.1.2* below, neither the Bank Agent nor the Indenture Trustee shall, nor shall either such Credit Party authorize or direct any Person acting for it, or any Bank Lender or Second Mortgage Note Holder to, exercise any right or remedy with respect to any FF&E Component Collateral (including any right of set-off) or take any action to

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enforce, collect or realize upon any FF&E Component Collateral including, without limitation, any right, remedy or action to:

- (a) remove the FF&E Component Collateral (except as permitted under *Section 3.7* below);
- (b) exercise any collection rights in respect of the proceeds from the sale or other disposition of any FF&E Component Collateral;
- (c) exercise any right of set-off against any property constituting FF&E Component Collateral;
- (d) initiate any foreclosure or similar proceeding against any FF&E Component Collateral or take or accept any transfer of title in lieu of foreclosure upon any FF&E Component Collateral;
- (e) enforce any claim to the proceeds of insurance upon any FF&E Component Collateral, other than in accordance with the provisions of *Section 4.3* hereof;
- (f) deliver any notice, claim or demand relating to the FF&E Component Collateral to any Person in the possession or control of any FF&E Component Collateral or acting as bailee, custodian or agent for a Project Secured Party in respect of any FF&E Component Collateral;
- (g) otherwise enforce any remedy available upon default for the enforcement of any lien upon the FF&E Component Collateral;
- (h) deliver any notice or commence any proceeding for any of the foregoing purposes; or
- (i) seek relief in any Insolvency or Liquidation Proceeding permitting it to do any of the foregoing.

3.1.2 Notwithstanding *Section 3.1.1* above, any right or remedy set forth in clauses (a) through (i) thereof may be exercised and any such action may be taken, authorized or instructed by the Bank Agent or the Indenture Trustee:

- (a) after Discharge of the FF&E Facility;
- (b) as necessary, to deliver any notice or demand necessary to enforce any right to claim, take or receive proceeds of any FF&E Component Collateral remaining after the Discharge of the FF&E Secured Obligations in the event of foreclosure or other enforcement of any lien securing the FF&E Secured Obligations, so long as, in any of the foregoing cases, any such actions are not adverse to the grant, perfection, priority or enforcement of the liens upon the FF&E Component Collateral securing the FF&E Secured Obligations, the value of the FF&E Component Collateral or the rights of the FF&E Agent and the FF&E Lenders in and to the FF&E Component Collateral;
- (c) as necessary to perfect a subordinate lien upon any FF&E Component Collateral by any method of perfection except through possession or control;
- (d) subject to all the other provisions of this Agreement, as necessary to prove (but not enforce) the liens securing the Bank Secured Obligations or the Second Mortgage Notes Obligations upon the FF&E Component Collateral or as necessary to preserve or protect (but not enforce) such liens upon the FF&E Component Collateral (excluding any claim for adequate protection) in any manner that is not adverse to the grant, perfection, priority or enforcement of liens upon the FF&E Component Collateral securing the FF&E Secured Obligations, the value of the FF&E

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Component Collateral or the rights of the FF&E Agent and the FF&E Lenders in and to the FF&E Component Collateral; or

- (e) after obtaining the prior written consent of the FF&E Agent, which consent shall be subject to the FF&E Agent's sole discretion.

3.1.3 Nothing in this Agreement or any other Financing Agreement shall:

- (a) impair as between the Company Group, on the one hand, and the Project Secured Parties, on the other hand, the obligation of the Company and all guarantors within the Company Group, which is absolute and unconditional, to pay principal of, premium and interest and Liquidated Damages (as defined in the Second Mortgage Notes Indenture), if any, in respect of the Bank Secured Obligations and the Second Mortgage Notes Secured Obligations in accordance with the terms of the Bank Financing Agreements

and the Second Mortgage Notes Financing Agreements or any other obligation of the Company or any other Person within the Company Group under the Bank Financing Agreements and the Second Mortgage Notes Financing Agreements;

- (b) affect the relative rights of the Project Secured Parties vis a vis creditors of the Company (other than the FF&E Agent and the FF&E Lenders);
- (c) restrict the right of the Project Secured Parties to sue for payments that are then due and owing or accelerate the Bank Secured Obligations or the Second Mortgage Notes Secured Obligations; or
- (d) prevent the Project Secured Parties from exercising any rights or remedies any of them may have against the Company or any Person within the Company Group, subject however, in all cases, to the rights of the FF&E Agent and the FF&E Lenders in respect of the FF&E Collateral hereunder and the obligations of the Project Secured Parties hereunder.

3.2 Rights and Limitations Applicable to the FF&E Agent and the FF&E Lenders.

3.2.1 Subject to *Section 3.5* below, the FF&E Agent and the FF&E Lenders shall have the exclusive right to manage, perform and enforce the terms of the FF&E Security Documents with respect to all FF&E Component Collateral and to exercise and enforce all privileges and rights thereunder according to their discretion and exercise of their business judgment, including, without limitation, the exclusive right to take the actions enumerated in clauses (a) through (i) of *Section 3.1.1* above. Without limiting the generality of the foregoing, if an Event of Default has occurred and is continuing under the FF&E Facility, the FF&E Agent shall have the right to (i) enter the Project's real property for the purpose of inspecting, maintaining or protecting the FF&E Component Collateral and (ii) without causing material damage to the Hotel/Casino Collateral (other than any such material damage which has been repaired), remove the FF&E Component Collateral (including all records and other documentation relating thereto) and take such additional steps as are reasonably necessary or appropriate to prepare such FF&E Component Collateral for a foreclosure sale or other exercise of remedies with respect to such FF&E Component Collateral under the FF&E Facility Agreement. The FF&E Agent agrees to repair any damage caused to the Hotel/Casino Collateral in connection with its removal of any FF&E Collateral.

In connection with any of the actions taken by the FF&E Agent or the FF&E Lenders in accordance with this *Section 3.2.1*, subject to *Section 3.8*, the Project Credit Parties waive any and all rights to affect the method or challenge the appropriateness of any action by the FF&E Agent or the FF&E Lenders with respect to the FF&E Component Collateral and

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hereby consent to each of the FF&E Agent and the FF&E Lenders exercising or not exercising such rights and remedies as if no lien upon the FF&E Component Collateral securing the Bank Secured Obligations or the Second Mortgage Notes Secured Obligations, as the case may be, existed, except only that the Project Credit Parties reserve all rights granted by law (i) to request or receive notice of any sale of FF&E Component Collateral in foreclosure of any lien upon the FF&E Component Collateral securing the FF&E Secured Obligations and (ii) after the Discharge of the FF&E Facility, to redeem any FF&E Component Collateral or enforce any right to claim, take or receive proceeds of FF&E Component Collateral then remaining.

3.2.2 The FF&E Agent and the FF&E Lenders may at any time and from time to time, without the consent of or notice to the Project Credit Parties but subject to any applicable Standstill Period and to the provisions of *Section 4.2*, without incurring any responsibility or liability to such Project Credit Parties and without in any manner prejudicing, affecting or impairing the ranking or priority of the liens and the security interests in the FF&E Component Collateral created by the FF&E Security Documents or the rights and obligations of the Credit Parties hereunder:

- (a) make loans and advances to the Company Group or any Person within the Company Group or issue, guaranty or obtain letters of credit for the account of the Company Group or any Person within the Company Group or otherwise extend credit to the Company Group or any Person within the Company Group in any amount (subject to the provisions of the Bank Credit Agreement and the Second Mortgage Notes Indenture relating to the maximum amount of indebtedness) and on any terms, whether pursuant to a commitment or as a discretionary advance and whether or not any Potential Event of Default or Event of Default or failure of condition is then continuing;
- (b) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, compromise, accelerate, extend or, subject to *Section 8.13* hereof, refinance (as permitted in *Section 8.13* below), any FF&E Secured Obligations or any agreement, guaranty or obligation of the Company Group or any Person within the Company Group or any other Person in any manner related thereto, or otherwise amend, supplement or change in any manner any FF&E Secured Obligations or any such agreement, guaranty or obligation;
- (c) increase or reduce the amount of any FF&E Secured Obligation (subject to the provisions of the Bank Credit Agreement and the Second Mortgage Notes Indenture relating to the maximum amount of indebtedness) or reduce the interest, premium, fees or other amounts payable in respect thereof;
- (d) release or discharge any FF&E Secured Obligation or any guaranty thereof or any agreement or obligation of the Company Group or any Person within the Company Group or any other Person with respect thereto;
- (e) take or fail to take any first priority lien in any FF&E Component Collateral or take or fail to take any action which may be necessary or appropriate to ensure that any lien upon the FF&E Component Collateral securing an FF&E Secured Obligation is duly enforceable or perfected or entitled to priority as against any other lien or to ensure that any proceeds of any FF&E Component Collateral are applied to the payment of any FF&E Component Secured Obligation or any other obligation secured thereby;

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- (f) release, discharge or permit the lapse of any or all liens securing a FF&E Secured Obligation or any other liens upon any property at any time;
- (g) exercise or enforce, in any manner, order or sequence, or fail to exercise or enforce, any right or remedy against the Company or any guarantor or any FF&E Component Collateral or any right or power under the FF&E Security Documents and hereunder and apply any payment or proceeds of collateral in any order of application; or
- (h) sell, exchange, release, foreclose upon or otherwise deal with the FF&E Component Collateral.

3.2.3 Except for its gross negligence or willful misconduct, no (a) exercise, delay in exercising or failure to exercise any right arising under the FF&E Security Documents or this Agreement, (b) act or omission of the FF&E Agent or any FF&E Lender in respect of the Company Group or any Person within the Company Group or any other Person or FF&E Component Collateral or any right arising under the FF&E Security Documents and hereunder, (c) change, impairment, or suspension of any right or remedy of the FF&E Agent or any FF&E Lender with respect to the FF&E Component Collateral, or (d) other act, failure to act, circumstance, occurrence or event, including, without limitation, the acts listed in Section 3.2.2 above, which, but for this provision, would or could act as a release or exoneration of the agreements or obligations of the Project Credit Parties hereunder shall in any way affect, decrease, diminish or impair any of such agreements or obligations, including, without limitation, the lien subordination provisions set forth in Sections 2.1 and 3.1.

3.3 Certain Waivers by the Project Secured Parties. To the fullest extent permitted by law, until Discharge of the FF&E Secured Obligations, each Project Secured Party waives and agrees not to assert or enforce:

- (a) any right of subrogation to the rights or interests of the FF&E Agent or the FF&E Lenders in the FF&E Component Collateral or any claim or defense based upon impairment of any such right of subrogation;
- (b) any right of marshalling accorded to a junior lienholder in the FF&E Component Collateral, as against a priority lienholder in such Collateral, under equitable principles; and
- (c) any statutory right of appraisal or valuation of the FF&E Component Collateral accorded to a junior lienholder in a proceeding to foreclose a senior lien,

in each case, that otherwise may be enforceable in respect of any lien upon the FF&E Component Collateral securing the Bank Secured Obligations or the Second Mortgage Notes Secured Obligations as against the FF&E Agent or the FF&E Lenders; provided, however, that the foregoing shall not be construed as reducing or otherwise negating the obligation of the Company Group to pay, as part of the Bank Secured Obligations and the Second Mortgage Notes Secured Obligations any amounts advanced by the Bank Lenders or the Secured Mortgage Note Holders to pay any portion of the FF&E Secured Obligations.

3.4 Notification of Events of Default. Each Credit Party hereby agrees, for the benefit of each other Credit Party, to use its best efforts to provide or cause the Company to provide written notice to each other Credit Party as promptly as practicable after obtaining actual knowledge of the occurrence of an Event of Default under its respective Facility. No Credit Party shall have any liability to another for failing to provide or cause to be provided any such notice, but such release from liability shall not relieve the FF&E Agent's and the FF&E Lenders' obligation to refrain from the Exercise of Remedies until the expiration of the Standstill Period in accordance with and subject to the provisions of Section 3.5.

3.5 FF&E Standstill Period.

3.5.1 The delivery by the FF&E Agent or the Company to the Bank Agent and the Indenture Trustee of the notice referred to in Section 3.4 with respect to the occurrence of an Event of Default under the FF&E Facility Agreement, which notice references the commencement of the Standstill Period, shall, subject to the provisions of Section 3.5.3, commence a standstill period of 30 days (as may be extended pursuant to the terms of Section 3.5.2 below, the "**Standstill Period**"). Until the expiration of such Standstill Period:

- (a) unless otherwise agreed in writing by the Project Credit Party Agent, the FF&E Agent agrees not to Exercise Remedies (except and to the extent that such Exercise of Remedies is necessary to prevent the expiration of any applicable statute of limitations) unless (x) the Bank Agent or the Indenture Trustee Exercises Remedies (except and to the extent that such Exercise of Remedies is necessary to prevent the expiration of any applicable statute of limitations) or (y) an Insolvency or Liquidation Proceeding has commenced or been initiated with respect to the Company or any other Loan Party; and
- (b) if (i) all Events of Default under the FF&E Facility Agreement are cured (or waived to the satisfaction of the FF&E Lenders), (ii) all Events of Default under the Bank Credit Agreement are cured (or waived to the satisfaction of the Bank Lenders) and (iii) the Bank Agent notifies the FF&E Agent that the Bank Credit Agreement will be reinstated and that funding under the Bank Credit Agreement will recommence, the FF&E Agent agrees to reinstate the FF&E Facility Agreement and recommence funding thereunder in accordance with the terms of such FF&E Facility Agreement and the Disbursement Agreement.

3.5.2 So long as all interest, fees, indemnities and expenses of the FF&E Agent and the FF&E Lenders under the FF&E Financing Agreements are brought current on or before the 15th day following the commencement of the Standstill Period and thereafter kept current through the expiration of the Standstill Period (as may be extended pursuant to this paragraph), then (a) with respect to a Standstill Period commencing prior to the Completion of the Project, such Standstill Period shall be extended for a period of 30 days from the date on which such Standstill Period was to expire and (b) with respect to a Standstill Period commencing after the Completion of the Project, such Standstill Period shall be extended for a period of 15 days from the date on which such Standstill Period was to expire.

3.5.3 The provisions of this *Section 3.5* shall apply only to (a) the first Event of Default occurring under the FF&E Facility Agreement prior to the Completion of the Project in respect of which the Bank Agent and the Indenture Trustee receive a notice commencing the Standstill Period and (b) the first Event of Default occurring under the FF&E Facility Agreement after the Completion of the Project in respect of which the Bank Agent and the Indenture Trustee receive a notice commencing the Standstill Period; provided, however, that any Event of Default as to which, pursuant to the FF&E Facility Agreement and the vote of the applicable FF&E Lenders thereunder, the FF&E Lenders will exercise remedies only against the Aircraft Collateral and accelerate only the Aircraft Secured Obligations, shall not be taken into account for purposes of the foregoing.

3.6 Limitation of Liability.

3.6.1 Except as expressly set forth herein, no Credit Party will have any duty, express or implied, fiduciary or otherwise, to any other Credit Party.

3.6.2 To the maximum extent permitted by law, each Project Credit Party waives any claim it may have against the FF&E Agent or any FF&E Lender with respect to or arising out of

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any action or failure to act or any error of judgment or negligence on the part of the FF&E Agent or such FF&E Lender or their respective directors, officers, employees or agents with respect to any exercise of rights or remedies in respect of the FF&E Component Collateral or any transaction relating to the FF&E Component Collateral and each Project Credit Party agrees that except as specifically provided herein the FF&E Agent and FF&E Lenders shall be entitled to manage and exercise their rights and remedies with respect to the FF&E Collateral in the manner they deem appropriate; provided that the foregoing shall not exculpate the FF&E Agent or any FF&E Lender from any liability arising out of the gross negligence or willful misconduct of the FF&E Agent or such FF&E Lender, as the case may be, or any of their respective directors, officers, employees or agents. Neither the FF&E Agent nor any FF&E Lender nor any of their respective directors, officers, employees or agents will be liable for failure to demand, collect or realize upon any of the FF&E Component Collateral or for any delay in doing so; provided that the foregoing shall not exculpate the FF&E Agent or any FF&E Lender from any liability arising out of the gross negligence or willful misconduct of the FF&E Agent or any such FF&E Lender, as the case may be, or any of their respective directors, officers, employees or agents, nor will the FF&E Agent or any FF&E Lender be under any obligation to sell or otherwise dispose of any FF&E Component Collateral upon the request of any Person within the Company Group or upon the request of any Project Credit Party or any other Person or to take any other action whatsoever with regard to the FF&E Component Collateral or any part thereof.

3.7 Cooperation with Foreclosure Purchaser. Each of the Bank Agent and the Indenture Trustee agree to cooperate with any Person that acquires the FF&E Component Collateral in a foreclosure proceeding or other sale proceeding to remove the FF&E Component Collateral from the Project. After any such foreclosure or other sale proceeding and if the FF&E Agent or such other purchaser has not removed the FF&E Component Collateral within forty-five (45) days following such foreclosure or other sale, then pending such removal by the FF&E Agent or such purchaser the Project Credit Party Agent may, at the cost and expense of the Secured Parties under its Facility, and in a manner reasonable satisfactory to the FF&E Agent or such other purchaser, remove such FF&E Component Collateral from the Project and store and insure the same for the FF&E Agent or such other purchaser in a manner reasonably satisfactory to such party. The FF&E Agent or such other purchase shall be required to pay the costs of such storage and insurance from and after the 91st day following such foreclosure or other sale.

3.8 Obligations of Project Credit Parties Limited to their Capacities as Junior Lien Holders. Each Credit Party acknowledges and agrees that notwithstanding anything to the contrary in this Agreement or the other Financing Agreements, the provisions of *Section 3* and *Section 5* of this Agreement apply to the Bank Agent, the Bank Lenders, the Indenture Trustee and the Second Mortgage Note Holders solely in their respective capacities as holders of liens secured by the FF&E Component Collateral. Nothing in *Section 3* or *Section 5* of this Agreement or the other Financing Agreements shall prevent or preclude the Bank Agent, the Bank Lenders, the Indenture Trustee or the Second Mortgage Note Holders from taking any action or asserting rights or claims which such parties may be entitled to take or assert in any other capacity (including, without limitation, any action or assertion of rights as holders of liens on and security interests in any Collateral pledged by any Person within the Company Group to such Credit Parties (other than the FF&E Component Collateral) and as holders of unsecured claims against the Company or any Person within the Company Group). Except as provided in *Section 2* and *Section 3.5* above, nothing in this Agreement or the other Financing Agreement shall prevent or preclude the FF&E Agent from taking any action or asserting any rights or claims which it may be entitled to take or assert as the holder of unsecured claims against the Company or any Person within the Company Group.

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4. Other Intercreditor Provisions.

4.1 Waiver of Provisions Under Financing Agreements. Any Credit Party may, without the consent of any other Credit Party, defer any payments due under its Facility or waive any provisions thereof.

4.2 Amendments of Financing Agreements. Each of the FF&E Agent and the FF&E Lenders, the Bank Agent and the Bank Lenders and the Indenture Trustee and the Second Mortgage Note Holders (subject, in the case of the Indenture Trustee and the Second Mortgage Note Holders, to the Project Lenders Intercreditor Agreement) shall be permitted to enter into amendments, modifications and supplements with the Company Group of their respective Financing Agreements without the consent of any other party, including during any Standstill Period, *except* for amendments, modifications or supplements (i) increasing the applicable interest rate or fees, (ii) changing (to earlier or more frequent dates) the dates upon which payments of principal or interest are due thereon (iii) in the case of the FF&E Facility, (a) readjusting the amortization schedules of the indebtedness as between FF&E Component Secured Obligations and the other FF&E Secured Obligation so as to reduce the amortization of the FF&E Component Secured Obligations relative to the amortization of the other FF&E Secured Obligations or (b) permit to be prepaid or allocate to the FF&E Component Secured Obligations less than a pro rata portion of any prepayment made under the FF&E Facility (except for (A) prepayments made with the proceeds from the sale, disposition or casualty event with respect to a portion of the Collateral, which shall be used to prepay the obligations related to such Collateral and

(B) refinancings permitted under the Financing Agreements and Section 8.13 hereof), (iv) reducing the amount of the lending commitments thereunder at any time prior to Completion, (v) changing the redemption, prepayment, or defeasance provisions thereof, (vi) amend Section 7.5(e) of the Bank Credit Agreement or Section 7.5(e) of the FF&E Facility Agreement so as to reduce the aggregate fair market value of Property which the Company is permitted to dispose of in any Fiscal Year (as defined in each such Facility Agreement), (vii) which (a) in the case of the Bank Credit Facility, have the effect of prohibiting, limiting or restricting the prepayments of the FF&E Facility allowed pursuant to Section 7.9(a) of the Bank Credit Agreement and (b) in the case of the FF&E Facility, have the effect of prohibiting, limiting or restricting the prepayments of the Bank Credit Facility allowed pursuant to Section 7.9(a) of the FF&E Facility Agreement or (viii) in the case of the Bank Credit Facility, have the effect of prohibiting, limiting or restricting the substitution of FF&E Collateral, each of which amendments, modifications or supplements described in clauses (i) through (viii) above shall require the consent of the FF&E Agent and the Bank Agent.

4.3 Provisions Relating to Events of Loss and Loss Proceeds.

4.3.1 Upon the occurrence of an Event of Loss, the FF&E Agent will have the sole right to adjust settlement of all insurance claims and condemnation awards relating to FF&E Collateral and the Project Credit Party Agent will have the sole right to adjust settlement of all insurance claims and condemnation awards relating to any Collateral other than FF&E Collateral.

4.3.2 Any Loss Proceeds received prior to Final Completion shall, to the extent permitted by the Disbursement Agreement, be applied towards repair or restoration of the Project in accordance with the Disbursement Agreement.

4.3.3 The Credit Parties acknowledge that, from and after Final Completion, the Project Credit Party Agent is the loss payee under the Company's and the other Loan Parties' insurance policies and will receive and hold all Loss Proceeds payable to the Company or the other Loan Parties. Each of the Bank Agent and the Indenture Trustee hereby covenants and agrees, for so long as each such party is the Project Credit Party Agent, to hold any Loss

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Proceeds so received in accordance with the terms hereof and to apply the same only as provided hereunder.

4.3.4 Any Loss Proceeds received prior to Final Completion which are not permitted to be applied towards repair or restoration of the Project and any Loss Proceeds received after Final Completion shall be applied as follows:

(i) if (A) all or any portion of such Loss Proceeds have been allocated by the payor thereof among the assets or property to which such Event of Loss relates or (B) such Loss Proceeds result from an Event of Loss involving exclusively a specific category of Collateral (for example, the Aircraft Collateral, the FF&E Component Collateral or the Hotel/Casino Collateral), such Loss Proceeds shall be paid over to the Credit Party with a prior lien priority in such assets or property as more specifically set forth in *Section 2* of this Agreement for application in accordance with the applicable Facility; and

(ii) any Loss Proceeds remaining after application of the preceding clause shall be allocated among the assets or property to which such Event of Loss relates in proportion to the magnitude of the losses (after giving effect to any allocation under clause (i) above) experienced by such assets or property based upon the diminution in value to such assets or property as a consequence of such Event of Loss. Upon completion of such allocation, the applicable Loss Proceeds shall be paid over to the applicable Credit Party with a prior lien priority in such assets or property as more specifically set forth in *Section 2* of this Agreement for application in accordance with the applicable Facility.

4.3.5 To the extent the Company is allowed and elects to restore or replace any FF&E Component Collateral using Loss Proceeds, only such restored or replacement items the cost of which is funded entirely with Loss Proceeds allocated to the FF&E Collateral in accordance with the principles of Section 4.3.4 above shall constitute FF&E Component Collateral hereunder and shall be subject to the lien priorities set forth in *Section 2.1* above.

4.4 Responsibility for Staying Informed. Each Credit Party and the Lenders on whose behalf it is acting shall be responsible for keeping themselves informed of the financial condition of the Company Group and all other circumstances bearing upon the risk of nonpayment of the FF&E Secured Obligations, the Bank Secured Obligations or the Second Mortgage Note Secured Obligations, as the case may be. Except as set forth in *Section 3.4* and *3.5*, no Credit Party shall have any duty to advise any other Credit Party of information regarding such condition or circumstances or as to any other matter. If any Credit Party or any Lender, in its sole discretion, undertakes at any time or from time to time to provide any such information to any other Credit Party or Lender it shall be under no obligation to provide any similar information on any subsequent occasion, to provide any additional information, or undertake any investigation, or to disclose any information which, pursuant to accepted or reasonable commercial finance practice, it wishes to maintain confidential.

5. Insolvency or Liquidation Proceedings.

5.1 Right to File Involuntary Bankruptcy. Except as set forth in *Section 3.5* with respect to the FF&E Agent and the FF&E Lenders during any Standstill Period, any Secured Party shall be entitled, at any time and upon its sole discretion, to initiate or join as a petitioning creditor in an involuntary Insolvency or Liquidation Proceeding against any Person within the Company Group.

5.2 Certain Agreements and Consents by the Project Credit Parties

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5.2.1 At no time shall the Project Credit Parties solely in their respective capacities as junior lienholders with respect to the FF&E Component Collateral:

(a)

oppose or otherwise contest any motion for relief from the automatic stay or from any injunction against foreclosure or enforcement of a lien upon the FF&E Component Collateral securing the FF&E Secured Obligations made by any holder of FF&E Secured Obligations in any Insolvency or Liquidation Proceeding;

- (b) oppose or otherwise contest any exercise by any holder of FF&E Secured Obligations of the right to credit bid any portion of the FF&E Component Secured Obligations at any sale in foreclosure of a lien upon the FF&E Component Collateral securing the FF&E Secured Obligations; or
- (c) oppose or otherwise contest any other request for judicial relief made in any court by any holder of FF&E Component Secured Obligations relating to the enforcement of any lien upon the FF&E Component Collateral securing such Obligations.

5.2.2 The Project Credit Parties will not assert or enforce any claim under §506(c) of the United States Bankruptcy Code with respect to their liens upon the FF&E Component Collateral securing the FF&E Secured Obligations for costs or expenses of preserving or disposing of any FF&E Component Collateral.

6. Default Payoff Option. The FF&E Agent hereby grants the Eligible Payor the right (without any obligation) to pay off in cash, at any time when an Event of Default has occurred and is continuing under the FF&E Facility Agreement, all, but not less than all, of the principal of and interest on all FF&E Component Secured Obligations outstanding at the time of payment. The pay off amount shall be equal to 100% of the principal amount and accrued interest outstanding on the FF&E Component Secured Obligations on the date of payment (including fees and interest accruing after the commencement of an Insolvency or Liquidation Proceeding at the rate provided for in the FF&E Facility Agreement (regardless of whether such item is an allowed claim under applicable law) and any costs of collection) plus all other FF&E Component Secured Obligations (including any LIBOR breakage costs but excluding any prepayment or acceleration penalty or premium) then unpaid. Upon receipt of such payment in cash, all commitments under the FF&E Facility shall terminate and the FF&E Agent and the FF&E Lenders shall release their liens on and security interests in the FF&E Component Collateral in accordance with *Section 2.5* above.

7. Representations and Warranties. Each Credit Party represents and warrants to each other Credit Party as follows:

7.1 Organization. It is duly organized and is validly existing under the laws of the jurisdiction under which it was organized with full power to execute, deliver, and perform this Agreement and consummate the transactions contemplated hereby.

7.2 Authorization. All actions necessary to authorize the execution, delivery and performance of this Agreement on behalf of such party have been duly taken, and all such actions continue in full force and effect as of the date hereof.

7.3 Binding Agreement. It has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid, and binding agreement of such party enforceable in accordance with its terms and subject to (a) applicable bankruptcy, reorganization, insolvency and moratorium laws, and (b) principles of equity, which may apply regardless of whether a proceeding is brought in law or in equity.

7.4 No Consent Required. To the best of its knowledge, no consent of any other party and no consent, license, approval, or authorization of, or exemption by, or registration or declaration or filing with, any governmental authority, bureau or agency is required in connection with the

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execution, delivery, or performance by such party of this Agreement or consummation by such party of the transactions contemplated by this Agreement.

7.5 No Conflict. None of the execution, delivery, and performance of this Agreement nor the consummation of the transactions contemplated by this Agreement will (a) violate or conflict with any provision of the organizational or governing documents, if any, of such party; (b) to the best of its knowledge, violate, conflict with, or result in the breach or termination of, or otherwise give any other contracting party the right to terminate, or constitute (or with notice or lapse of time, or both, would constitute) a default under the terms of any contract, mortgage, lease, bond, indenture, agreement, or other instrument to which such party is a party or to which any of its properties are subject; (c) to the best of its knowledge, result in the creation of any lien, charge, encumbrance, mortgage, lease, claim, security interest, or other right or interest upon the properties or assets of such party pursuant to the terms of any such contract, mortgage, lease, bond, indenture, agreement, franchise, or other instrument; (d) violate any judgment, order, injunction, decree, or award of any court, arbitrator, administrative agency, or governmental or regulatory body of which it has knowledge against, or binding upon such party or upon any of the securities, properties, assets, or business of such party; or (e) to the best of its knowledge, constitute a violation by such party of any statute, law, or regulation that is applicable to such party.

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8. Miscellaneous Provisions.

8.1 Notices; Addresses. Any communications among the Credit Parties hereto or notices herein to be given may be given to the following addressees:

| | |
|-----------------------|--|
| If to the Bank Agent: | Deutsche Bank Trust Company Americas 31 West 52 nd Street New York, New York 10019 Attn: George Reynolds Phone: (646) 324-2112 Fax: (646) 324-7450 |
|-----------------------|--|

| | |
|------------------------------|--|
| If to the Indenture Trustee: | Wells Fargo Bank, National Association, as Indenture Trustee MAC: N303-121 |
|------------------------------|--|

Corporate Trust Operations
6th & Marquette Avenue
Minneapolis, MN 55479
Attn: Michael Slade
Phone: (612) 667-0266
Fax: (612) 667-2160

If to the FF&E Agent

Wells Fargo Bank Nevada, National Association
c/o Wells Fargo Bank Northwest, National Association
299 South Main Street, 12th Floor
Salt Lake City, Utah 94111
Attn: Corporate Trust Services
MAC: U1228-120
Phone: (801) 246-5630
Fax: (801) 246-5053

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by reputable overnight delivery service, (c) in the event overnight delivery services are not readily available, if mailed by first class mail, postage prepaid, registered or certified with return receipt requested or (d) if sent by prepaid telex, or by telecopy with correct answer back received. Notice so given shall be effective upon receipt by the addressee, except that any communication or notice so transmitted by telecopy or other direct written electronic means shall be deemed to have been validly and effectively given on the day (if a Banking Day and, if not, on the next following Banking Day) on which it is validly transmitted if transmitted before 4 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; *provided, however*, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location by giving of no less than twenty (20) days' notice to the other parties in the manner set forth hereinabove.

8.2 Further Assurances. Each Credit Party (a) shall deliver to each other Credit Party, to the Disbursement Agent and to the Securities Intermediary such instruments, agreements, certificates and documents as any such Person may reasonably request to confirm the validity and priority of the liens on and security interests in the Collateral granted pursuant to the Security Documents as affected hereby, (b) shall fully cooperate with each other, with the Disbursement Agent and with the Securities Intermediary, and (c) shall perform all additional acts reasonably requested by any such Person to effect the purposes of this Agreement.

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8.3 Waiver. Any waiver, permit, consent or approval or any kind or character on the part of any of the Credit Parties under this Agreement or any waiver on the part of any of the Credit Parties of any provision or condition of this Agreement must be in writing and shall be effective only to the extent in such writing specifically set forth.

8.4 Entire Agreement. This Agreement and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof, all of which negotiations and writings are deemed void and of no force and effect. As among the Credit Parties, in the event of any conflict between the terms of this Agreement and the terms of the Disbursement Agreement, the terms of this Agreement shall control.

8.5 Governing Law. This Agreement shall be governed by the laws of the State of New York of the United States of America and shall for all purposes be governed by and construed in accordance with the laws of such state without regard to the conflict of law rules thereof other than *Section 5-1401* of the New York General Obligations Law.

8.6 Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the parties hereto shall enter into good faith negotiations to replace the invalid, illegal or unenforceable provision.

8.7 Headings. Section headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

8.8 Limitations on Liability. No claim shall be made by any Credit Party or any of its Affiliates against any other Credit Party, the Disbursement Agent, the Securities Intermediary or any of their respective Affiliates, directors, employees, attorneys or agents for any special, indirect, consequential or punitive damages (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or any act or omission or event occurring in connection therewith; and each Credit Party hereby waives, releases and agrees not to sue upon any such claim for any such special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

8.9 Consent to Jurisdiction. Any legal action or proceeding arising out of this Agreement may be brought in or removed to the courts of the State of New York, in and for the County of New York, or of the United States of America for the Southern District of New York. By execution and delivery of this Agreement, each Credit Party, accepts, for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts for legal proceedings arising out of or in connection with this Agreement and irrevocably consents to the appointment of the Prentice-Hall Corporation System Inc. as its agent to receive service of process in New York, New York. Nothing herein shall affect the right to serve process in any other manner including judicial or non-judicial foreclosure of real property interests which are part of the Collateral. Each Credit Party hereby waives any right to stay or dismiss any action or proceeding under or in connection with any or all of the Project, this Agreement or any other operative document brought before the foregoing courts on the basis of forum non-conveniens.

8.10 Successors and Assigns. The provision of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; *provided, however*, this Agreement shall terminate upon the earlier to occur of (a) Discharge of both the Bank Facility and the Second Mortgage Notes and (b) the Discharge of the FF&E Facility.

8.11 Counterparts. This Agreement may be executed in one or more duplicate counterparts and when signed by all of the Credit Parties listed below shall constitute a single binding agreement.

8.12 No Third Party Beneficiaries. Except for the Bank Lenders, the Second Mortgage Note Holders, the FF&E Agent, the FF&E Lenders, the Disbursement Agent and the Securities Intermediary, the Credit Parties do not intend the benefits of this Agreement to inure to the benefit of nor shall it be enforceable by any third party (including, without limitation, the Company or any of its Affiliates) nor shall this Agreement be construed to make or render any Credit Party liable to any third party (including, without limitation, the Company or any of its Affiliates) for the performance or failure to perform any obligations hereunder.

8.13 Refinancing; Amendment for New Credit Parties. Upon (a) any refinancing in whole or in part of any Facility or (b) if any Credit Party deems necessary, the incurring of other Indebtedness of the Company (subject in each case to the terms of this Agreement and the rights of the existing Credit Parties under their respective Financing Agreements with respect to any such refinancing or other Indebtedness), any such new lender shall be bound by the terms of this Agreement and each Credit Party hereby agrees to execute and deliver an amendment to this Agreement with such new lender, or an agent or trustee on its behalf, to make such Person a Credit Party hereunder. No more than one partial refinancing shall be permitted with respect to each Facility, it being understood however that once a Facility is partially refinanced, the foregoing limitation shall not apply to refinancings in whole of the parts so refinanced.

8.14 Trust Indenture Act. The parties do not intend that the provisions of this Agreement violate the requirements of the Trust Indenture Act of 1939, as amended.

8.15 Reinstatement. If the payment of any amount applied to any FF&E Component Secured Obligation is later avoided, rescinded (including by settlement of any claim for avoidance or rescission) or otherwise set aside, then:

- (a) to the fullest extent lawful, all claims for the payment of such amount as FF&E Component Secured Obligations and, to the extent securing such claims, all such liens upon such FF&E Component Collateral granted under the FF&E Security Documents will be reinstated and entitled to the benefits hereof, and
- (b) if a Discharge of the FF&E Facility became effective prior to such reinstatement, all obligations of the Project Credit Parties that were terminated as a result of such Discharge of the FF&E Facility shall be concurrently reinstated to the extent such claims and liens upon the FF&E Component Collateral granted under the FF&E Security Documents are reinstated, beginning on such date but prospectively only (and not retroactively), as though no FF&E Component Secured Obligations or liens upon such FF&E Component Collateral granted under the FF&E Security Documents had been outstanding at any time prior to such date and will remain effective until the claims for such amount are paid in full in cash.

8.16 Interaction with Project Lenders Intercreditor Agreement. As between the Bank Agent and the Indenture Trustee, nothing in this Agreement shall reduce, relieve or otherwise discharge the obligations of the Indenture Trustee, the Second Mortgage Note Holders, the Bank Agent and the Bank Lenders under the Project Lenders Intercreditor Agreement.

8.17 Attorneys' Fees. Unless paid by the Company Group, the prevailing party in any dispute or controversy hereunder shall be entitled to an award of its reasonable attorneys' fees.

[Signature Page Follows]

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IN WITNESS WHEREOF, the Credit Parties hereto have caused this Agreement to be executed by their respective officers or agents thereunto duly authorized as of the day and year first above written.

Bank Agent:

DEUTSCHE BANK TRUST COMPANY AMERICAS

By: /s/ LINDA WANG

Name: Linda Wang
Title: Vice President

Indenture Trustee:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
a national banking association

By: /s/ C. SCOTT NIELSEN

Name: C. Scott Nielsen
Title: Vice President

FF&E Agent:

By: /s/ C. SCOTT NIELSEN

Name: C. Scott Nielsen
Title: *Trust Officer*

QuickLinks

[INTERCREDITOR AGREEMENT \(FF&E\)](#)

INTERCREDITOR AGREEMENT
(Project Lenders)

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Bank Agent

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Indenture Trustee

October 30, 2002

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**INTERCREDITOR AGREEMENT
(Project Lenders)**

THIS INTERCREDITOR AGREEMENT is made as of October 30, 2002, by and among **DEUTSCHE BANK TRUST COMPANY AMERICAS**, as the Administrative Agent acting on behalf of itself and the Bank Lenders pursuant to the Bank Credit Agreement (in such capacity, the "**Bank Agent**"), and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association in its capacity as Trustee under the Second Mortgage Note Indenture (in such capacity, the "**Indenture Trustee**").

RECITALS:

A. The Project. Wynn Las Vegas, LLC, a Nevada limited liability company (the "**Company**"), proposes to develop, construct and operate the Le Reve Hotel Casino, a large-scale, hotel, casino, golf course and entertainment complex with related ancillary facilities, all as part of the redevelopment on the site of the former Desert Inn Resort & Casino.

B. The Bank Credit Facility. Concurrently herewith, the Company, the Bank Agent, the Bank Lenders and the other parties named therein have entered into the Bank Credit Agreement pursuant to which the Bank Lenders have agreed, subject to the terms thereof, to provide the Bank Credit Facility to the Company.

C. The Second Mortgage Note Indenture. Concurrently herewith, the Company, Wynn Las Vegas Capital Corp., certain guarantors named therein and the Indenture Trustee have entered into the Second Mortgage Note Indenture pursuant to which the Company and Wynn Las Vegas Capital Corp. will issue the Second Mortgage Note.

D. FF&E Facility. Concurrently herewith, the Company, the FF&E Agent and the FF&E Lenders have entered into the FF&E Facility Agreement pursuant to which the FF&E Lenders have agreed, subject to the terms thereof, to provide the FF&E Facility to the Company. The proceeds of the FF&E Facility will be used to acquire the FF&E Component and the Aircraft (as defined in the FF&E Facility Agreement).

E. Financing for the Project. The Company is financing the development of the Project, in part, with the proceeds of the Bank Credit Facility, the FF&E Facility and the Second Mortgage Note. In addition to certain other collateral and security interests:

(1) the Bank Credit Facility is secured (i) by a first priority lien on the Bank Proceeds Account Collateral and the Hotel/Casino Collateral, and (ii) by a second priority lien on the FF&E Component Collateral as more particularly described in *Section 2.1* and *Section 2.2* hereof;

(2) the Second Mortgage Note are secured (i) by a first priority lien on the Second Mortgage Note Proceeds Account Collateral, (ii) by a second priority lien on Hotel/Casino Collateral and (iii) by a third priority lien on the FF&E Component Collateral, as more particularly described in *Section 2.1* and *Section 2.2* hereof; and

(3) the FF&E Facility is secured by a first priority lien on the FF&E Collateral as defined and more particularly described in the FF&E Intercreditor Agreement.

F. Disbursement Agreement. The Company, the Bank Agent, the Indenture Trustee, the FF&E Agent and the Disbursement Agent, have entered into that Master Disbursement Agreement as of even date herewith (the "**Disbursement Agreement**"), in order to set forth, among other things, (a) the mechanics for and allocation of the Company's request for advances under the various Facilities and from the Company's Funds Account, (b) the conditions precedent to the initial advance and conditions precedent to subsequent advances, (c) certain common representations, warranties and covenants of the

Company in favor of the Funding Agents and (d) common Events of Default and remedies during construction of the Project.

G. Intercreditor Agreement. The Project Credit Parties desire to enter into this Agreement in order to set forth certain provisions relating to their respective rights in the Collateral, the exercise of remedies upon the occurrence of an event of default, the application of proceeds of enforcement and certain other matters.

NOW, THEREFORE, with reference to the foregoing recitals and in reliance thereon, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Project Credit Parties agree as follows:

1. Definitions and General Provisions.

1.1 Definitions. Except as otherwise expressed and provided herein, all capitalized terms used in this Agreement and its Exhibits and not otherwise defined herein shall have the meanings given to such terms in the Disbursement Agreement. Except as set forth herein, the rules of interpretations set forth

in Exhibit A to the Disbursement Agreement shall apply.

1.1.1 Other Terms. The following terms shall have the meanings set forth below:

"Account Collateral" or **"Accounts Collateral"** means, collectively, all of the Company Accounts (other than the FF&E Proceeds Account) and all amounts on deposit therein, any interest earned thereon, and any investments of such amounts made pursuant to the Collateral Account Agreements and any proceeds of the foregoing. When the term "Collateral" is used in conjunction with any of the foregoing accounts (e.g., the "Second Mortgage Notes Proceeds Account Collateral"), said Account Collateral means the specified account and all amounts on deposit therein, any interest earned thereon, and any investments of such amounts made pursuant to the applicable Collateral Account Agreement, and any proceeds of the foregoing *except* to the extent such proceeds are deposited into another account pursuant to the terms of the Disbursement Agreement or the Collateral Account Agreements.

"Agreement" has the meaning given in the preamble hereto.

"Bank Agent" means Deutsche Bank Trust Company Americas or its successor or assignee in its capacity as Administrative Agent under the Bank Credit Agreement.

"Bank Credit Facility" means, collectively, the delay draw term loan credit facility and the revolving credit facility (including the letter of credit facility thereunder) described and made available to Wynn Las Vegas by the Bank Lenders pursuant to the Bank Credit Agreement.

"Bank Financing Agreements" means the Bank Credit Agreement, the Bank Fee Letter, the FF&E Intercreditor Agreement, this Agreement, the Bank Security Documents and any other agreement, document or instrument entered into or delivered by a member of the Company Group on, prior to or after the Closing Date with or to the Bank Agent or the Bank Lenders in connection with the financing of the Project.

"Bank Financing Period" means the period commencing on the date of the initial Advance under the Bank Credit Facility and ending upon Discharge of the Bank Secured Obligations.

"Bank Lenders" means, collectively, (a) the Bank lenders pursuant to the Bank Credit Agreement and (b) the counterparties to Interest Rate Agreements (as defined in the Bank Credit Agreement) that are permitted to be secured by the Bank Security Documents, in each case, or their successors or assignees in such capacity as lenders or counterparties, as the case may be, under the Bank Credit Agreement.

"Bank Secured Obligations" means all Obligations of the Company Group to the Bank Agent and the Bank Lenders under the Bank Credit Facility, the Bank Security Documents and the other Bank

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Financing Agreements, including, without limitation, amounts paid by the Bank Lenders pursuant to the Default Pay Off Option under the FF&E Intercreditor Agreement and Obligations in respect of Interest Rate Agreements (as defined in the Bank Credit Agreement), but only to the extent that the Bank Credit Agreement permits such Interest Rate Agreement Obligations to be secured by the Bank Security Documents.

"Bankruptcy Law" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute and any other state or federal insolvency, reorganization, moratorium or similar law for the relief of debtors now or hereafter in effect.

"Blocking Event" means (a) the occurrence of an Event of Default under Section 8(a) of the Bank Facility Agreement (Payment Default) or (b) that the Bank Secured Obligations have become due and payable in full (whether at maturity, upon acceleration or otherwise).

"Collateral" means the following unique and separate categories of property encumbered to secure the Obligations to any of the Secured Lenders: (a) the Hotel/Casino Collateral, (b) the FF&E Collateral and (c) the Separate Proceeds Accounts Collateral.

"Company Group" means, collectively, the Company and any Affiliate of the Company that has incurred any Obligations or pledged any Collateral under any Financing Agreement.

"Credit Bid Rights" means, in respect of any order relating to a sale of assets in any Insolvency or Liquidation Proceeding, that:

- (a) such order grants the Second Mortgage Note Holders (individually and in any combination) the right to bid at the sale of such assets and the right to offset such Second Mortgage Note Holders' claims secured by liens upon such assets against the purchase price of such assets if:
 - (i) the bid of such Second Mortgage Note Holders is the highest bid or otherwise determined by the court to be the best offer at the sale; and
 - (ii) the bid of such Second Mortgage Note Holders includes a cash purchase price component payable at the closing of the sale in an amount that would be sufficient on the date of the closing of the sale to achieve the Discharge of the Bank Secured Obligations and to satisfy all liens entitled to priority over the liens securing the Bank Secured Obligations that attach to the proceeds of the sale, if such amount were applied on the date of the sale to the payment in cash of:
 - (A) all unpaid Bank Secured Obligations;
 - (B) all unpaid claims secured by any such liens entitled to priority over the liens securing the Bank Secured Obligations; and
 - (C) all claims and costs, including those incurred in connection with the sale by the Bank Agent or the Bank Lenders, required by such order to be paid from the proceeds of the sale in priority over the Bank Secured Obligations, whether or not the order requires or permits such amount to be so applied; and

(b) such order allows the claims of the Second Mortgage Note Holders in such Insolvency or Liquidation Proceeding to the extent required for the grant of such rights.

"**Default Purchase Option**" means the option granted to the Indenture Trustee on behalf of the Second Mortgage Note Holders pursuant to Section 6 hereof to purchase the Bank Secured Obligations.

"**Disbursement Agent**" means Deutsche Bank Trust Company Americas or its successor or assignee in its capacity as Disbursement Agent under the Disbursement Agreement.

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"**Disbursement Agreement Default**" means the occurrence and continuance of an Event of Default under, and as defined in, the Disbursement Agreement.

"**Disbursement Agreement Default Date**" the date upon which a Disbursement Agreement Default occurs.

"**Discharge**" means (a) in respect of the Bank Facility, the termination of all commitments to extend credit under the Bank Credit Facility, indefeasible payment in full in cash of the principal of and interest and premium (if any) on all Bank Secured Obligations, termination, cancellation or expiration of all letters of credit issued under the Bank Credit Facility and indefeasible payment in full in cash of all other Bank Secured Obligations that are unpaid at the time the principal and interest are indefeasibly paid in full in cash and (b) in respect of the Second Mortgage Note, indefeasible payment in full in cash of the principal of and interest and premium (if any) on all Second Mortgage Note Secured Obligations and indefeasible payment in full in cash of all other Second Mortgage Note Secured Obligations that are unpaid at the time the principal and interest are indefeasibly paid in full in cash.

"**Eligible Purchaser**" means any Person or Persons at any time or from time to time designated by the holders of at least 25% in outstanding principal amount of the Second Mortgage Note, voting as a single class, as entitled to exercise the Default Purchase Option.

"**Event of Default**" means, as the context requires, (i) a Disbursement Agreement Default, or (ii) the occurrence and continuance of an "Event of Default" by or with respect to the Company under the applicable Financing Agreement that has not been waived by the applicable Project Credit Party (it being understood that the provisions of Section 1.2 of this Agreement shall not apply to any such waiver).

"**Facility or Facilities**" means, as the context requires, any or all of the Bank Credit Facility and the Second Mortgage Note Proceeds.

"**Facility Agreements**" means, collectively, the Bank Credit Agreement and the Second Mortgage Note Indenture.

"**FF&E Component Collateral**" has the meaning given in the FF&E Intercreditor Agreement.

"**FF&E Financing Agreements**" means the FF&E Facility Agreement, the FF&E Security Documents and any other agreement, document or instrument entered into or delivered by a member of the Company Group on, prior to or after the Closing Date with or to the FF&E Agent or the FF&E Lenders in connection with the financing of the Project.

"**FF&E Secured Obligations**" means all Obligations of the Company Group to the FF&E Agent and the FF&E Lenders under the FF&E Facility Agreement, the FF&E Security Documents and the other FF&E Financing Agreements.

"**Guarantor**" shall have the meaning given in the Bank Credit Agreement.

"**Hotel/Casino Collateral**" means all real and personal property encumbered to secure the Bank Secured Obligations under the Bank Security Documents and the Second Mortgage Notes Secured Obligations under the Second Mortgage Notes Security Documents *other than* (i) the Separate Proceeds Accounts Collateral and (ii) the FF&E Collateral, *provided, however*, that after the release of any portion of the Hotel/Casino Collateral in accordance with the Bank Credit Agreement and the Second Mortgage Notes Indenture, the Hotel/Casino Collateral shall exclude such released Collateral.

"**Indenture Trustee**" means Wells Fargo Bank, National Association or its successor or assignee in its capacity as Trustee under the Second Mortgage Notes Indenture.

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"**Insolvency or Liquidation Proceeding**" means (1) any case commenced by or against the Company Group or any Person within the Company Group under any Bankruptcy Law, any other proceeding for the reorganization, recapitalization or adjustment or marshalling of the assets or liabilities of the Company Group or any Person within the Company Group, any receivership or assignment for the benefit of creditors relating to the Company Group or any Person within the Company Group or any similar case or proceeding relative to the Company Group or any Person within the Company Group or their creditors, as such, in each case whether or not voluntary; (2) any liquidation, dissolution, marshalling of assets or liabilities or other winding up of or relating to the Company Group or any Person within the Company Group, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency; or (3) any other proceeding of any type or nature in which substantially all claims of creditors of the Company Group or any Person within the Company Group are determined and any payment or distribution is or may be made on account of such claims.

"**Notice of Default**" means a notice of default which must be recorded in the official real property records of Clark County, Nevada, in order to commence non-judicial foreclosure of a Deed of Trust in accordance with applicable Nevada law.

"**Project Credit Parties**" means the Bank Agent and the Indenture Trustee.

"**Second Mortgage Notes Financing Agreements**" means the Second Mortgage Notes Indenture, the Second Mortgage Notes, the Disbursement Agreement, the FF&E Intercreditor Agreement, this Agreement, the Second Mortgage Notes Security Documents and any other agreement, document or instrument entered into or delivered by a member of the Company Group on, prior to or after the Closing Date with or to the Indenture Trustee or the Second Mortgage Note Holders in connection with the financing of the Project.

"**Second Mortgage Notes Secured Obligations**" means all Obligations of the Company Group under the Second Mortgage Notes Indenture, the Second Mortgage Notes, the Second Mortgage Notes Security Documents and the other Second Mortgage Notes Financing Agreements, including, without limitation, amounts paid by any Second Mortgage Note Holder pursuant to the Default Payoff Option under the FF&E Intercreditor Agreement.

"**Secured Lenders**" means the Bank Agent, the Bank Lenders, the Indenture Trustee and the Second Mortgage Note Holders.

"**Secured Obligations**" means the Bank Secured Obligations or the Second Mortgage Notes Secured Obligations, as the context requires.

"**Securities Intermediary**" means any entity acting in its capacity as Securities Intermediary under any Collateral Account Agreement.

"**Separate Proceeds Accounts Collateral**" means, collectively, the Second Mortgage Notes Proceeds Account Collateral and the Bank Proceeds Account Collateral.

1.2 Interpretation. To the extent that reference is made in this Agreement to any term defined in, or to any other provision of, any other agreement, such term or provision shall continue to have the original meaning thereof notwithstanding any termination, expiration or amendment of such other agreement; *provided, however*, that to the extent that the Disbursement Agreement or any other agreement to which all of the Project Credit Parties are parties is amended in accordance with the terms thereof and hereof, then any references herein to such terms and provisions of such document shall be to such terms or provisions as so amended.

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2. Collateral, Priority of Liens, Subordination and Release.

2.1 Liens and Security Interests. The Project Credit Parties agree that each Secured Lender shall have the benefit of the following liens on and security interests in the Collateral:

2.1.1 Collateral for Bank Secured Obligations. The Bank Secured Obligations shall be secured by (a) a first priority lien on and security interest in the Bank Proceeds Account Collateral and the Hotel/Casino Collateral and (b) subject to the lien and security interest of the FF&E Agent and FF&E Lenders in the FF&E Component Collateral, by a first priority lien on and security interest in the FF&E Component Collateral.

2.1.2 Collateral for Second Mortgage Notes Secured Obligations. The Second Mortgage Notes Secured Obligations shall be secured by (a) a first priority lien on and security interest in the Second Mortgage Notes Proceeds Account Collateral, (b) by a second priority lien on and security interest in the Hotel/Casino Collateral and (c) subject to the lien and security interest of the FF&E Agent and the FF&E Lenders in the FF&E Component Collateral, by a second priority lien on and security interest in the FF&E Component Collateral, which second priority liens and security interests described in clauses (b) and (c) above shall be subject and subordinate to the lien and security interest in the Hotel/Casino Collateral and the FF&E Component Collateral securing the Bank Secured Obligations.

2.2 FF&E Component Collateral. The Project Credit Parties acknowledge that pursuant to the FF&E Intercreditor Agreement, and subject to the terms and conditions thereof, the FF&E Agent and the FF&E Lenders shall, from and after the initial Advance under the FF&E Facility, have a first priority lien on and security interest in a portion or all of the FF&E Component Collateral. None of the rights or obligations of the FF&E Agent, the Bank Agent or the Indenture Trustee under the FF&E Intercreditor Agreement shall affect or otherwise modify the rights and obligations of the Bank Agent or the Indenture Trustee hereunder.

2.3 Separate Proceeds Accounts Collateral. The Second Mortgage Notes Proceeds Account Collateral secures only the Second Mortgage Notes Secured Obligations, and no other Project Credit Party shall have any liens thereon or any security interest therein. The Bank Proceeds Account Collateral secures only the Bank Secured Obligations, and no other Project Credit Party shall have any liens thereon or any security interest therein.

2.4 Confirmation of Liens. Each Project Credit Party hereto hereby confirms and agrees that the liens and security interests held by or for the benefit of each Secured Lender in the Collateral, as provided for in the preceding provisions of this *Section 2* shall secure all Obligations of the Company Group and any Person within the Company Group now or hereafter owing to each Secured Lender in connection with the applicable Facility throughout the term of this Agreement, in each case with the priority specified in *Section 2.1*, notwithstanding (a) the availability of any other collateral to any Secured Lender, (b) the actual date and time of execution, delivery, recording, filing and perfection of any of the Security Documents, or (c) the fact that any lien or security interest created by any of the Security Documents, or any claim with respect thereto, is or may be subordinated, avoided or disallowed in whole or in part under any Bankruptcy Law. All provisions of this Agreement, including but not limited to, all matters relating to the creation, validity, perfection, priority, subordination and release of the liens and security interests intended to be created by the Security Documents and all provisions regarding the allocation and priority of payments with respect to any Facility shall survive Insolvency or Liquidation Proceeding and be fully enforceable by and against each Project Credit Party hereto during any such proceeding. In the event of an Insolvency or Liquidation Proceeding, each Project Credit Party further confirms and agrees that the Obligations due and outstanding under and with respect to each Facility shall include all principal, additional advances permitted hereunder, Protective Advances made by such Project Credit Party, interest, default interest, LIBOR breakage and swap breakage, post petition

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interest and all other amounts due thereunder, for periods before and for periods after the commencement of any such proceedings, even if the claim for such amounts is disallowed pursuant to applicable law, and all proceeds from the sale or other disposition of the Collateral shall be paid to the Secured Lenders in the order and priority provided for in this *Section 2* notwithstanding the disallowance of any such claim or the invalidity or subordination of any lien on or security interest in the Collateral under applicable law.

3. Rights and Limitation of Actions With Respect to Collateral.

3.1 Rights and Limitations Applicable to Note Holders.

3.1.1 Subject to *Section 3.1.2* below, during the Bank Financing Period, the Indenture Trustee shall not, and shall not authorize or direct any Person acting for it, or any Second Mortgage Note Holder to exercise any right or remedy with respect to any Collateral (including any right of set-off) or take any action to enforce, collect or realize upon any Collateral, including, without limitation, any right, remedy or action to:

- (a) take possession of or control over any Collateral;
- (b) exercise any collection rights in respect of any Collateral;
- (c) exercise any right of set-off against any property subject to any lien securing the Bank Secured Obligations;
- (d) foreclose upon any Collateral or take or accept any transfer of title in lieu of foreclosure upon any Collateral;
- (e) enforce any claim to the proceeds of insurance upon any Collateral;
- (f) deliver any notice, claim or demand relating to the Collateral to any Person (including any securities intermediary, depository bank or landlord) in the possession or control of any Collateral or acting as bailee, custodian or agent for the Bank Agent or any Bank Lender in respect of any Collateral;
- (g) otherwise enforce any remedy available upon default for the enforcement of any lien upon the Collateral, including any Exercise of Remedies during the Standstill Period (each, as defined in the FF&E Intercreditor Agreement);
- (h) deliver any notice or commence any proceeding for any of the foregoing purposes;
- (i) seek relief in any Insolvency or Liquidation Proceeding permitting it to do any of the foregoing; or
- (j) subject to *Section 3.2.3* below, retain any proceeds of accounts and other obligations receivable paid to it directly by any account debtor.

3.1.2 Notwithstanding *Section 3.1.1* above, any right or remedy set forth in clauses (a) through (j) thereof may be exercised and any such action may be taken, authorized or instructed:

- (a) if all the Bank Secured Obligations are purchased by a Person entitled to purchase the outstanding Bank Secured Obligations upon exercise of the Default Purchase Option;
- (b) as necessary to redeem any Collateral in a creditor's redemption permitted by law or to deliver (subject to the prior Discharge of the Bank Secured Obligations) any notice or demand necessary to enforce any right to claim, take or receive proceeds of Collateral remaining after the Discharge of the Bank Secured Obligations in the event of foreclosure or other enforcement of any lien securing the Bank Secured

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Obligations, so long as the enforcement of any such lien securing the Bank Secured Obligations is not adversely affected or delayed;

- (c) in respect of the Second Mortgage Notes Proceeds Collateral;
- (d) as necessary to perfect a lien upon any Collateral by any method of perfection except through possession or control;
- (e) subject to all the other provisions of this Agreement, as necessary to prove (but not enforce) the liens securing the Second Mortgage Notes Secured Obligations or as necessary to preserve or protect (but not enforce) the liens securing the Second Mortgage Notes Secured Obligations in any manner that is not adverse to the grant, perfection, priority or enforcement of liens securing the Bank Secured Obligations and does not adversely affect or delay any exercise or enforcement of the rights and remedies of the Bank Agent and the Bank Lenders; or
- (f) after obtaining the prior written consent of the Bank Agent, which consent shall be subject to the Bank Agent's sole discretion.

3.1.3 Nothing in this Agreement or any other Financing Agreement shall:

- (a) impair as between the Company Group and the Second Mortgage Note Holders, the obligation of the Company and all guarantors within the Company Group, which is absolute and unconditional, to pay principal of, premium and interest and Liquidated Damages (as defined in the Second Mortgage Notes Indenture), if any, on the Second Mortgage Notes in accordance with their terms or any other obligation of the Company or any other Person within the Company Group under the Mortgage Note Financing Agreements;
- (b) affect the relative rights of the Second Mortgage Note Holders vis a vis creditors of the Company (other than the Bank Agent and the Bank Lenders); or
- (c) restrict the right of the Second Mortgage Note Holders to sue for payments that are then due and owing, exercise remedies against the Second Mortgage Notes Proceeds Collateral or accelerate the Second Mortgage Notes Secured Obligations; or

- (d) prevent the Indenture Trustee or any Second Mortgage Note Holder from exercising any rights or remedies they may have against the Company or any Person within the Company Group, subject to the rights of the Bank Agent and the Bank Lenders hereunder and the Obligations of the Indenture Trustee and the Second Mortgage Note Holders hereunder.

3.2 Rights and Limitations Applicable to the Banks.

3.2.1 Subject to Sections 3.2.2 and 3.2.3 below, at all times during the Bank Financing Period the Bank Agent and the Bank Lenders shall have the exclusive right to manage, perform and enforce the terms of the Bank Security Documents with respect to all Collateral (other than the Second Mortgage Notes Proceeds Collateral) and to exercise and enforce all privileges and rights thereunder according to their discretion and exercise of their business judgment, including, without limitation, the exclusive right to take the actions enumerated in clauses (a) through (j) of Section 3.1.1 above. Without limiting the generality of the foregoing, (except with respect to the Second Mortgage Notes Proceeds Collateral) at all times during the Bank Financing Period:

- (a) the Bank Agent will have the sole right to adjust settlement of all insurance claims and condemnation awards in the event of any covered loss, theft or destruction or

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condemnation of any Collateral and all claims under insurance constituting Collateral;

- (b) subject to Section 5.21 of the Disbursement Agreement, all proceeds of insurance on or constituting Collateral and all condemnation awards resulting from a taking of any Collateral will inure to the benefit of, and will be paid to, the Bank Agent and the Bank Lenders;
- (c) the Bank Agent shall have the sole right to enforce the provisions of the FF&E Intercreditor Agreement against the FF&E Agent (provided that the Second Mortgage Note Holders or any of them may exercise the Default Payoff Option as defined and subject to the terms of the FF&E Intercreditor Agreement); and
- (d) the Indenture Trustee will cooperate, if necessary and as reasonably requested by the Bank Agent, in effecting the payment of insurance proceeds to the Bank Agent as described above.

In connection therewith, each of the Indenture Trustee and the Second Mortgage Note Holders waives any and all rights to affect the method or challenge the appropriateness of any action by the Bank Agent and the Bank Lenders and subject to Sections 3.2.2. and 3.2.3 below, hereby consents to each of the Bank Agent and the Bank Lenders exercising or not exercising such rights and remedies as if no lien securing the Second Mortgage Notes Secured Obligations existed, except only that the Indenture Trustee and the Second Mortgage Note Holders reserve all rights granted by law (i) to request or receive notice of any sale of Collateral in foreclosure of any Lien securing the Bank Secured Obligations and (ii) to redeem any Collateral or enforce any right to claim, take or receive proceeds of Collateral remaining after the Discharge of the Bank Secured Obligations as provided in Section 3.1.2(b).

3.2.2 Notwithstanding Section 3.2.1 above, if (a) the Bank Agent shall at any time record a Notice of Default in respect of an Event of Default under the Bank Credit Agreement and (b) on the date of such recordation the aggregate outstanding amount of Bank Secured Obligations is no greater than \$100,000,000, then neither the Bank Agent nor the Bank Lenders shall be entitled to complete a foreclosure against or other realization upon any portion of the Collateral that is material or essential to the construction or operation of the Project earlier than 180 days after the Bank Agent provides to the Indenture Trustee the notice contemplated in Section 3.3 in respect of such Event of Default. For purposes of the foregoing, the Project Credit Parties agree that neither the Phase II Land nor the equity interests in any Person within the Company Group that have been pledged to secure the Bank Secured Obligations shall at any time be deemed to be material or essential to the construction or operation of the Project.

3.2.3 (a) Notwithstanding Sections 3.1.1(c) and 3.2.1 above, the Indenture Trustee and the Second Mortgage Notes Holders shall be permitted to receive and retain, free from any liens or security interests in favor of the Bank Agent or the Bank Lenders, any and all payments made thereto by or on behalf of the Company Group or any Person within the Company Group, other than:

- (i) payments which are made during the Bank Financing Period in breach of any provision of the Bank Credit Agreement or Bank Security Documents;
- (ii) Payment of amounts during the Bank Financing Period which constitute proceeds from the sale, transfer or other disposition of any Collateral or proceeds from any insurance policy or condemnation settlement or award, in each case, in respect of any Collateral;

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- (iii) payments obtained or received during the Bank Financing Period in connection with or as a result of any breach of Section 3.1(a) through (i) above; and
 - (iv) payments obtained or received during the Bank Financing Period (A) at any time after the Indenture Trustee has received written notice (and prior to the rescission of such notice) that a Blocking Event has occurred or (B) at any time after the commencement of an Insolvency or Liquidation Proceeding in respect of the Company Group or any Person within the Company Group.

The foregoing clauses (i) through (iv) shall not, however, prohibit payments to the Second Mortgage Note Holders consisting of Second Mortgage Notes Collateral. Any payment received by the Indenture Trustee or any Second Mortgage Note Holder (including, without limitation, payments and prepayments made for application against the Second Mortgage Notes Secured Obligations and all other payments and deposits made pursuant to any provision of the Second Mortgage Notes Indenture or any Second Mortgage Notes Security Documents) during the Bank Financing Period in violation of any of clauses (i) through (iv) above shall be held in trust for the benefit of the Bank Agent and the Bank Lenders and shall be turned over to the Bank Agent promptly upon the Bank Agent's request.

(b) Notwithstanding Section 3.2.1, from and after the occurrence of an Event of Default under the Bank Facility Agreement but so long as a Blocking Event has not occurred, the Bank Agent may seize control of the Accounts and the Accounts Collateral and issue instructions to the Disbursement Agent or any Securities Intermediary under any Collateral Account Agreement with respect to the Accounts and the Accounts Collateral (other than the Second Mortgage Notes Proceeds Collateral), provided that in such circumstances the Bank Agent (i) may not apply the Accounts Collateral against Bank Secured Obligations which have not become due and payable and (ii) may not restrict or prohibit the Company (or the Disbursement Agent or Securities Intermediary acting at the request of the Company) from (A) using Project revenues from and after the Opening Date to pay costs and expenses necessary or appropriate, in the reasonable judgment of the Bank Agent, to continue to operate the Project in the ordinary course or (B) using Project revenues to pay scheduled debt service in respect of the Bank Secured Obligations, the Second Mortgage Notes Secured Obligations or the FF&E Secured Obligations. None of the foregoing limitations on the Bank Agent's rights and remedies shall apply from and after the occurrence and during the continuance of a Blocking Event. In addition, in the event that pursuant to Section 7.27 of the Bank Credit Agreement, amounts on deposit in the Project Liquidity Reserve Account are permitted to be used to pay Debt Service on the Second Mortgage Notes, the Bank Agent shall upon receipt of a Note Debt Service Shortfall Notice from the Indenture Trustee, so long as no Blocking Event has occurred and is continuing, cause funds to be released from the Project Liquidity Reserve Account and paid to the Indenture Trustee in the amount set forth in the Note Debt Service Shortfall Notice or, if less, the amount permitted to be used for such purpose pursuant to Section 7.27 of the Bank Credit Agreement.

3.3 Notification of Events of Default. Each Credit Party hereby agrees, for the benefit of the other Credit Party, to use best efforts to provide written notice to such other Credit Party within 10 Business Days after obtaining actual knowledge of the occurrence or assertion of an Event of Default under their respective Facilities. Neither Credit Party shall have any liability to the other for failing to provide any such notice, but such release from liability shall not affect the Bank Agent's and the Bank Lenders' obligation under Section 3.2.2 above.

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3.4 Certain Waivers by Note Holders. To the fullest extent permitted by law, the Indenture Trustee and the Second Mortgage Note Holders waive and agree not to assert or enforce at any time during the Bank Financing Period:

- (a) any right of subrogation to the rights or interests of the Bank Agent or the Bank Lenders or any claim or defense based upon impairment of any such right of subrogation;
- (b) any right of marshalling accorded to a junior lienholder, as against a priority lienholder, under equitable principles; and
- (c) any statutory right of appraisal or valuation accorded to a junior lienholder in a proceeding to foreclose a senior lien,

in each case, that otherwise may be enforceable in respect of any lien securing the Second Mortgage Notes Secured Obligations as against the Bank Agent or the Bank Lenders.

4. Rights and Limitations with Respect to Amendments, Waivers and Other Actions Under Facility Agreements.

4.1 Rights and Limitations Applicable to Note Holders. Prior to the Discharge of the Bank Secured Obligations, the Indenture Trustee will not enter into, and the Second Mortgage Note Holders will not authorize or direct, any amendment of or supplement to any Second Mortgage Notes Security Document relating to any Collateral that would make such Second Mortgage Notes Security Document inconsistent in any material respect with the comparable provisions of the Bank Security Document upon such Collateral. No such amendment or supplement will be enforceable. For purposes of the foregoing, (a) no inconsistency reflected in the Second Mortgage Notes Security Documents delivered at the time of the issuance of the Second Mortgage Notes, as compared with the corresponding provisions of the comparable Bank Security Document then in effect, will be subject to the provisions of this Section and (b) subject to clause (a) above, any provision granting rights or powers to the Indenture Trustee or any Second Mortgage Note Holder that are not granted to the Bank Agent and the Banks will constitute a material inconsistency.

4.2 Rights and Limitations Applicable to the Banks.

4.2.1 The Bank Agent and the Bank Lenders may at any time and from time to time, without the consent of or notice to the Indenture Trustee or any Second Mortgage Note Holder, without incurring any responsibility or liability to the Indenture Trustee or any Second Mortgage Note Holder and without in any manner prejudicing, affecting or impairing the ranking or priority of the liens and the security interests in the Collateral created by the Bank Security Documents or the rights and obligations of the Project Credit Parties hereunder:

- (a) make loans and advances to the Company Group or any Person within the Company Group or issue, guaranty or obtain letters of credit for account of the Company Group or any Person within the Company Group or otherwise extend credit to the Company Group or any Person within the Company Group in any amount (subject to the provisions of the Second Mortgage Notes Indenture relating to the maximum amount of first priority lien indebtedness) and on any terms, whether pursuant to a commitment or as a discretionary advance and whether or not any Default or Event of Default or failure of condition is then continuing;
- (b) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, compromise, accelerate, extend or, subject to Section 8.13 hereof, refinance, any Bank Secured Obligations or any agreement, guaranty, lien or obligation of the Company Group or any Person within the Company Group or any other Person in any manner related thereto, or otherwise amend, supplement or change in any manner any Bank Secured Obligations or liens securing Bank Secured

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Obligations or any such agreement, guaranty, lien or obligation; provided that notwithstanding any other provision herein to the contrary, the Bank Agent and the Bank Lenders may not amend Section 7.27 of the Bank Credit Agreement;

- (c) increase or reduce the amount of any Bank Secured Obligation (subject to the provisions of the Second Mortgage Notes Indenture relating to the maximum amount of the first priority lien indebtedness) or the interest, premium, fees or other amounts payable in

respect thereof;

- (d) release or discharge any Bank Secured Obligation or any guaranty thereof or any agreement or obligation of the Company Group or any Person within the Company Group or any other Person with respect thereto;
- (e) take or fail to take any first priority lien or any other collateral security for any Bank Secured Obligation or take or fail to take any action which may be necessary or appropriate to ensure that any lien securing a Bank Secured Obligation or any other lien upon any property is duly enforceable or perfected or entitled to priority as against any other lien or to ensure that any proceeds of any property subject to any lien are applied to the payment of any Bank Secured Obligation or any other obligation secured thereby;
- (f) release, discharge or permit the lapse of any or all liens securing a Bank Secured Obligation or any other liens upon any property at any time;
- (g) exercise or enforce, in any manner, order or sequence, or fail to exercise or enforce, any right or remedy against the Company or any Guarantor or any collateral security or any other Person or property in respect of any Bank Secured Obligation or any lien securing any Bank Secured Obligation or any right or power under the Bank Security Documents and hereunder and apply any payment or proceeds of collateral in any order of application; or
- (h) sell, exchange, release, foreclose upon or otherwise deal with any property that may at any time be subject to any lien securing any Bank Secured Obligation.

4.2.2 No (a) exercise, delay in exercising or failure to exercise any right arising under the Bank Security Documents or this Agreement, (b) act or omission of the Bank Agent or any Bank Lender in respect of the Company Group or any Person within the Company Group or any other Person or any collateral security for any Bank Secured Obligation or any right arising under the Bank Security Documents and hereunder, (c) change, impairment, or suspension of any right or remedy of the Bank Agent or any Bank Lender, or (d) other act, failure to act, circumstance, occurrence or event, including, without limitation, the acts listed in *Section 4.2.1* above, which, but for this provision, would or could act as a release or exoneration of the agreements or obligations of the Indenture Trustee or any Second Mortgage Note Holder hereunder shall in any way affect, decrease, diminish or impair any of such agreements or obligations, including, without limitation, the lien subordination provisions and the standstill obligations set forth in *Sections 2.1* and *3.1* hereof.

4.2.3 No amendment, supplement, waiver or change otherwise permitted by the Second Mortgage Notes Indenture in respect of the Bank Security Documents will be prohibited or in any manner restricted or affected by, or by reason of, the provisions of this Agreement.

4.3 Waivers and Deferrals of Payments. Any Project Credit Party may, without the consent of the other Project Credit Parties, defer any payments due under its Facility or waive any provisions thereof.

4.4 Waivers and Amendments Binding on Note Holders.

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4.4.1 The Project Credit Parties agree that from and after the Initial Advance under the Bank Facility the Bank Agent shall have the exclusive right, without the consent of the Indenture Trustee (but subject to any right of the FF&E Agent to consent to such amendment or waiver to the extent such consent is required under the Disbursement Agreement and/or the FF&E Intercreditor Agreement), to amend the Disbursement Agreement or to waive any Default or Event of Default by or with respect to the Company or any Person within the Company Group under the Disbursement Agreement (*i.e.*, any Potential Event of Default or Disbursement Agreement Default), *provided, however*, that without the consent of the holders of a majority (in aggregate principal amount) of the Second Mortgage Notes, (a) such waiver of a Disbursement Agreement Default must be made not later than one hundred eighty (180) days following the applicable Disbursement Agreement Default Date, (b) the Bank Agent shall not waive any default or event of default which otherwise independently (not by cross-default or cross-reference to another agreement) constitutes a default or event of default under the Second Mortgage Notes Indenture, (c) the Bank Agent shall not amend the definition of or the conditions or circumstances requiring a Required Scope Change Approval and shall not waive any default or event of default resulting from, or any condition relating to, implementation of a Scope Change for which a Required Scope Change Approval is required pursuant to *Section 6.2.1* of the Disbursement Agreement or (d) amend or waive any default or event of default under *Sections 7.12* or *7.1.11* of the Disbursement Agreement ("In Balance" and "Project Completion Date") or amend or waive any provision so as to effect an amendment or waiver of such Sections.

4.4.2 The Project Credit Parties agree that from and after the initial Advance under the Bank Facility, without the consent of any Indenture Trustee, any amendment, waiver or consent agreed to, upon any terms and conditions, by, on the one hand, the Company Group or any Person within the Company Group that is party to a Bank Security Document and, on the other hand, the Bank Agent, in respect of any provision of any Bank Security Document, will automatically apply, on the same terms and subject to the same conditions to the corresponding provision of the comparable Mortgage Note Security Document. Such application to the Second Mortgage Notes Security Documents shall become effective upon the delivery by the Bank Agent of written notice of such amendment, waiver or consent, and the terms and conditions thereof, to the Indenture Trustee, if the notice states that such amendment, waiver or consent has become effective as to such agreement and is, pursuant to this Section 4.4.2 likewise effective as to the corresponding provision of the comparable Mortgage Note Security Document; *provided, however*, that no amendment, waiver or consent of a Bank Security Document which effects or relates to a release of lien shall apply to or otherwise amend or affect any Second Mortgage Notes Security Document. Any such amendment, waiver or consent need not otherwise be confirmed by the Indenture Trustee or any Second Mortgage Note Holder in order to be effective.

4.5 Limitation of Liability

4.5.1 Except as expressly set forth herein, none of the Bank Agent or any Bank Lender will have any duty, express or implied, fiduciary or otherwise, to the Indenture Trustee or any Second Mortgage Note Holder.

4.5.2 To the maximum extent permitted by law, each of the Indenture Trustee and each Second Mortgage Note Holder waives any claim it may have against the Bank Agent or any Bank Lender with respect to or arising out of any action or failure to act or any error of judgment or

of their respective directors, officers, employees or agents will be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so, except to the extent arising out of the gross negligence or willful misconduct of the Bank Agent or any such Bank Lender or any of their respective directors, officers, employees or agents, or will be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Person within the Company Group or upon the request of any Second Mortgage Note Holder or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof.

4.5.3 The Bank Agent and the Bank Lenders, on the one hand, and the Indenture Trustee and the Second Mortgage Note Holders, on the other hand, shall each be responsible for keeping themselves informed of the financial condition of the Company Group and all other circumstances bearing upon the risk of nonpayment of the Bank Secured Obligation or Second Mortgage Notes Secured Obligations, as the case may be. Except as set forth in *Section 3.3*, the Bank Agent and the Bank Lenders shall have no duty to advise the Indenture Trustee or any Second Mortgage Note Holder of information regarding such condition or circumstances or as to any other matter. If the Bank Agent or any Bank Lender, in its sole discretion, undertakes at any time or from time to time to provide any such information to the Indenture Trustee or any Second Mortgage Note Holder it shall be under no obligation to provide any similar information on any subsequent occasion, to provide any additional information, or undertake any investigation, or to disclose any information which, pursuant to accepted or reasonable commercial finance practice, it wishes to maintain confidential.

5. **Insolvency or Liquidation Proceedings**

5.1 Right to file Involuntary Bankruptcy. Notwithstanding any other provision of this Agreement to the contrary, any Secured Lender shall be entitled, at any time and upon its sole discretion, to initiate or join as a petitioning creditor in an involuntary Insolvency or Liquidation Proceeding against any Person within the Company Group.

5.2 Certain Agreements and Consents by Note Holders.

5.2.1 At no time during the Bank Financing Period shall the Indenture Trustee or any Second Mortgage Note Holder:

- (a) request judicial relief in an Insolvency or Liquidation Proceeding or in any other court, that would hinder, delay, limit or prohibit the exercise or enforcement of any right or remedy otherwise available to the holders of Bank Secured Obligations that would limit, invalidate, avoid or set aside any lien securing the Bank Secured Obligations or Bank Security Document or subordinate the lien securing the Bank Secured Obligations to the liens securing the Second Mortgage Notes Secured Obligations (other than in respect of the Second Mortgage Notes Proceeds Collateral) or grant the lien securing the Second Mortgage Notes Secured Obligations (other than in respect of the Second Mortgage Notes Proceeds Collateral) equal ranking to the liens securing the Bank Secured Obligations;
- (b) oppose or otherwise contest any motion for relief from the automatic stay or from any injunction against foreclosure or enforcement of lien securing the Bank Secured Obligations made by any holder of Bank Secured Obligations in any Insolvency or Liquidation Proceeding;
- (c) oppose or otherwise contest any exercise by any holder of Bank Secured Obligations of the right to credit bid Bank Secured Obligations at any sale in foreclosure of lien securing the Bank Secured Obligations; or

- (d) oppose or otherwise contest any other request for judicial relief made in any court by any holder of Bank Secured Obligations relating to the enforcement of any lien securing the Bank Secured Obligations.

5.2.2 If, in any Insolvency or Liquidation Proceeding during the Bank Financing Period, the Bank Agent and the Bank Lenders:

- (a) consent to any order for use of cash collateral for payment (i) of expenses reasonably necessary or appropriate for the conduct of the Project or for the preservation of the Collateral, (ii) debt secured by liens upon the Collateral that are senior to the liens securing the Second Mortgage Notes Secured Obligations or (iii) administrative expenses arising in connection with the Insolvency or Liquidation Proceeding;
- (b) consent to any order granting any priming lien, replacement lien, cash payment or other relief on account of Bank Secured Obligations as adequate protection (or its equivalent) for the interests of the Bank Agent and the Bank Lenders in property subject to the liens securing the Bank Secured Obligations in connection with any order for use of cash collateral; or
- (c) consent to any order relating to any sale of assets of any Person within the Company Group and providing, to the extent the sale is to be free and clear of liens, that all such liens shall attach to the proceeds of the sale, and, in connection therewith, consent to and support before the court any request for Credit Bid Rights made by the Indenture Trustee or any Second Mortgage Note Holder (except that the Bank Agent and Bank Lenders need not admit, consent to or support any valuation of the Collateral alleged in support of the allowance of any secured claim based upon the liens securing the Second Mortgage Notes Secured Obligations),

then, so long as the Bank Agent and the Bank Lenders do not oppose or otherwise contest any request made by the Indenture Trustee or any Second Mortgage Note Holder (which may be made only if, pursuant to any such order, the Bank Agent and the Bank Lenders are, or are to be,

granted a lien upon any property) for the grant to the Indenture Trustee, for the benefit of the Second Mortgage Note Holders and as adequate protection (or its equivalent) for the Indenture Trustee's interest in the Collateral pursuant to the liens securing the Second Mortgage Notes Secured Obligations of a junior lien upon such property that is co-extensive in all respects with, but subordinated (as set forth herein) in all respects to, all liens securing the Bank Secured Obligations upon such property and any such lien granted to the Bank Agent and the Bank Lenders pursuant to such order, the Indenture Trustee and the Second Mortgage Note Holders will not oppose or otherwise contest the entry of such order, except that any such order relating to a sale of assets may be opposed or otherwise contested by them (x) as necessary to secure the grant of Credit Bid Rights or (y) based on any ground that may be asserted by a holder of unsecured claims (but not except for Credit Bid Rights, on any grounds arising from or relating to any lien securing the Second Mortgage Notes Secured Obligations or any secured claim or secured creditor rights based on any lien securing the Second Mortgage Notes Secured Obligations).

5.2.3 If, in any Liquidation or Insolvency Proceeding, debt obligations of the reorganized debtor secured by liens upon any property of the reorganized debtor are distributed pursuant to a plan of reorganization or similar dispositive restructuring plan, both on account of the Bank Secured Obligations and on account of the Second Mortgage Notes Secured Obligations, then, to the extent the debt obligations distributed on account of the Bank Secured Obligations and on account of the Second Mortgage Notes Secured Obligations are secured by liens upon the same property, the provisions of this Agreement will survive the distribution of

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such debt obligations pursuant to such plan and will apply with like effect to the liens securing such debt obligations.

5.2.4 The Indenture Trustee and the Second Mortgage Note Holders will not assert or enforce, at any time during the Bank Financing Period, any claim under §506(c) of the United States Bankruptcy Code with respect to the liens securing the Bank Secured Obligations for costs or expenses of preserving or disposing of any Collateral.

5.2.5 If, for purposes of valuation of the secured claims of the Bank Agent and Bank Lenders in any Insolvency or Liquidation Proceeding, the Bank Agent and Bank Lenders determine, and the Bank Agent notifies the Indenture Trustee, that the Collateral should be valued as of any particular time in the period from the date of commencement of such Insolvency or Liquidation Proceeding to the date of confirmation of any plan of reorganization or other dispositive restructuring plan therein, then the Indenture Trustee and the Second Mortgage Note Holders shall not oppose or otherwise contest that the date as of which such secured claims should be valued is the date chosen by the Bank Agent and Bank Lenders, but the Indenture Trustee and the Second Mortgage Note Holders shall remain free (a) to contest without any restriction any valuation claimed or asserted by the Bank Agent or the Bank Lenders as of such date and (b) to assert and seek relief determining that the Collateral should be valued at another date if a valuation at the other date would have the effect of placing a higher value upon the Collateral, taken as a whole. Notwithstanding the foregoing, the Indenture Trustee and the Second Mortgage Note Holders shall not have the right to assert the lack of adequate protection of their liens or the collateral securing the Second Mortgage Notes as a basis for opposing a motion or other relief sought in any Insolvency or Liquidation Proceeding and approved by the Bank Lenders.

5.2.6 If, in connection with the approval by creditors of any plan of reorganization or other dispositive restructuring plan in any Insolvency or Liquidation Proceeding, either:

- (a) secured claims based upon the Second Mortgage Notes Secured Obligations and secured claims based upon the Bank Secured Obligations are classified in the same class of secured claims; or
- (b) secured claims based upon the Second Mortgage Notes Secured Obligations are classified in a separate class from secured claims based upon the Bank Secured Obligations and are treated under such plan as an impaired secured class, and such plan could not lawfully be confirmed or approved by the court in such Insolvency or Liquidation Proceeding unless the class of secured claims based upon the Second Mortgage Notes Secured Obligations votes, as a class, to accept such plan,

then the holders of secured claims based upon the Second Mortgage Notes Secured Obligations shall not vote such secured claims to accept such plan if: (i) the Bank Agent notifies the holders of such secured claims (in such manner and to such Person at such addresses as the Indenture Trustee may direct), at least 10 Business Days before ballots are due in the voting on such plan, that fewer than the holders of two-thirds in amount of secured claims based upon the Bank Secured Obligations will vote, as a separate class (or as if they were a separate class), to accept such plan, (ii) such notice is not withdrawn by the Bank Agent by written notice to the Indenture Trustee or the Second Mortgage Note Holders and (iii) such plan is not accepted by the holders of secured claims based upon the Bank Secured Obligations voting as a separate class (or as if they were a separate class).

The Indenture Trustee shall provide the Bank Agent with such information as may be available to the Indenture Trustee as to the names and notice addresses of the holders of secured claims based upon the Second Mortgage Notes. The notice described in clause (i) of

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the preceding paragraph shall be conclusively deemed sufficiently given if mailed by ordinary mail, postage prepaid, to such names and addresses. No ballot voting a secured claim based upon the Second Mortgage Notes Secured Obligations shall be delivered in respect of any such plan by any holder of secured claims based upon the Second Mortgage Notes Secured Obligations prior to the last date on which the notice described in clause (i) may be given by the Bank Agent. Any ballot cast in violation of this section will be invalid.

5.3 **Avoidance of Bank Secured Obligations in Bankruptcy.** If (a) any lien securing a Bank Secured Obligation is avoided in any Insolvency or Liquidation Proceeding, (b) by reason of such avoidance, there is a resultant reduction (a "**Bank Secured Claim Reduction**") in the amount of the secured claims (without regard to unsecured claims) that, but for such avoidance, would have been allowed in such Insolvency or Liquidation Proceeding on account of claims based upon Bank Secured Obligations, and (c) a distribution is made in such Insolvency or Liquidation Proceeding on account of secured claims (without regard to any unsecured claims) based upon Second Mortgage Notes Secured Obligations, whether such distribution is made in

cash, securities or otherwise, or the Indenture Trustee receives any proceeds from the foreclosure or other enforcement of the liens securing the Second Mortgage Notes Secured Obligations (such distribution or receipt specifically excluding, however, any distribution or receipt in respect of the Second Mortgage Notes Proceeds Collateral, a "**Mortgage Note Recovery**"), then a portion of such Mortgage Note Recovery (the "**Shareable Recovery**") determined by multiplying:

- (i) a percentage by dividing (A) the aggregate amount allowed in such Insolvency or Liquidation Proceeding on account of all unsecured claims based upon Bank Secured Obligations (after giving effect to such avoidance) by (B) the aggregate amount allowed in such Insolvency or Liquidation Proceeding on account of all unsecured claims based upon Bank Secured Obligations (after giving effect to such avoidance) and all secured and unsecured claims based upon Second Mortgage Notes Secured Obligations; *by*
- (ii) the lesser of (A) the amount of such Bank Secured Claim Reduction and (B) the amount of such Mortgage Note Recovery,

shall be received and held by the Indenture Trustee subject to an option, exercisable solely by the Bank Agent by written notice delivered to the Indenture Trustee no later than the 20th Business Day after the latest of:

- (1) the date on which such Mortgage Note Recovery is received;
- (2) the date on which the amount (if any) of secured claims and unsecured claims based on the Bank Secured Obligations and the Second Mortgage Notes Secured Obligations are allowed in such Insolvency or Liquidation Proceeding; and
- (3) the date on which the amount of such Bank Secured Claim Reduction is determined,

to exchange the Shareable Recovery (in the form received, with any interest accrued thereon) for an equivalent amount (net of any such accrued interest) of unsecured claims allowed in such Insolvency or Liquidation Proceeding based upon Bank Secured Obligations or for any substantially contemporaneous distribution (exchanged in the form received, with any interest accrued thereon) made in such Insolvency or Liquidation Proceeding on account of such equivalent amount of unsecured claims based upon Bank Secured Obligations. Such exchange shall be made by each party thereto without any recourse, representation, warranty or liability whatsoever.

5.4 No Other Restrictions on Note Holders. Notwithstanding any other provision of this Agreement to the contrary, except as expressly provided herein the Second Mortgage Note Holders shall not, in any Insolvency or Liquidation Proceeding, be restricted in voting any secured

claims based upon the Second Mortgage Notes Secured Obligations and will not be in any respect restricted in voting any unsecured claims based upon the Obligations outstanding under the Second Mortgage Notes.

6. Default Purchase Option. The Bank Agent hereby grants the Indenture Trustee the right (without any obligation) to purchase, at any time during the period that begins when all commitments to extend credit constituting all Bank Secured Obligations have terminated and all Bank Secured Obligations have matured (whether at the stated maturity, upon acceleration or otherwise, including by virtue of the commencement of an Insolvency or Liquidation Proceeding) and ends on the 45th day after receipt by the Indenture Trustee of written notice of such maturity from the Bank Agent, all, but not less than all, of the principal of and interest on and all prepayment or acceleration penalties and premiums in respect of all Bank Secured Obligations outstanding at the time of purchase and all other Bank Secured Obligations then outstanding, together with all liens securing such Bank Secured Obligations and all guarantees and other supporting obligations relating to such Bank Secured Obligations:

- (a) for a purchase price equal to 100% of the principal amount and accrued interest outstanding on the Bank Secured Obligations on the date of purchase (including fees and interest accruing after the commencement of a Liquidation or Insolvency Proceeding at the rate provided for in the Bank Credit Agreement (regardless of whether such item is an allowed claim under applicable law) and any costs of collection) plus all other Bank Secured Obligations (including any LIBOR breakage costs but excluding any prepayment or acceleration penalty or premium) then unpaid;
- (b) with such purchase price payable in cash on the date of purchase against transfer to an Eligible Purchaser or its nominee or transferee (without recourse and without any representation or warranty whatsoever, whether as to the enforceability of any Bank Secured Obligations or the validity, enforceability, perfection, priority or sufficiency of any lien securing or guarantee or other supporting obligation for any Bank Secured Obligations or as to any other matter whatsoever, except only the representation and warranty that the transferor is transferring free and clear of all liens and encumbrances (other than that will be satisfied and discharged concurrently with the closing of the purchase from the proceeds of the purchase price), and has good right to convey, whatever claims and interests it purports to have in respect of Bank Secured Obligations and any such liens, guarantees and supporting obligations pursuant to the Bank Financing Agreements);
- (c) with such purchase accompanied by a deposit of cash collateral under the dominion and control of the Bank Agent in an amount equal to 105% of the undrawn amount of each letter of credit then outstanding as Bank Secured Obligations, as security for the additional obligation of the purchaser to purchase, at par plus accrued interest, the reimbursement obligation in respect of such letter of credit as and when such letter of credit is funded and to pay all Bank Secured Obligations then outstanding relating to such letter of credit; and
- (d) pursuant to an Assignment and Assumption Agreement in the form of Exhibit E to the Bank Credit Agreement and otherwise consistent with this Section.

7. Representations and Warranties. Each Project Credit Party represents and warrants to each other Project Credit Party as follows:

7.1 Organization. It is duly organized and is validly existing under the laws of the jurisdiction under which it was organized with full power to execute, deliver, and perform this Agreement and consummate the transactions contemplated hereby.

7.2 Authorization. All actions necessary to authorize the execution, delivery and performance of this Agreement on behalf of such party have been duly taken, and all such actions continue in full force and effect as of the date hereof.

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7.3 Binding Agreement. It has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid, and binding agreement of such party enforceable in accordance with its terms and subject to (a) applicable bankruptcy, reorganization, insolvency and moratorium laws, and (b) principles of equity, which may apply regardless of whether a proceeding is brought in law or in equity.

7.4 No Consent Required. To the best of its knowledge, no consent of any other party and no consent, license, approval, or authorization of, or exemption by, or registration or declaration or filing with, any governmental authority, bureau or agency is required in connection with the execution, delivery, or performance by such party of this Agreement or consummation by such party of the transactions contemplated by this Agreement.

7.5 No Conflict. None of the execution, delivery, and performance of this Agreement nor the consummation of the transactions contemplated by this Agreement will (a) violate or conflict with any provision of the organizational or governing documents, if any, of such party; (b) to the best of its knowledge, violate, conflict with, or result in the breach or termination of, or otherwise give any other contracting party the right to terminate, or constitute (or with notice or lapse of time, or both, would constitute) a default under the terms of any contract, mortgage, lease, bond, indenture, agreement, or other instrument to which such party is a party or to which any of its properties are subject; (c) to the best of its knowledge, result in the creation of any lien, charge, encumbrance, mortgage, lease, claim, security interest, or other right or interest upon the properties or assets of such party pursuant to the terms of any such contract, mortgage, lease, bond, indenture, agreement, franchise, or other instrument; (d) violate any judgment, order, injunction, decree, or award of any court, arbitrator, administrative agency, or governmental or regulatory body of which it has knowledge against, or binding upon such party or upon any of the securities, properties, assets, or business of such party; or (e) to the best of its knowledge, constitute a violation by such party of any statute, law, or regulation that is applicable to such party.

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8. Miscellaneous Provisions.

8.1 Notices; Addresses. Any communications between the Project Credit Parties hereto or notices herein to be given may be given to the following addressees:

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| If to the Bank Agent: | Deutsche Bank Trust Company Americas 31 West 52 nd Street New York, New York 10019 Attn: George Reynolds Phone: (646) 324-2112 Fax: (646) 324-7450 |
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| If to the Indenture Trustee: | Wells Fargo Bank, National Association, as Indenture Trustee, MAC: N303-121 Corporate Trust Operations 6 th & Marquette Avenue Minneapolis, MN 55479 Attn: Michael Slade Phone: (612) 667-0266 Fax: (612) 667-2160 |
|------------------------------|---|

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by reputable overnight delivery service, (c) in the event overnight delivery services are not readily available, if mailed by first class mail, postage prepaid, registered or certified with return receipt requested or (d) if sent by prepaid telex, or by telecopy with correct answer back received. Notice so given shall be effective upon receipt by the addressee, except that any communication or notice so transmitted by telecopy or other direct written electronic means shall be deemed to have been validly and effectively given on the day (if a Banking Day and, if not, on the next following Banking Day) on which it is validly transmitted if transmitted before 4 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; *provided, however*, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location by giving of no less than twenty (20) days' notice to the other parties in the manner set forth hereinabove.

8.2 Further Assurances. Each Project Credit Party (a) shall deliver to each other Project Credit Party, to the Disbursement Agent and to the Securities Intermediary such instruments, agreements, certificates and documents as any such Person may reasonably request to confirm the validity and priority of the liens on and security interests in the Collateral granted pursuant to the Security Documents as affected hereby, (b) shall fully cooperate with each other, with the Disbursement Agent and with the Securities Intermediary, and (c) shall perform all additional acts reasonably requested by any such Person to effect the purposes of this Agreement.

8.3 Waiver. Any waiver, permit, consent or approval of any kind or character on the part of any of the Project Credit Parties, the Disbursement Agent or the Securities Intermediary of any Potential Event of Default, Event of Default or other breach or default under this Agreement, any Security Document or any other Financing Agreement, or any waiver on the part of any of the Project Credit Parties, the Disbursement Agent or the Securities Intermediary, of any provision or condition of this Agreement or any other operative document, must be in writing and shall be effective only to the extent in such writing specifically set forth.

hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof, all of which negotiations and writings are deemed void and of no force and effect. As among the Project Credit Parties, in the event of any conflict between the terms of this Agreement and the terms of the Disbursement Agreement, the terms of this Agreement shall control.

8.5 Governing Law. This Agreement shall be governed by the laws of State of New York of the United States of America and shall for all purposes be governed by and construed in accordance with the laws of such state without regard to the conflict of law rules thereof other than *Section 5-1401* of the New York General Obligations Law.

8.6 Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the parties hereto shall enter into good faith negotiations to replace the invalid, illegal or unenforceable provision.

8.7 Headings. Section headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

8.8 Limitations on Liability. No claim shall be made by any Project Credit Party or any of its Affiliates against any other Project Credit Party, the Disbursement Agent, the Securities Intermediary or any of their respective Affiliates, directors, employees, attorneys or agents for any special, indirect, consequential or punitive damages (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or any act or omission or event occurring in connection therewith; and each Project Credit Party hereby waives, releases and agrees not to sue upon any such claim for any such special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

8.9 Consent of Jurisdiction. Any legal action or proceeding arising out of this Agreement may be brought in or removed to the courts of the State of New York, in and for the County of New York, or of the United States of America for the Southern District of New York. By execution and delivery of this Agreement, each Project Credit Party, accepts, for its and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts for legal proceedings arising out of or in connection with this Agreement and irrevocably consents to the appointment of the Prentice-Hall Corporation System Inc. as its agent to receive service of process in New York, New York. Nothing herein shall affect the right to serve process in any other manner including judicial or non-judicial foreclosure of real property interests which are part of the Collateral. Each Project Credit Party hereby waives any right to stay or dismiss any action or proceeding under or in connection with any or all of the Project, this Agreement or any other operative document brought before the foregoing courts on the basis of forum non-conveniens.

8.10 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; *provided, however*, this Agreement shall terminate upon the earlier to occur of (i) Discharge of the Bank Secured Obligation and (ii) Discharge of the Second Mortgage Notes Secured Obligations. Upon Discharge of the Bank Secured Obligation, the Bank Agent agrees to deliver any and all Collateral of which it has possession, either directly or through an agent, custodian or other representative to the Indenture Trustee and to notify each Securities Intermediary, each counterparty to a Consent and such other Persons as the Indenture Trustee may reasonably request that the Bank Credit Facility has been terminated and discharged in full.

8.11 Counterparts. This Agreement may be executed in one or more duplicate counterparts and when signed by all of the Project Credit Parties listed below shall constitute a single binding agreement.

8.12 No Third Party Beneficiaries. Except for the Bank Lenders, the Second Mortgage Note Holders, the Disbursement Agent and the Securities Intermediary, the Project Credit Parties do not intend the benefits of this Agreement to inure to the benefit of nor shall it be enforceable by any third party (including, without limitation, any other Funding Agent, the Company or any of its Affiliates) nor shall this Agreement be construed to make or render any Project Credit Party liable to any third party (including, without limitation, any other Funding Agent, the Company or any of its Affiliates) for the performance or failure to perform any obligations hereunder.

8.13 Amendment for New Project Credit Parties. Upon any refinancing of any Facility, or the incurring of other Indebtedness of the Company (subject to the rights of the existing Project Credit Parties under their respective Financing Agreements with respect to any such refinancing or other Indebtedness), the applicable lender shall be bound by the terms of this Agreement and such lender, or an agent or trustee on its behalf, and the Project Credit Parties shall execute and deliver an amendment to this Agreement to make such Person a Credit Party hereunder.

8.14 Trust Indenture Act. The parties do not intend that the provisions of this Agreement violate the requirements of the Trust Indenture Act of 1939, as amended.

8.15 Reinstatement. If the payment of any amount applied to any Bank Secured Obligations is later avoided, or rescinded (including by settlement of any claim for avoidance or rescission) or otherwise set aside, then:

- (a) to the fullest extent lawful, all claims for the payment of such amount as Bank Secured Obligations and, to the extent securing such claims, all such liens under the Bank Security Documents will be reinstated and entitled to the benefits hereof, and
- (b) if a Discharge of Bank Secured Obligations became effective prior to such reinstatement, all obligations of the Indenture Trustee and the Second Mortgage Note Holders that were terminated as a result of such Discharge of Bank Secured Obligations shall be concurrently

reinstated to the extent such claims and liens under the Bank Security Documents are reinstated, beginning on such date but prospectively only (and not retroactively), as though no Bank Secured Obligations or liens under the Bank Security Documents had been outstanding at any time prior to such date and will remain effective until the claims for such amount are paid in full in cash.

8.16 Attorneys' Fees. Unless paid by the Company Group, the prevailing party in any dispute or controversy hereunder shall be entitled to an award of its reasonable attorneys' fees.

IN WITNESS WHEREOF, the Project Credit Parties hereto have caused this Agreement to be executed by their respective officers or agents thereunto duly authorized as of the day and year first above written.

Bank Agent:

DEUTSCHE BANK TRUST COMPANY AMERICAS

By: /s/ GEORGE REYNOLDS

Name: George Reynolds
Title: Vice President

Indenture Trustee:

WELLS FARGO BANK, NATIONAL ASSOCIATION,

By: /s/ MICHAEL G. SLADE

Name: Michael G. Slade
Title: Corporate Trust Officer

QuickLinks

[INTERCREDITOR AGREEMENT \(Project Lenders\)](#)

MANAGEMENT FEES SUBORDINATION AGREEMENT
Dated as of October 30, 2002

This **MANAGEMENT FEES SUBORDINATION AGREEMENT** (this "*Agreement*") is made by Wynn Resorts, Limited, a Nevada corporation ("*Wynn Resorts*"), Wynn Las Vegas, LLC, a Nevada limited liability company ("*Wynn Las Vegas*"), Wynn Las Vegas Capital Corp., a Nevada corporation ("*Wynn Capital*") and, together with Wynn Las Vegas, the "*Issuers*") and their subsidiaries and affiliates listed on *Exhibit A* hereto (and, together with the Issuers, the "*Wynn Entities*") in favor of (a) Deutsche Bank Trust Company Americas, as Administrative Agent for the lenders under the Bank Credit Agreement (as defined below), (b) Wells Fargo Bank Nevada National Association, as Collateral Agent under the FF&E Credit Agreement, and (c) Wells Fargo Bank, National Association, as trustee for the benefit of the holders of the second mortgage notes (the "*Second Mortgage Notes*") issued pursuant to the Second Mortgage Notes Indenture (as defined below).

PRELIMINARY STATEMENTS:

1. Wynn Resorts and the Wynn Entities propose to develop and own the Le Rêve Casino Resort, a hotel and casino resort, with related parking structure and golf course facilities to be developed on the Project site, all as more particularly described in the applicable exhibit to the Disbursement Agreement (the "*Project*").
2. The Wynn Entities desire to finance the development and construction of the Project with, among other things, (a) the proceeds of the issuance by the Issuers of second mortgage notes issued under the Second Mortgage Notes Indenture, (b) borrowings by and other extensions of credit to Wynn Las Vegas under the Bank Credit Agreement and (c) borrowings by and other extensions of credit to Wynn Las Vegas under the FF&E Credit Agreement.
3. It is a condition to the issuance of the second mortgage notes under the Second Mortgage Notes Indenture, the borrowings and other extensions of credit under the Bank Credit Agreement, and the borrowings and other extensions of credit under the FF&E Credit Agreement, that Wynn Resorts and each of the Wynn Entities shall have executed and delivered this Agreement.
4. The Wynn Entities have entered into a Management Agreement, dated as of the date hereof (the "*Management Agreement*"), with Wynn Resorts pursuant to which Wynn Resorts will provide certain management services to the Wynn Entities.
5. Wynn Resorts acknowledges that it will receive direct and indirect benefits from the issuance of the second mortgage notes under the Second Mortgage Notes Indenture, the borrowings and other extensions of credit under the Bank Credit Agreement and the borrowings and other extensions of credit under the FF&E Credit Agreement, and the use of the respective proceeds thereof in connection with the development, construction and operation of the Project.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1.
SUBORDINATION

SECTION 1.01. *Certain Definitions.* For purposes of this Agreement, the following terms shall have the meanings set forth below:

"*Applicable Representative*" means (1) until the Senior Debt in respect of the Bank Credit Agreement has been repaid in full in cash, the "*Administrative Agent*" under the Bank Credit Agreement, (2) after payment in full in cash of all Senior Debt under the Bank Credit Agreement but

prior to payment in full in cash of all Senior Debt under the Second Mortgage Notes Indenture, the "*Trustee*" under the Second Mortgage Notes Indenture, and (3) thereafter, the "*Collateral Agent*" under the FF&E Credit Agreement.

"*Bank Credit Agreement*" means the Credit Agreement dated as of the date hereof, among Wynn Las Vegas, Deutsche Bank Securities Inc., as advisor, lead arranger and joint book running manager, Deutsche Bank Trust Company Americas, as administrative agent and swing line lender, Banc Of America Securities LLC, as advisor, lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as advisor, arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York Branch, as arranger and joint documentation agent, J.P. Morgan Securities Inc., as joint documentation agent, and the lenders from time to time parties thereto, as such Credit Agreement may be amended, modified or supplemented from time to time, including, without limitation, amendments, modifications, supplements and restatements thereof giving effect to increases, renewals, extensions, refundings, deferrals, restructurings, replacements or refinancings of, or additions to, the arrangements provided in such Credit Agreement (whether or not provided by the original agents and lenders under such Credit Agreement).

"*Business Day*" means any day other than a Legal Holiday.

"*FF&E Credit Agreement*" means that certain Credit Agreement of even date herewith by and among Wynn Las Vegas, Wells Fargo Bank Nevada National Association, as Collateral Agent, and the lenders party thereto, as such Credit Agreement may be amended, modified or supplemented from time to time, including, without limitation, amendments, modifications, supplements and restatements thereof giving effect to increases, renewals, extensions, refundings, deferrals, restructurings, replacements or refinancings of, or additions to, the arrangements provided in such Credit Agreement (whether or not provided by the original agents and lenders under such Credit Agreement).

"*Intercreditor Agreements*" means (a) that certain Intercreditor Agreement (Project Lenders) of even date herewith by and between the Administrative Agent under the Bank Credit Agreement and the Trustee under the Second Mortgage Notes Indenture and (b) that certain Intercreditor Agreement (FF&E) by and among the Administrative Agent under the Bank Credit Agreement, the Trustee under the Second Mortgage Notes Indenture and the Collateral Agent under the FF&E Credit Agreement.

"Legal Holiday" means a Saturday, a Sunday or a day on which banking institutions in the City of New York or at a place of payment are authorized by law, regulation or executive order to remain closed; *provided* that if a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday.

"Management Fees" means any fees payable by any Wynn Entity to Wynn Resorts under the Management Agreement.

"Obligations" means any principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness (including, without limitation, interest accruing at the then applicable rate provided in such documentation after the maturity of such Indebtedness and interest accruing at the then applicable rate provided in such documentation after the filing of a petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any debtor under such documentation, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding).

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or other entity.

"Representative" means (a) with respect to Senior Debt under the Bank Credit Agreement, the Administrative Agent under the Bank Credit Agreement, (b) with respect to Senior Debt under the

FF&E Credit Agreement, the Collateral Agent under the FF&E Credit Agreement, and (c) with respect to Senior Debt under the Second Mortgage Notes Indenture, the Trustee under the Second Mortgage Notes Indenture.

"Second Mortgage Notes Indenture" means the Indenture, dated as of the date hereof, among the Issuers, as joint and several obligors, Desert Inn Water Company, LLC, Wynn Design & Development, LLC, Wynn Resorts Holdings, LLC, Las Vegas Jet, LLC, World Travel, LLC, Palo, LLC and Valvino Lamore, LLC, as guarantors, and the Trustee, as such Indenture may be amended, modified or supplemented from time to time, including, without limitation, amendments, modifications, supplements and restatements thereof giving effect to increases, renewals, extensions, refundings, deferrals, restructurings, replacements or refinancings of, or additions to, the arrangements provided in such Indenture (whether or provided by the holders of the second mortgage notes).

"Senior Debt" means:

- (1) all indebtedness and other Obligations of Wynn Las Vegas outstanding under the Bank Credit Agreement and the other documents that from time to time evidence such indebtedness and Obligations or secure or support payment or performance thereof, including without limitation the Collateral Documents (as defined in the Credit Agreement),
- (2) all indebtedness and other Obligations of Wynn Las Vegas outstanding under the FF&E Credit Agreement and the other documents that from time to time evidence such indebtedness and Obligations or secure or support payment or performance thereof, including without limitation the Collateral Documents (as defined in the FF&E Credit Agreement), and
- (3) all indebtedness and other Obligations of the Issuers outstanding under the Second Mortgage Notes Indenture and the other documents that from time to time evidence such indebtedness and Obligations or secure or support payment or performance thereof, including without limitation the Collateral Documents (as defined in the Second Mortgage Notes Indenture).

SECTION 1.02. Agreement to Subordinate. Wynn Resorts hereby agrees that the payment of Management Fees is subordinated in right of payment, to the extent and in the manner provided in this Article 1, to the payment of Senior Debt (whether outstanding on the date hereof or hereafter created, incurred, assumed or guaranteed), and that the subordination is for the benefit of the holders of Senior Debt. In furtherance of such subordination, Wynn Resorts and the Wynn Entities agree as follows:

(a) any Management Fee from time to time accruing under the Management Agreement with respect to any semi-annual period for which interest is calculated and payable under the Second Mortgage Notes Indenture shall accrue but shall not be paid until the tenth (10th) Business Day immediately succeeding the date established under the Second Mortgage Notes Indenture for payment of interest accrued during such semi-annual period; and

(b) no Wynn Entity shall make any payment or distribution to Wynn Resorts in respect of Management Fees at any time that such payment or distribution is not permitted under the terms of the Bank Credit Agreement, the FF&E Credit Agreement or the Second Mortgage Notes Indenture. Each Wynn Entity further acknowledges and agrees that it is familiar with the terms of the Bank Credit Agreement, the FF&E Credit Agreement and the Second Mortgage Notes Indenture, and that such Wynn Entity shall be responsible for staying informed as to any amendments, waivers or other modifications affecting such documents, and as to the status of performance under such documents.

SECTION 1.03. Liquidation; Dissolution; Bankruptcy. Upon any distribution to creditors of any Wynn Entity in a liquidation or dissolution of such Wynn Entity or in a bankruptcy, reorganization, insolvency, receivership or similar proceeding relating to such Wynn Entity or its property, in an assignment for the benefit of creditors or any marshaling of such Wynn Entity's assets and liabilities:

(a) holders of Senior Debt will be entitled to receive payment in full of all Obligations due in respect of such Senior Debt (including interest after the commencement of any bankruptcy proceeding at the rate specified in the applicable Senior Debt) before Wynn Resorts will be entitled to receive any payment of Management Fees; and

(b) until all Obligations with respect to Senior Debt (as provided in clause (a) above) are paid in full, any payments of Management Fees to which Wynn Resorts would be entitled but for this Article 1 will be made to the Applicable Representative.

SECTION 1.04. Pay Over of Distributions. In the event that Wynn Resorts receives any payment of Management Fees at a time that such payment is prohibited by this Agreement, such payment will be held by Wynn Resorts, in trust for the benefit of, and will be paid forthwith over and delivered, upon written request, to the Applicable Representative for handling in accordance with the Intercreditor Agreements.

SECTION 1.05. Application of Amounts Received by Applicable Representative. This Article I defines the relative rights of Wynn Resorts and holders of Senior Debt. Nothing in this Agreement will:

(a) impair, as between the Wynn Entities and Wynn Resorts, the obligation of the Wynn Entities, which is absolute and unconditional, to pay Management Fees in accordance with the terms of the Management Agreement; or

(b) affect the relative rights of Wynn Resorts and creditors of the Wynn Entities other than their rights in relation to holders of Senior Debt.

SECTION 1.06. Subordination May Not Be Impaired by the Wynn Entities. No right of any Representative or holder of Senior Debt to enforce the subordination of the Management Fees may be impaired by any act or failure to act by any Wynn Entity or by the failure of any Wynn Entity to comply with this Agreement.

SECTION 1.07. Distribution or Notice to Representative. Whenever a notice is to be given to holders of Senior Debt pursuant to this Agreement, the notice shall be given to the Representative of such Senior Debt. Upon any payment or distribution of assets of any Wynn Entity referred to in this Article 1, Wynn Resorts will be entitled to rely upon any order or decree made by any court of competent jurisdiction or upon any certificate of the Applicable Representative or the liquidating trustee or agent or other Person making any distribution to Wynn Resorts for the purpose of ascertaining the Persons entitled to participate in such distribution, the holders of the Senior Debt and other Indebtedness of such Wynn Entity, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article 1.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

SECTION 2.01. Representations and Warranties. Each of Wynn Resorts and the Wynn Entities hereby represents and warrants as follows, severally and not jointly:

(a) *Authority.* Such Person has the requisite corporate or limited liability company power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery and performance by such Person of this Agreement have been duly approved by all necessary corporate or limited liability company action of such Person and no other corporate or limited liability company proceedings on the part of such Person are necessary to consummate the transactions contemplated by this Agreement.

(b) *Enforceability.* This Agreement has been duly executed and delivered by such Person. This Agreement is the legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency,

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reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

ARTICLE 3. MISCELLANEOUS

SECTION 3.01. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 3.02. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 3.03. Choice of Law; Jurisdiction; Waivers. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. To the fullest extent permitted by applicable law, Wynn Resorts hereby irrevocably submits to the non-exclusive jurisdiction of any New York State court or Federal court sitting in the County of New York in respect of any suit, action or proceeding arising out of or relating to the provisions of this Agreement and irrevocably agrees that all claims in respect of any such suit, action or proceeding may be heard and determined in any such court. The parties hereto hereby waive, to the fullest extent permitted by applicable law, any objection that they may now or hereafter have to the laying of venue of any such suit, action or proceeding brought in any such court, and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. The parties hereto hereby waive, to the fullest extent permitted by applicable law, any right to trial by jury with respect to any action or proceeding arising out of or relating to this Agreement.

SECTION 3.04. Notices; Identities of Representatives. All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been given or made when delivered, or three Business Days after being deposited in the mail, postage prepaid, or, in the case of telecopy notice, when received, addressed (a) in the case of Wynn Resorts or any Wynn Entity, as follows, and (b) in the case of the Representatives, as follows:

Wynn Resorts

Wynn Resorts, Limited
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attention: Ron Kramer

Telecopy: (702) 791-0167
Telephone: (702) 733-4123

with a copy to:

Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Attention: C. Kevin McGeehan, Esq.
Telecopy: (310) 282-5610
Telephone: (310) 203-7110

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Wynn Entities:

c/o Wynn Las Vegas, LLC
Attention: Ron Kramer
Las Vegas, Nevada 89109
Telecopy: (702) 791-0167
Telephone: (702) 733-4123

with a copy to:

Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Attention: C. Kevin McGeehan, Esq.
Telecopy: (310) 282-5610
Telephone: (310) 203-7110

Administrative Agent under the Bank Credit Agreement

Deutsche Bank Trust Company Americas
31 West 52nd Street
New York, New York 10019
Attention: George Reynolds
Telecopy: (646) 324-7450
Telephone: (646) 324-2112

with a copy to:

Latham & Watkins
885 Third Avenue
New York, New York 10022
Attention: Christopher Plaut, Esq.
Telecopy: (212) 906-1200
Telephone: (212) 751-4864

The Administrative Agent under the FF&E Credit Agreement:

Wells Fargo Bank Nevada National Association
Attention: Corporate Trust Services
MAC: U1228-120
299 South Main Street, 12th Floor
Salt Lake City, Utah 84111
Telecopy: (801) 246-5053
Telephone: (801) 246-5630

The Second Mortgage Notes Trustee:

Wells Fargo Bank, National Association
Attention: Michael Slade
MAC: N9303-110
6th & Marquette
Minneapolis, Minnesota
Telecopy: (612) 667-2160
Telephone: (612) 667-0266

A party may change its address for notices hereunder by written notice to the other parties to this Agreement. Further, by written notice to the other parties to this Agreement, a Representative with respect to Senior Debt may inform the other parties to this Agreement as to a change in the identity of the Representative for such Senior Debt, and the other parties to this Agreement thereafter shall have the right to treat the successor Representative identified in such notice as the Representative with respect to such Senior Debt.

SECTION 3.05. Attorneys' Fees and Costs. In the event of a dispute hereunder, if any party refers this Agreement to an attorney to continue or enforce the provisions of this Agreement, the prevailing party in any such dispute shall be entitled to an award of all costs and expenses (including attorneys' fees) incurred in connection with the dispute.

[Signature Page Follows]

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IN WITNESS WHEREOF, the parties hereto have caused this Management Fees Subordination Agreement to be executed by their respective officers or authorized signatories thereunto duly authorized, as of the date first written above.

WYNN RESORTS, LIMITED,
a Nevada corporation

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

WYNN LAS VEGAS, LLC,
a Nevada limited liability company

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

WYNN LAS VEGAS CAPITAL CORP.,
a Nevada corporation

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: President

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Trustee

By: /s/ MICHAEL G. SLADE

Name: Michael G. Slade

Title: Corporate Trust Officer

WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION,
as Collateral Agent

By: /s/ C. SCOTT NIELSEN

Name: C. Scott Nielsen

Title: Trust Officer

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Exhibit A

1. Valvino Lamore, LLC, a Nevada limited liability company.
2. Wynn Resorts Holdings, LLC, a Nevada limited liability company.
3. Palo, LLC, a Delaware limited liability company.
- 4.

Desert Inn Water Company, LLC, a Nevada limited liability company.

5. Desert Inn Improvement Co., a Nevada corporation.
 6. Wynn Las Vegas Capital Corp., a Nevada corporation.
 7. World Travel, LLC, a Nevada limited liability company.
 8. Las Vegas Jet, LLC, a Nevada limited liability company.
-

QuickLinks

[Exhibit 10.19](#)

GUARANTEE AND COLLATERAL AGREEMENT

made by

VALVINO LAMORE, LLC,

WYNN LAS VEGAS CAPITAL CORP.,

PALO, LLC,

WYNN RESORTS HOLDINGS, LLC,

DESERT INN WATER COMPANY, LLC,

WYNN DESIGN & DEVELOPMENT, LLC,

WORLD TRAVEL LLC,

LAS VEGAS JET, LLC,

WYNN LAS VEGAS, LLC

and

THE OTHER GRANTORS FROM TIME TO TIME PARTY HERETO

in favor of

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Administrative Agent

Dated as of October 30, 2002

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GUARANTEE AND COLLATERAL AGREEMENT

This GUARANTEE AND COLLATERAL AGREEMENT, dated as of October 30, 2002, is made by each of the signatories hereto (together with any other entity that may become a party hereto as provided herein, the "*Grantors*"), in favor of DEUTSCHE BANK TRUST COMPANY AMERICAS, as administrative agent (in such capacity, the "*Administrative Agent*") for (i) the banks and other financial institutions or entities (the "*Lenders*") from time to time parties to the Credit Agreement, dated as of October 30, 2002 (as amended, supplemented or otherwise modified from time to time, the "*Credit Agreement*"), among Wynn Las Vegas, LLC, a Nevada limited liability company (the "*Borrower*"), the Lenders, Deutsche Bank Securities Inc., as lead arranger and joint book running manager, Banc of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York and Grand Cayman Branches, as arranger and joint documentation agent, JPMorgan Chase Bank, as joint documentation agent, and the Administrative Agent and (ii) the other Secured Parties (as hereinafter defined).

RECITALS:

WHEREAS, pursuant to the Credit Agreement, the Lenders have severally agreed to make extensions of credit to the Borrower upon the terms and subject to the conditions set forth therein;

WHEREAS, the Borrower is a member of an affiliated group of companies that includes each other Grantor;

WHEREAS, the proceeds of the extensions of credit under the Credit Agreement will be used in part to enable the Borrower to make valuable transfers to one or more of the other Grantors in connection with the operation of their respective businesses;

WHEREAS, the Borrower and the other Grantors are engaged in related businesses, and each Grantor will derive substantial direct and indirect benefit from the making of the extensions of credit under the Credit Agreement; and

WHEREAS, it is a condition precedent to the obligation of the Lenders to make their respective extensions of credit to the Borrower under the Credit Agreement that the Grantors shall have executed and delivered this Agreement to the Administrative Agent for the ratable benefit of the Secured Parties;

NOW, THEREFORE, in consideration of the premises and to induce the Arrangers, the Managers, the Agents, including, without limitation, the Administrative Agent, and the Lenders to enter into the Credit Agreement and to induce the Lenders to make their respective extensions of credit to the Borrower thereunder, each Grantor hereby agrees with the Administrative Agent, for the ratable benefit of the Secured Parties, as follows:

SECTION 1. DEFINED TERMS

1.1. *Definitions.* (a) Any capitalized terms used in this Agreement which are not otherwise defined herein shall have the respective meanings ascribed to such terms in the Disbursement Agreement (as defined below) and, if not defined therein, the respective meanings ascribed to such terms in the Credit Agreement; *provided*, that (1) any such capitalized terms used in this Agreement which are defined in both the Disbursement Agreement and the Credit Agreement shall have the respective meanings ascribed to such terms in the Disbursement Agreement, and (2) upon termination of the Disbursement Agreement, any defined terms used herein having meanings given to such terms in the Disbursement Agreement shall continue to have the meanings given to such terms in the Disbursement Agreement as amended and in effect immediately prior to such termination (provided that, following any such termination of the Disbursement Agreement, such terms and the meanings therefor may be amended or modified in accordance with Section 10.1 of the Credit Agreement). The

following terms which are defined in the Uniform Commercial Code in effect in the State of New York on the date hereof are used herein as so defined: Accounts, Certificated Security, Chattel Paper, Commodity Account, Commodity Contract, Commodity Intermediary, Documents, Entitlement Order, Equipment, Farm Products, Financial Asset, Goods, Instruments, Inventory, Letters of Credit, Letter of Credit Rights, Payment Intangible, Securities Account, Securities Intermediary, Security, Security Entitlement, Supporting Obligation and Uncertificated Security.

(b) The following terms shall have the following meanings:

"*Agreement*": this Guarantee and Collateral Agreement, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"*Borrower Obligations*": the collective reference to the Obligations (as defined in the Credit Agreement).

"*Collateral*": as defined in Section 3.

"*Collateral Account*": (i) any collateral account established by the Administrative Agent as provided in Section 6.2 or 6.5 or (ii) any cash collateral account established as provided in Sections 2.12(g) or 8 of the Credit Agreement.

"*Contracts*": the contracts and agreements listed in *Schedule 7* (which include, without limitation, all Material Contracts (as defined in the Credit Agreement) and all Material Project Documents (as defined in the Disbursement Agreement)) as such schedule may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof, including, without limitation, (i) all rights of any Grantor to receive moneys due and to become due to it thereunder or in connection therewith, (ii) all rights of any Grantor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect thereto, (iii) all rights of any Grantor to damages arising thereunder, (iv) all rights of any Grantor to cancel, terminate or suspend such Contracts or the performance of work thereunder, and to perform and compel performance of, such Contracts and to exercise all remedies thereunder and (v) all rights of any Grantor to amend or modify such Contracts and to consent to any sale, assignment or disposition (by operation of law or otherwise) by the counterparty thereto of any part of such counterparty's interest in any such Contract.

"*Copyright Licenses*": any written agreement naming any Grantor as licensor or licensee (including, without limitation, those listed in *Schedule 6*), granting any right under any Copyright, including, without limitation, the grant of rights to manufacture, distribute, exploit and sell materials derived from any Copyright.

"*Copyrights*": (i) all copyrights, whether or not the underlying works of authorship have been published, including, but not limited to, copyrights in software and databases, all Mask Works (as defined in 17 U.S.C. 901 of the U.S. Copyright Act) and all such underlying works of authorship and other intellectual property rights therein, all copyrights of works based on, incorporated in, derived from or relating to works covered by such copyrights, all right, title and interest to make and exploit all derivative works based on or adopted from works covered by such copyrights, and all copyright registrations and copyright applications, and any renewals or extensions thereof, including, without limitation, each registration and application identified in *Schedule 6*, (ii) the rights to print, publish and distribute any of the foregoing, (iii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iv) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all Copyright Licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (v) all other rights of any kind whatsoever accruing thereunder or pertaining thereto.

"*Deposit Account*": as defined in the Uniform Commercial Code of any applicable jurisdiction and, in any event, including, without limitation, any demand, time, savings, passbook or like account maintained with a depository institution.

"*Disbursement Agreement*": that certain Master Disbursement Agreement dated as of October 30, 2002 among the Borrower, the Administrative Agent and the other parties signatory thereto, as the same may hereafter be amended or modified in accordance with its terms and the terms of the Credit Agreement.

"*Excluded Assets*": (i) the Aircraft and the Aircraft Note, (ii) the Company Accounts (it being understood that certain of the Company Accounts have been pledged to the Administrative Agent pursuant to the Company Collateral Account Agreements), (iii) subject to Section 7.13(b) of the Credit Agreement, any assets the acquisition of which was financed by Indebtedness permitted by Section 7.2(g) of the Credit Agreement, to the extent that the terms of such Indebtedness prohibit additional Liens on such assets (but only to the extent and so long as so prohibited), (iv) any Contract that prohibits

the creation of a security interest therein or requires consent to such security interest (other than to the extent that any such prohibition or consent requirement would be rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the New York UCC); provided, however, that the security interest shall attach immediately at such time as the restriction prohibiting assignment shall be removed or any condition thereto shall be satisfied, and (v) all Intellectual Property related to the name "Wynn Resorts".

"*General Intangibles*": all "general intangibles" as such term is defined in Section 9-102(a)(42) of the Uniform Commercial Code in effect in the State of New York on the date hereof and, in any event, including, without limitation, with respect to any Grantor, all rights and interests in, to and under contracts, agreements, instruments and indentures, including, without limitation, the Contracts, and all licenses, permits, concessions, franchises and authorizations issued by Governmental Authorities in any form, and portions thereof, to which such Grantor is a party or under which such Grantor has any right, title or interest or to which such Grantor or any property of such Grantor is subject, as the same may from time to time be amended, supplemented, replaced or otherwise modified, including, without limitation, (i) all rights of such Grantor to receive moneys due and to become due to it thereunder or in connection therewith, (ii) all rights of such Grantor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect thereto, (iii) all rights of such Grantor to damages arising thereunder, (iv) all rights of such Grantor to receive any tax refunds, and (v) all rights of such Grantor to terminate and to perform, compel performance and to exercise all remedies thereunder.

"*Guarantor Obligations*": with respect to any Guarantor, all obligations and liabilities of such Guarantor which may arise under or in connection with this Agreement (including, without limitation, Section 2) or any other Loan Document to which such Guarantor is a party, in each case whether on account of guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to any Secured Party that are required to be paid by such Guarantor pursuant to the terms of this Agreement or any other Loan Document).

"*Guarantors*": the collective reference to the Grantors other than the Borrower.

"*Hedge Agreements*": as to any Person, all interest rate swaps, caps or collar agreements or similar arrangements entered into by such Person providing for protection against fluctuations in interest rates or currency exchange rates or the exchange of nominal interest obligations, either generally or under specific contingencies.

"*Intellectual Property*": the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or

otherwise, including, without limitation, the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks, the Trademark Licenses, the Trade Secrets and the Trade Secret Licenses, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

"*Intercompany Note*": any promissory note evidencing loans made by any Grantor to Borrower or any of the other Grantors, including, without limitation, the Subordinated Intercompany Note (but excluding the Aircraft Note).

"*Investment Property*": the collective reference to (i) all "investment property" as such term is defined in Section 9-102(a)(49) of the Uniform Commercial Code in effect in the State of New York on the date hereof including, without limitation, all Certificated Securities and Uncertificated Securities, all Security Entitlements, all Securities Accounts, all Commodity Contracts and all Commodity Accounts, (ii) security entitlements, in the case of any United States Treasury book-entry securities, as defined in 31 C.F.R. section 357.2, or, in the case of any United States federal agency book-entry securities, as defined in the corresponding United States federal regulations governing such book-entry securities, and (iii) whether or not constituting "investment property" as defined in the Uniform Commercial Code in effect in the State of New York on the date hereof, all Pledged Notes, all Pledged Stock, all Pledged Security Entitlements, all Pledged Debt Securities and all Pledged Commodity Contracts.

"*Issuers*": the collective reference to each issuer of a Pledged Security.

"*Nevada Gaming Authorities*": as defined in the Credit Agreement.

"*New York UCC*": the Uniform Commercial Code as from time to time in effect in the State of New York.

"*Non-Deliverable Collateral*": as defined in Section 4.8(a).

"*Obligations*": (i) in the case of the Borrower, the Borrower Obligations, and (ii) in the case of each Guarantor, its Guarantor Obligations.

"*Patent License*": all agreements, whether written or oral, providing for the grant by or to any Grantor of any right to manufacture, use or sell any invention covered in whole or in part by a Patent, including, without limitation, any of the foregoing referred to in *Schedule 6*.

"*Patents*": (i) all patents, patent applications and patentable inventions, including, without limitation, each issued patent and patent application identified in *Schedule 6*, and all certificates of invention or similar industrial property rights, (ii) all inventions and improvements described and claimed therein, (iii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iv) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all Patent Licenses entered into in connection therewith, and damages and payments for past, present or future infringement thereof), and (v) all reissues, divisions, continuations, continuations-in-part, substitutes, renewals, and extensions thereof, all improvements thereon and all other rights of any kind whatsoever accruing thereunder or pertaining thereto.

"*Permits*": as defined in the Credit Agreement.

"*Pledged Commodity Contracts*": all commodity contracts listed on *Schedule 2* and all other commodity contracts to which any Grantor is party from time to time.

"*Pledged Debt Securities*": the debt securities listed on *Schedule 2*, together with any other certificates, options, rights or security entitlements of any nature whatsoever in respect of the debt securities of any Person that may be issued or granted to, or held by, any Grantor while this Agreement is in effect.

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"*Pledged Notes*": all promissory notes listed on *Schedule 2*, all Intercompany Notes at any time issued to any Grantor and all other promissory notes issued to or held by any Grantor.

"*Pledged Securities*": the collective reference to the Pledged Debt Securities, the Pledged Notes and the Pledged Stock.

"*Pledged Security Entitlements*": all security entitlements with respect to the financial assets listed on *Schedule 2* and all other security entitlements of any Grantor.

"*Pledged Stock*": the shares of Capital Stock listed on *Schedule 2*, together with any other shares, stock certificates, options, rights or security entitlements of any nature whatsoever in respect of the Capital Stock of any Person that may be issued or granted to, or held by, any Grantor while this Agreement is in effect.

"*Proceeds*": all "proceeds" as such term is defined in Section 9-102(a)(64) of the Uniform Commercial Code in effect in the State of New York on the date hereof and, in any event, shall include, without limitation, all dividends or other income from the Pledged Securities, collections thereon or distributions or payments with respect thereto.

"*Receivable*": any right to payment for goods or other property sold, leased, licensed or otherwise disposed of or for services rendered, whether or not such right is evidenced by an Instrument or Chattel Paper and whether or not it has been earned by performance (including, without limitation, any Account or Payment Intangible). References herein to a Receivable shall include any Supporting Obligation or collateral securing such Receivable.

"*Secured Parties*": collectively, the Arrangers, the Agents, the Managers, the Lenders and, with respect to any Specified Hedge Agreement, any affiliate of any Lender party thereto or any Person that was a Lender or an affiliate thereof when such Specified Hedge Agreement was entered into that has agreed to be bound by the provisions of Section 7.2 hereof as if it were a party hereto and by the provisions of Section 9 of the Credit Agreement as if it were a Lender party thereto.

"*Securities Act*": the Securities Act of 1933, as amended.

"*Trademark License*": any agreement, whether written or oral, providing for the grant by or to any Grantor of any right to use any Trademark, including, without limitation, any of the foregoing referred to in *Schedule 6*.

"*Trademarks*": (i) all trademarks, service marks, trade names, corporate names, company names, business names, trade dress, trade styles, logos, or other indicia of origin or source identification, internet domain names, trademark and service mark registrations, and applications for trademark or service mark registrations and any renewals thereof, including, without limitation, each registration and application identified in *Schedule 6*, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all Trademark Licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever accruing thereunder or pertaining thereto, together in each case with the goodwill of the business connected with the use of, and symbolized by, each of the above.

"*Trade Secret License*": any agreement, whether written or oral, providing for the grant by or to any Grantor of any right to use any Trade Secret, including, without limitation, any of the foregoing referred to in *Schedule 6*.

"*Trade Secrets*": (i) all trade secrets and all confidential and proprietary information, including know-how, manufacturing and production processes and techniques, inventions, research and

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development information, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, and customer and supplier lists and information, including, without limitation, any of the foregoing referred to in *Schedule 6*, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of any Grantor accruing thereunder or pertaining thereto.

"*Vehicles*": all cars, trucks, trailers, construction and earth moving equipment and other vehicles covered by a certificate of title law of any jurisdiction and, in any event including, without limitation, the vehicles listed on *Schedule 8* and all tires and other appurtenances to any of the foregoing; *provided, that* the term "Vehicles" shall not include the Aircraft.

1.2. *Other Definitional Provisions.* (a) The words "hereof", "herein", "hereto" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and Schedule references are to this Agreement unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(c) Where the context requires, terms relating to the Collateral or any part thereof, when used in relation to a Grantor, shall refer to such Grantor's Collateral or the relevant part thereof.

(d) The expressions "payment in full," "paid in full" and any other similar terms or phrases when used herein with respect to the Borrower Obligations or the Guarantor Obligations shall mean the unconditional, final and irrevocable payment in full, in immediately available funds, of all of the Borrower Obligations or the Guarantor Obligations, as the case may be.

SECTION 2. GUARANTEE

2.1. *Guarantee.*

(a) Each of the Guarantors hereby, jointly and severally, unconditionally and irrevocably, guarantees to the Administrative Agent, for the ratable benefit of the Secured Parties and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by the Borrower when due (whether at the stated maturity, by acceleration or otherwise) of the Borrower Obligations.

(b) If and to the extent required in order for the Obligations of any Guarantor to be enforceable under applicable federal, state and other laws relating to the insolvency of debtors, the maximum liability of such Guarantor hereunder shall be limited to the greatest amount which can lawfully be guaranteed by such Guarantor under such laws, after giving effect to any rights of contribution, reimbursement and subrogation arising under Section 2.2. Each Guarantor acknowledges and agrees that, to the extent not prohibited by applicable law, (i) such Guarantor (as opposed to its creditors, representatives of creditors or bankruptcy trustee, including such Guarantor in its capacity as debtor in possession exercising any powers of a bankruptcy trustee) has no personal right under such laws to reduce, or request any judicial relief that has the effect of reducing, the amount of its liability under this Agreement, (ii) such Guarantor (as opposed to its creditors, representatives of creditors or bankruptcy trustee, including such Guarantor in its capacity as debtor in possession exercising any powers of a bankruptcy trustee) has no personal right to enforce the limitation set forth in this Section 2.1(b) or to reduce, or request judicial relief

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reducing, the amount of its liability under this Agreement, and (iii) the limitation set forth in this Section 2.1(b) may be enforced only to the extent required under such laws in order for the obligations of such Guarantor under this Agreement to be enforceable under such laws and only by or for the benefit of a creditor, representative of creditors or bankruptcy trustee of such Guarantor or other Person entitled, under such laws, to enforce the provisions thereof.

(c) Each Guarantor agrees that the Borrower Obligations may at any time and from time to time be incurred or permitted in an amount exceeding the maximum liability of such Guarantor under Section 2.1(b) without impairing the guarantee contained in this Section 2 or affecting the rights and remedies of any Secured Party hereunder.

(d) The guarantee contained in this Section 2 shall remain in full force and effect until payment in full of all Obligations that do not arise under a Specified Hedge Agreement, notwithstanding that from time to time during the term of the Credit Agreement the Borrower may be free from any Borrower Obligations.

(e) No payment made by the Borrower, any of the Guarantors, any other guarantor or any other Person or received or collected by any Secured Party from the Borrower, any of the Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Borrower Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Borrower Obligations or any payment received or collected from such Guarantor in respect of the Borrower Obligations), remain liable for the Borrower Obligations up to the maximum liability of such Guarantor hereunder until the Borrower Obligations (other than Obligations in respect of any Specified Hedge Agreement) are paid in full, no Letter of Credit shall be outstanding and the Commitments are terminated or have expired.

2.2. *Rights of Reimbursement, Contribution and Subrogation.* In case any payment is made on account of the Obligations by any Grantor or is received or collected on account of the Obligations from any Grantor or its property:

(a) If such payment is made by the Borrower or from its property, then, if and to the extent such payment is made on account of Obligations arising from or relating to a Loan made to the Borrower or a Letter of Credit issued for account of the Borrower, the Borrower shall not be entitled (A) to demand or enforce reimbursement or contribution in respect of such payment from any other Grantor or (B) to be subrogated to any claim, interest, right or remedy of any Secured Party against any other Person, including any other Grantor or its property; and

(b) If such payment is made by a Guarantor or from its property, such Guarantor shall be entitled, subject to and upon payment in full of the Obligations, (A) to demand and enforce reimbursement for the full amount of such payment from the Borrower and (B) to demand and enforce contribution in respect of such payment from each other Guarantor which has not paid its fair share of such payment, as necessary to ensure that (after giving effect to any enforcement of reimbursement rights provided hereby) each Guarantor pays its fair share of the unreimbursed portion of such payment. For this purpose, the fair share of each Guarantor as to any unreimbursed payment shall be determined based on an equitable apportionment of such unreimbursed payment among all Guarantors based on the relative value of their assets and any other equitable considerations deemed appropriate by the court.

(c) If and whenever (after payment in full of the Obligations) any right of reimbursement or contribution becomes enforceable by any Grantor against any other Grantor under Sections 2.2(a) and 2.2(b), such Grantor shall be entitled, subject to and upon payment in full of the Obligations,

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to be subrogated (equally and ratably with all other Grantors entitled to reimbursement or contribution from any other Grantor as set forth in this Section 2.2) to any security interest that may then be held by the Administrative Agent upon any Collateral granted to it in this Agreement. Such right of subrogation shall be enforceable solely against the Grantors, and not against the Secured Parties, and neither the Administrative Agent nor any other Secured Party shall have any duty whatsoever to warrant, ensure or protect any such right of subrogation or to obtain, perfect, maintain, hold, enforce or retain any Collateral for any purpose related to any such right of subrogation. If subrogation is demanded by any Grantor, then (after payment in full of the Obligations) the Administrative Agent shall deliver to the Grantors making such demand, or to a representative of such Grantors or of the Grantors generally, an instrument satisfactory to the Administrative Agent transferring, on a quitclaim basis without any recourse, representation, warranty or obligation whatsoever, whatever security interest the Administrative Agent then may hold in whatever Collateral may then exist that was not previously released or disposed of by the Administrative Agent.

(d) All rights and claims arising under this Section 2.2 or based upon or relating to any other right of reimbursement, indemnification, contribution or subrogation that may at any time arise or exist in favor of any Grantor as to any payment on account of the Obligations made by it or received or collected from its property shall be fully subordinated in all respects to the prior payment in full of all of the Obligations. Until payment in full of the Obligations, no Grantor shall demand or receive any collateral security, payment or distribution whatsoever (whether in cash, property or securities or otherwise) on account of any such right or claim. If any such payment or distribution is made or becomes available to any Grantor in any bankruptcy case or receivership, insolvency or liquidation proceeding, such payment or distribution shall be delivered by the person making such payment or distribution directly to the Administrative Agent, for application to the payment of the Obligations. If any such payment or distribution is received by any Grantor, it shall be held by such Grantor in trust, as trustee of an express trust for the benefit of the Secured Parties, and shall forthwith be transferred and delivered by such Grantor to the Administrative Agent, in the exact form received and, if necessary, duly endorsed.

(e) The obligations of the Grantors under the Loan Documents, including their liability for the Obligations and the enforceability of the security interests granted thereby, are not contingent upon the validity, legality, enforceability, collectibility or sufficiency of any right of reimbursement, contribution or subrogation arising under this Section 2.2. The invalidity, insufficiency, unenforceability or uncollectibility of any such right shall not in any respect diminish, affect or impair any such obligation or any other claim, interest, right or remedy at any time held by any Secured Party against any Guarantor or its property. The Secured Parties make no representations or warranties in respect of any such right and shall have no duty to assure, protect, enforce or ensure any such right or otherwise relating to any such right.

(f) Each Grantor reserves any and all other rights of reimbursement, contribution or subrogation at any time available to it as against any other Grantor, but (i) the exercise and enforcement of such rights shall be subject to Section 2.2(d) and (ii) neither the Administrative Agent nor any other Secured Party shall ever have any duty or liability whatsoever in respect of any such right, except as provided in Section 2.2(c).

(g) Each Guarantor waives any right or claims of right to cause a marshalling of the Borrower's or any Guarantor's assets or to proceed against any Guarantor, the Borrower or any other guarantor of any of the Borrower's obligations in any particular order, including, but not limited to, any right arising out of Nevada Revised Statutes 40.430, to the fullest extent permitted by Nevada Revised Statutes 40.495(2).

2.3. *Amendments, etc. with respect to the Borrower Obligations.* Each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, any demand for payment of any of the Borrower Obligations made by any Secured Party may be rescinded by such Secured Party and any of the Borrower Obligations continued, and the Borrower Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, increased, extended, amended, modified, accelerated, compromised, waived, surrendered or released by any Secured Party, and the Credit Agreement and the other Loan Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Administrative Agent (or the requisite Lenders under the Credit Agreement or all Lenders, as the case may be) may deem advisable from time to time, and any collateral security, guarantee or right of offset at any time held by any Secured Party for the payment of the Borrower Obligations may be sold, exchanged, waived, surrendered or released. No Secured Party shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Borrower Obligations or for the guarantee contained in this Section 2 or any property subject thereto.

2.4. *Guarantee Absolute and Unconditional.* Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Borrower Obligations and notice of or proof of reliance by any Secured Party upon the guarantee contained in this Section 2 or acceptance of the guarantee contained in this Section 2; the Borrower Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this Section 2; and all dealings between the Borrower and any of the Guarantors, on the one hand, and the Secured Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Section 2. Each Guarantor waives diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Borrower or any of the Guarantors with respect to the Borrower Obligations. Each Guarantor understands and agrees that the guarantee contained in this Section 2 shall be construed as a continuing, absolute and unconditional guarantee of payment and performance without regard to (a) the validity or enforceability of the Credit Agreement or any other Loan Document, any of the Borrower Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by any Secured Party, (b) any defense, set-off or counterclaim (other than a defense of payment or performance hereunder) which may at any time be available to or be asserted by the Borrower or any other Person against any Secured Party, or (c) any other circumstance whatsoever (with or without notice to or knowledge of the Borrower or such Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrower for the Borrower Obligations, or of such Guarantor under the guarantee contained in this Section 2, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, any Secured Party may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against the Borrower, any other Guarantor or any other Person or against any collateral security or guarantee for the Borrower Obligations or any right of offset with respect thereto, and any failure by any Secured Party to make any such demand, to pursue such other rights or remedies or to collect any payments from the Borrower, any other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Borrower, any other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of any Secured Party against any Guarantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

2.5. *Reinstatement.* The guarantee contained in this Section 2 shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Borrower Obligations is rescinded or must otherwise be restored or returned by any Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payments had not been made.

2.6. *Payments.* Each Guarantor hereby guarantees that payments hereunder will be paid to the Administrative Agent without set-off or counterclaim in Dollars in immediately available funds at the office of the Administrative Agent located at the Payment Office specified in the Credit Agreement.

SECTION 3. GRANT OF SECURITY INTEREST

Each Grantor, subject to compliance with applicable Nevada Gaming Laws, hereby assigns and transfers to the Administrative Agent, and hereby grants to the Administrative Agent, for the ratable benefit of the Secured Parties, a security interest in, all of the personal property of such Grantor, including, without limitation, the following property, in each case, wherever located and now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the "*Collateral*"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of such Grantor's Obligations:

- (a) all Accounts;
- (b) all Chattel Paper;
- (c) all Contracts;
- (d) all Deposit Accounts;
- (e) all Documents;
- (f) all Equipment;
- (g) all General Intangibles (including, without limitation, Payment Intangibles);
- (h) all Instruments;
- (i) all Intellectual Property;
- (j) all Inventory;
- (k) all Investment Property;
- (l) all Letters of Credit and Letter of Credit Rights;

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- (m) all money;
 - (n) all Vehicles;
 - (o) all Goods and other property not otherwise described above:
 - (p) all bank accounts, all funds held therein and all certificates and instruments, if any, from time to time representing or evidencing such bank accounts;
 - (q) all books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and other electronic storage media and related data processing software and similar items that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon.;
 - (r) all Permits;
 - (s) all insurance policies and all loss proceeds and other amounts payable thereunder (including, without limitation, Insurance Proceeds) and all Eminent Domain Proceeds; and
 - (t) to the extent not otherwise included, all Proceeds, accessions and products of any kind and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing (including, without limitation, Supporting Obligations).

Notwithstanding anything to the contrary in this Agreement, the term "*Collateral*" shall not include (i) any of the Excluded Assets, (ii) any license, permit, or authorization issued by any of the Nevada Gaming Authorities or any other Governmental Authority, or any other Collateral, which may not be pledged or in which a security interest may not be granted under Nevada Gaming Laws, or other applicable law, or under the terms of any such license, permit, or authorization, or which would require a finding of suitability or other similar approval or procedure by any of the Nevada Gaming Authorities or any other Governmental Authority prior to being pledged, hypothecated, or given as collateral security (to the extent such finding or approval has not been obtained), and (iii) any water rights, to the extent that the requisite approvals from the Nevada Public Utility Commission for the granting of security interests therein have not been obtained.

SECTION 4. REPRESENTATIONS AND WARRANTIES

To induce the Arrangers, the Agents, the Managers and the Lenders to enter into the Credit Agreement and to induce the Lenders to make their respective extensions of credit to the Borrower thereunder, each Grantor hereby represents and warrants to the Secured Parties that:

4.1. *Representations in Credit Agreement; Guarantor Representations.* In the case of each Guarantor, the representations and warranties set forth in Section 4 of the Credit Agreement as they relate to such Guarantor or to the Loan Documents to which such Guarantor is a party, each of which is hereby incorporated herein by reference and shall apply to each Guarantor *mutatis mutandis*, are true and correct, and the Secured Parties shall be entitled to rely on each of them as if they were fully set forth herein, *provided* that each reference in each such representation and warranty to the Borrower's knowledge shall, for the purposes of this Section 4.1(a), be deemed to be a reference to such Guarantor's knowledge.

4.2. *Title; No Other Liens.* Such Grantor owns each item of the Collateral free and clear of any and all Liens or claims, including, without limitation, Liens arising as a result of such Grantor becoming bound (as a result of merger or otherwise) as Grantor under a security agreement entered into by another Person, except for Permitted Liens. No effective financing statement, mortgage or other instrument similar in effect with respect to all or any part of the Collateral is on file or of record in any public office, except such as have been filed in favor of the Administrative Agent, for the ratable

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benefit of the Secured Parties, pursuant to this Agreement or as are otherwise permitted by the Credit Agreement.

4.3. *Perfected First Priority Liens.* (a) The security interests granted pursuant to this Agreement (i) constitute valid and, subject only to the filing of the financing statements and the taking of the other actions listed on *Schedule 3* hereto, fully perfected security interests in all of the Collateral (other than Intellectual Property arising under foreign laws which is not listed on *Schedule 6* or which is listed as "immaterial" on *Schedule 6*) in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, as collateral security for such Grantor's Obligations, enforceable in accordance with the terms hereof against all creditors of such Grantor, (ii) are subject to no other Liens on the Collateral except for Permitted Liens and (iii) are prior to all other Liens on the Collateral except for Senior Permitted Liens. Without limiting the foregoing, each Grantor has taken all actions necessary, including, without limitation, those specified in Section 5.2 to: (i) establish the Administrative Agent's "control" (within the meanings of Sections 8-106 and 9-106 of the New York UCC) over any portion of the Investment Property constituting Certificated Securities, Uncertificated Securities, Securities Accounts, Securities Entitlements or Commodity Accounts (each as defined in the New York UCC), (ii) establish the Administrative Agent's "control" (within the meaning of Section 9-104 of the New York UCC) over all Deposit Accounts, and (iii) establish the Administrative Agent's "control" (within the meaning of Section 9-107 of the New York UCC) over all Letter of Credit Rights.

(b) No authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body (except those which have been made or obtained) is required for either (i) the pledge or grant by any Grantor of the security interests purported to be created in favor of the Administrative Agent hereunder or (ii) the exercise by the Administrative Agent of any rights or remedies in respect of any Collateral (whether specifically granted or created hereunder or created or provided for by applicable law), except (A) for filings and actions specified on *Schedule 3* and (B) as may be required, in connection with the disposition of any Investment Property, by laws generally affecting the offering and sale of securities;

4.4. *Name; Jurisdiction of Organization, etc.* On the date hereof, such Grantor's exact legal name (as indicated on the public record of such Grantor's jurisdiction of formation or organization), jurisdiction of organization and the location of such Grantor's chief executive office or sole place of business are specified on *Schedule 4*. Each Grantor is organized solely under the law of the jurisdiction so specified and has not filed any certificates of domestication, transfer or continuance in any other jurisdiction. Except as otherwise indicated on *Schedule 4*, the jurisdiction of each such Grantor's organization of formation is required to maintain a public record showing the Grantor to have been organized or formed. Except as specified on *Schedule 4*, such Grantor has not changed its name, jurisdiction of organization, chief executive office or sole place of business or its corporate structure in any way (e.g. by merger, consolidation, change in corporate form or otherwise) within the previous five year period ending on the date hereof and has not within such period become bound (whether as a result of merger or otherwise) as grantor under a security agreement entered into by another Person, which has not heretofore been terminated.

4.5. *Inventory, Equipment and Books and Records.* On the date hereof, the Inventory and the Equipment (other than mobile goods) and the books and records pertaining to the Collateral are kept at the locations listed on *Schedule 5*. No material Inventory or Equipment (in the aggregate) of such Grantor is in the possession of an issuer of a negotiable document (as defined in Section 7-104 of the UCC) therefor that has not been delivered to the Administrative Agent or is otherwise in the possession of any bailee or warehouseman.

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4.6. *Farm Products.* None of the Collateral constitutes, or is the Proceeds of, Farm Products.

4.7. *Investment Property.* (a) The shares of Pledged Stock pledged by such Grantor hereunder constitute all of the issued and outstanding shares of all classes of the Capital Stock of each Issuer owned by such Grantor.

(b) All the shares of the Pledged Stock of such Grantor have been duly and validly issued and are fully paid and nonassessable.

(c) Each limited liability company interest or partnership interest owned by such Grantor and included in the Pledged Stock is certificated (and each Grantor covenants that it will not issue or cause or permit its Subsidiaries to issue any Capital Stock in uncertificated form or seek to convert all or any part of its existing Capital Stock into uncertificated form) and the terms of such certificated limited liability company interests and partnership interests expressly provide that they are securities governed by Article 8 of the Uniform Commercial Code in effect from time to time in the applicable jurisdiction.

(d) Each of the Pledged Notes issued to such Grantor constitutes the legal, valid and binding obligation of the obligor with respect thereto, enforceable in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

(e) Such Grantor is the record and beneficial owner of, and has good and marketable title to, the Investment Property pledged by it hereunder, free of any and all Liens or options in favor of, or claims of, any other Person, except Permitted Liens.

(f) Each Issuer that is not a Grantor hereunder but is an Affiliate of any Grantor has executed and delivered to the Administrative Agent an Acknowledgment and Agreement, in substantially the form of *Exhibit A*, to the pledge of the Pledged Securities pursuant to this Agreement.

4.8. *Receivables.* (a) No amount payable to such Grantor under or in connection with any Receivable is evidenced by any Instrument or Chattel Paper which has not been delivered to the Administrative Agent (other than Receivables evidenced by Instruments representing (i) extensions of credit by the Borrower to individual customers of its gaming operations in the ordinary course of business and (ii) loans to employees expressly permitted under Section 7.8(d) of the Credit Agreement (collectively, the "*Non-Deliverable Collateral*").

(b) None of the obligors on any material Receivables is a Governmental Authority.

(c) The amounts represented by such Grantor to the Secured Parties from time to time as owing to such Grantor in respect of the Receivables will at such times be materially accurate.

4.9. *Contracts.* (a) Except as specified on *Schedule 7*, no Contract prohibits assignment by the applicable Grantor or requires or purports to require the consent of any party (other than such Grantor) to such Contract in connection with the execution, delivery and performance of this Agreement.

(b) Except, after the Closing Date, as expressly permitted by the Credit Agreement or the Disbursement Agreement, each Contract is in full force and effect and constitutes a valid and legally enforceable obligation of the parties thereto, subject to the effects of bankruptcy, insolvency, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law).

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(c) No consent or authorization of, filing with or other act by or in respect of any Governmental Authority is required in connection with the execution, delivery, performance, validity or enforceability of any of the Contracts by any party thereto other than (i) those which have been duly obtained, made or performed, are in full force and effect and do not subject the scope of any such Contract to any material adverse limitation, either specific or general in nature and (ii) with respect to the performance of such Contracts only, filings, Permits or authorizations to be subsequently obtained as contemplated by the Credit Agreement or the Disbursement Agreement.

(d) Neither such Grantor nor (to the best of such Grantor's knowledge) any of the other parties to the Contracts is in default in the performance or observance of any of the terms thereof in any manner that, in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(e) The right, title and interest of such Grantor in, to and under the Contracts are not subject to any defenses, offsets, counterclaims or claims that, in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(f) Such Grantor has delivered to the Administrative Agent a complete and correct copy of each Contract, including all amendments, supplements and other modifications thereto.

(g) No amount payable to such Grantor under or in connection with any Contract is evidenced by any Instrument or Chattel Paper which has not been delivered to the Administrative Agent.

(h) None of the parties to any Contract is a Governmental Authority.

4.10. *Intellectual Property.* (a) *Schedules 6* includes, without limitation, all Intellectual Property material to the conduct of such Grantor's Permitted Businesses (which material Intellectual Property shall include, at all times, all Intellectual Property relating to the "*Le Rêve*" name), which Intellectual Property is owned by such Grantor in its own name on the date hereof. Except as set forth in *Schedule 6*, such Grantor is the exclusive owner of the entire and unencumbered right, title and interest in and to such Intellectual Property and is otherwise entitled to use all such Intellectual Property, without limitation, subject only to the license terms of the licensing or franchise agreements referred to in paragraph (c) below.

(b) On the date hereof, all of such Grantor's material Intellectual Property is valid, subsisting, unexpired and enforceable and has not been abandoned.

(c) Except as set forth in *Schedule 6* and for licenses between Grantors in the ordinary course of business, on the date hereof (i) none of such Grantor's Intellectual Property is the subject of any licensing or franchise agreement pursuant to which such Grantor is the licensor or franchisor, and (ii) there are no other agreements, obligations, orders or judgments which affect the use of any material Intellectual Property.

(d) With respect to Wynn Resorts Holdings, (i) the rights of Wynn Resorts Holdings in or to the "*Le Rêve*" name do not infringe upon the rights of any third party, which infringement could reasonably be expected to have a material adverse effect on such Grantor's ability to use the "*Le Rêve*" name in its Permitted Businesses as currently used or contemplated to be used, (ii) no claim has been asserted that the use of such Intellectual Property does or may infringe upon the rights of any third party which claim, if determined adversely to Wynn Resorts Holdings, could reasonably be expected to have a material adverse effect on such Grantor's ability to use such Intellectual Property in its Permitted Businesses, (iii) there is currently no infringement or unauthorized use of any item of such Intellectual Property which infringement or unauthorized use could reasonably be expected to have a material adverse effect on Wynn Resorts Holdings' ability

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to use such Intellectual Property in its Permitted Businesses and (iv) no holding, decision or judgment has been rendered by any Governmental Authority which could reasonably be expected to have a material adverse effect on Wynn Resorts Holdings' ability to use such Intellectual Property in its Permitted Businesses.

(e) The rights of such Grantor in or to the Intellectual Property do not infringe upon the rights of any third party, and no claim has been asserted that the use of such Intellectual Property does or may infringe upon the rights of any third party, in either case, which conflict or infringement could

reasonably be expected to have a Material Adverse Effect. To such Grantor's knowledge, there is currently no infringement or unauthorized use of any item of Intellectual Property that could reasonably be expected to have a Material Adverse Effect.

(f) No holding, decision or judgment has been rendered by any Governmental Authority which would limit, cancel or question the validity or enforceability of, or such Grantor's rights in, any of such Grantor's Intellectual Property in any respect that could reasonably be expected to have a Material Adverse Effect. Such Grantor is not aware of any uses of any item of its material Intellectual Property that could reasonably be expected to lead to such item becoming invalid or unenforceable.

(g) Except as could not reasonably be expected to have a Material Adverse Effect, no action or proceeding is pending, or, to the knowledge of such Grantor, threatened, on the date hereof (i) seeking to limit, cancel or question the validity of any of such Grantor's Intellectual Property or such Grantor's ownership interest therein, (ii) alleging that any services provided by, processes used by, or products manufactured or sold by such Grantor infringe any patent, trademark, copyright, or any other right of any third party, (iii) alleging that any material Intellectual Property of such Grantor is being licensed, sublicensed or used in violation of any patent, trademark, copyright or any other right of any third party, or (iv) which, if adversely determined, would have a material adverse effect on the value of any of such Grantor's Intellectual Property. To the knowledge of such Grantor, no Person is engaging in any activity that infringes upon Grantor's material Intellectual Property or upon the rights of such Grantor therein, except (i) with respect to the Intellectual Property related to or otherwise associated with the Grantor's use of the "Le Reve" name, such claims that, if determined adversely to a Grantor, could not reasonably be expected to have a material adverse effect on such Grantor's ability to use the "Le Reve" name in its Permitted Businesses as currently used or contemplated to be used and (ii) with respect to all other material Intellectual Property of such Grantor, as could not reasonably be expected to have a Material Adverse Effect. Except as set forth in *Schedule 6* hereto, such Grantor has not granted any material license, or any release, covenant not to sue, non-assertion assurance, or other material right to any person with respect to any part of its material Intellectual Property. The consummation of the transactions contemplated by this Agreement will not result in the termination or impairment of any of the material Intellectual Property of such Grantor.

(h) With respect to each Copyright License, Trademark License and Patent License, as of the date hereof, and with respect to each material Copyright License, material Trademark License and material Patent License after the date hereof: (i) except as could not reasonably be expected to have a Material Adverse Effect, such license is valid and binding and in full force and effect and such license represents the entire agreement between the respective licensor and licensee with respect to the subject matter of such license; (ii) such license will not cease to be valid and binding and in full force and effect on terms identical to those currently in effect as a result of the rights and interests granted herein, nor will the grant of such rights and interests constitute a breach or default under such license or otherwise give the licensor or licensee a right to terminate such license; (iii) such Grantor has not received any notice of termination or cancellation under such license, which notice could reasonably be expected to have a Material Adverse Effect; (iv) such Grantor has not received any notice of a breach or default under such license, which notice could

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reasonably be expected to have a Material Adverse Effect, which breach or default has not been cured; (v) such Grantor has not granted to any other third party any rights, adverse or otherwise, under such license which could reasonably be expected to have a Material Adverse Effect; and (vi) such Grantor is not in breach or default in any material respect, and no event has occurred that, with notice and/or lapse of time, would constitute such a breach or default or permit termination, modification or acceleration under such license.

(i) Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor has performed all acts and has paid all required fees and taxes to maintain each and every item of its material Intellectual Property in full force and effect and to protect and maintain its interest therein. Such Grantor has either used proper statutory notice in connection with its use of each material Patent, Trademark and Copyright included in its Intellectual Property, or such Grantor's failure to use proper statutory notice could not reasonably be expected to have a Material Adverse Effect.

(j) To its knowledge, except as could not reasonably be expected to have a Material Adverse Effect, (i) none of the Trade Secrets of such Grantor has been used, divulged, disclosed or appropriated to the detriment of such Grantor for the benefit of any other Person; (ii) no employee, independent contractor or agent of such Grantor has misappropriated any trade secrets of any other Person in the course of the performance of his or her duties as an employee, independent contractor or agent of such Grantor; and (iii) no employee, independent contractor or agent of such Grantor is in default or breach of any term of any employment agreement, non-disclosure agreement, assignment of inventions agreement or similar agreement or contract relating in any way to the protection, ownership, development, use or transfer of such Grantor's material Intellectual Property.

(k) Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor has made all filings and recordings necessary to adequately protect its interest in its Intellectual Property including, without limitation, recordation of its interests in the Patents and Trademarks with the United States Patent and Trademark Office and in corresponding national and international patent offices, and recordation of any of its interests in the Copyrights with the United States Copyright Office and in corresponding national and international copyright offices.

(l) Such Grantor has taken all commercially reasonable steps to ensure that all licensed users of any of its material Intellectual Property use consistent standards of quality which are controlled by such Grantor.

(m) The name "Wynn Resorts" and any Intellectual Property related thereto is not material to the Permitted Businesses of any Grantor and Wynn Resorts Holdings will transfer all such Intellectual Property to Wynn Resorts as soon as practicable.

4.11. *Vehicles.* *Schedule 8* is a complete and correct list of all Vehicles owned by such Grantor on the date hereof.

SECTION 5. COVENANTS

Each Grantor covenants and agrees with the Secured Parties that, from and after the date of this Agreement until the Obligations (other than unmatured contingent reimbursement and indemnification Obligations, and Obligations in respect of any Specified Hedge Agreement) shall have been paid in full, no Letter of Credit shall be outstanding and the Commitments shall have terminated or expired:

5.1. *Covenants in Credit Agreement.* Each Guarantor shall take, or shall refrain from taking, as the case may be, each action that is necessary to be taken or not taken, as the case may be, so that no Default or Event of Default is caused by the failure to take such action or to refrain from taking such action by such Guarantor or any of its Subsidiaries and each provision of the Credit Agreement that

relates to such Guarantor (whether directly, indirectly, through the Borrower's obligation to cause such Guarantor to take or not take actions or otherwise) is hereby incorporated herein by reference and shall apply to such Guarantor *mutatis mutandis* to the same extent as if the Credit Agreement had been executed by such Guarantor and such provisions had been made the direct obligations of such Guarantor.

5.2. *Delivery and Control of Instruments, Chattel Paper, Investment Property and Deposit Accounts.* (a) If any of the Collateral shall be or become evidenced or represented by any Instrument, Certificated Security, Chattel Paper or Negotiable Document, such Instrument, Certificated Security, Chattel Paper or Negotiable Document shall be promptly delivered to the Administrative Agent, duly endorsed in a manner satisfactory to the Administrative Agent, to be held as Collateral pursuant to this Agreement (other than the Non-Deliverable Collateral).

(b) If any of the Collateral shall be or become evidenced or represented by an Uncertificated Security, such Grantor shall cause, or with respect to any Issuer that is not an Affiliate of any Grantor, use commercially reasonable efforts to cause, the Issuer thereof either (i) to register the Administrative Agent as the registered owner of such Uncertificated Security, upon original issue or registration of transfer or (ii) to agree in writing with such Grantor and the Administrative Agent that such Issuer will comply with instructions with respect to such Uncertificated Security originated by the Administrative Agent without further consent of such Grantor, such agreement to be in substantially the form of *Exhibit C*. Notwithstanding the foregoing, each Grantor covenants that (x) the representations and warranties contained in Section 4.7(c) shall at all times be true and correct and (y) it will not issue or cause or permit its Subsidiaries to issue any Capital Stock in uncertificated form or seek to convert all or any part of its existing Capital Stock into uncertificated form.

(c) If any of the Collateral now or hereafter constitutes a Deposit Account or a Securities Account, such Grantor shall cause the financial institution maintaining such account to agree in writing with such Grantor and the Administrative Agent that such financial institution shall comply with all Entitlement Orders and instructions originated or issued by the Administrative Agent with respect to such Deposit Account or Securities Account without further consent of such Grantor, such agreement to be substantially in the form of *Exhibit D* or in such other form as shall be satisfactory to the Administrative Agent (including, without limitation, the Collateral Account Agreements (as defined in the Disbursement Agreement), which such agreements must be satisfactory to the Administrative Agent).

(d) If any of the Collateral shall be or become evidenced or represented by a Commodity Contract, such Grantor shall cause the Commodity Intermediary with respect to such Commodity Contract to agree in writing with such Grantor and the Administrative Agent that such Commodity Intermediary will apply any value distributed on account of such Commodity Contract as directed by the Administrative Agent without further consent of such Grantor, such agreement to be in substantially the form of *Exhibit E* or in such other form as may be satisfactory to the Administrative Agent.

(e) If any of the Collateral shall be or become evidenced or represented by or held in a Securities Account or a Commodity Account, such Grantor shall, in the case of a Securities Account, comply with Section 5.2(c) with respect to all Security Entitlements carried in such Securities Account and, in the case of a Commodity Account, comply with Section 5.2(d) with respect to all Commodity Contracts carried in such Commodity Account.

5.3. *[INTENTIONALLY OMITTED]*.

5.4. *Payment of Obligations.* Such Grantor will pay and discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all taxes, assessments and

governmental charges or levies imposed upon the Collateral or in respect of income or profits therefrom, as well as all claims of any kind (including, without limitation, claims for labor, materials and supplies) against or with respect to the Collateral, except that no such charge need be paid if the amount or validity thereof is currently being contested in good faith by appropriate proceedings, reserves in conformity with GAAP with respect thereto have been provided on the books of such Grantor and such proceedings could not reasonably be expected to result in the sale, forfeiture or loss of any material portion of the Collateral or any interest therein.

5.5. *Maintenance of Perfected Security Interest; Further Documentation.* (a) Such Grantor shall maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in Section 4.3 and shall defend such security interest against the claims and demands of all Persons whomsoever.

(b) Such Grantor will furnish to the Secured Parties from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the assets and property of such Grantor as the Administrative Agent may reasonably request, all in reasonable detail.

(c) At any time and from time to time, upon the written request of the Administrative Agent, and at the sole expense of such Grantor, such Grantor will promptly and duly authorize, execute and deliver, and have recorded, such further instruments and documents and take such further actions as the Administrative Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, (i) the filing of any financing or continuation statements under the Uniform Commercial Code (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby and (ii) in the case of Investment Property, Deposit Accounts and any other relevant Collateral, taking any actions necessary to enable the Administrative Agent to obtain "control" (within the meaning of the applicable Uniform Commercial Code) with respect thereto, including without limitation, executing and delivering and causing the relevant depository bank or securities intermediary to execute and deliver a Control Agreement in the form attached hereto as *Exhibit D*, or in such other form as may be satisfactory to the Administrative Agent.

5.6. *Changes in Locations, Name, Jurisdiction of Incorporation, etc.* Such Grantor will not, except upon 15 days' prior written notice to the Administrative Agent and delivery to the Administrative Agent of (a) all additional executed financing statements and other documents reasonably requested by the Administrative Agent to maintain the validity, perfection and priority of the security interests provided for herein and (b) if applicable, a written supplement to *Schedule 5* showing any additional location at which Inventory or Equipment (other than mobile goods) or books and records pertaining to the Collateral shall be kept:

(i) permit any of the Inventory or Equipment (other than mobile goods) or books and records pertaining to the Collateral to be kept at a location other than those listed on *Schedule 5*;

(ii) without limiting the prohibitions on mergers involving the Grantors contained in the Credit Agreement, change its legal name, jurisdiction of organization or the location of its chief executive office or sole place of business from that referred to in Section 4.4; or

(iii) change its legal name, identity or structure to such an extent that any financing statement filed by the Administrative Agent in connection with this Agreement would become misleading.

5.7. *Notices.* Such Grantor will advise the Secured Parties promptly, in reasonable detail, of:

(a) any Lien (other than any Permitted Lien) on any of the Collateral which would adversely affect the ability of the Administrative Agent to exercise any of its remedies hereunder; and

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(b) of the occurrence of any other event which could reasonably be expected to have a material adverse effect on the aggregate value of the Collateral or on the security interests created hereby.

5.8. *Investment Property.* (a) Subject to compliance with applicable Nevada Gaming Laws, if such Grantor shall become entitled to receive or shall receive any stock or other ownership certificate (including, without limitation, any certificate representing a stock dividend or a distribution in connection with any reclassification, increase or reduction of capital or any certificate issued in connection with any reorganization), option or rights in respect of the Capital Stock of any Issuer, whether in addition to, in substitution of, as a conversion of, or in exchange for, any shares of or other ownership interests in the Pledged Stock, or otherwise in respect thereof, such Grantor shall accept the same as the agent of the Secured Parties, hold the same in trust for the Secured Parties and deliver the same forthwith to the Administrative Agent in the exact form received, duly endorsed by such Grantor to the Administrative Agent, if required, together with an undated stock power covering such certificate duly executed in blank by such Grantor and with, if the Administrative Agent so requests, signature guaranteed, to be held by the Administrative Agent, subject to the terms hereof, as additional collateral security for the Obligations. So long as no Event of Default shall have occurred and be continuing, the Administrative Agent authorizes each Grantor to retain all ordinary cash dividends and distributions paid in the normal course of the business of the Issuer and all scheduled payments of interest. All other dividends and distributions of any type or nature, including, without limitation, any dividends or distributions paid in respect of Pledged Securities upon liquidation or dissolution of any Issuer shall immediately be delivered to the Administrative Agent to be held as additional Collateral hereunder. If any sums of money or property so paid or distributed in respect of the Pledged Securities shall be received by such Grantor, such Grantor shall, until such money or property is paid or delivered to the Administrative Agent, hold such money or property in trust for the Secured Parties, segregated from other funds of such Grantor, as additional collateral security for the Obligations.

(b) Without the prior written consent of the Administrative Agent (which consent shall not be unreasonably withheld), such Grantor will not (i) vote to enable, or take any other action to permit, any Issuer to issue any stock or other equity securities of any nature or to issue any other securities convertible into or granting the right to purchase or exchange for any stock or other equity securities of any nature of any Issuer (except pursuant to a transaction permitted by the Credit Agreement), (ii) sell, assign, transfer, exchange, or otherwise dispose of, or grant any option with respect to, any of the Investment Property or Proceeds thereof or any interest therein (except pursuant to a transaction expressly permitted by the Credit Agreement), (iii) create, incur or permit to exist any Lien or option in favor of, or any claim of any Person with respect to, any of the Investment Property or Proceeds thereof, or any interest therein, except for the security interests created by this Agreement and other Permitted Liens or (iv) enter into any agreement or undertaking restricting the right or ability of such Grantor or the Administrative Agent to sell, assign or transfer any of the Investment Property or Proceeds thereof or any interest therein (except pursuant to a transaction expressly permitted by the Credit Agreement).

(c) In the case of each Grantor which is an Issuer, such Issuer agrees that (i) it will be bound by the terms of this Agreement relating to the Pledged Securities issued by it and will comply with such terms insofar as such terms are applicable to it, (ii) it will notify the Administrative Agent promptly in writing of the occurrence of any of the events described in Section 5.8(a) with respect to the Pledged Securities issued by it and (iii) the terms of Sections 6.3(c) and 6.7 shall apply to it, *mutatis mutandis*, with respect to all actions that may be required of it pursuant to Section 6.4(c) or 6.8 with respect to the Pledged Securities issued by it. In addition, each Grantor which is either an Issuer or an owner of any Pledged Security hereby consents to the grant by each other Grantor of the security interest hereunder in favor of the Administrative Agent and to the transfer of any Pledged Security to the Administrative Agent or its nominee following an Event of Default and to

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the substitution of the Administrative Agent or its nominee as a partner, member or shareholder of the Issuer of the related Pledged Security.

5.9. *Receivables.* (a) Other than in the ordinary course of business consistent with customary practices in its Permitted Businesses, and so long as no Event of Default shall have occurred and be continuing, such Grantor will not (i) grant any extension of the time of payment of any Receivable, (ii) compromise or settle any Receivable for less than the full amount thereof, (iii) release, wholly or partially, any Person liable for the payment of any Receivable, (iv) allow any credit or discount whatsoever on any Receivable or (v) amend, supplement or modify any Receivable in any manner that could materially adversely affect the value thereof.

(b) Such Grantor will deliver to the Administrative Agent a copy of each material written demand, notice or document received by it that questions or calls into doubt the validity or enforceability of more than 5% of the aggregate amount of the then outstanding Receivables.

5.10. *Contracts.* (a) Except to the extent permitted under the Credit Agreement or Disbursement Agreement, such Grantor will perform and comply in all material respects with all its obligations under the Contracts.

(b) Such Grantor will not amend, modify, cancel, terminate, waive or fail to enforce any provision of any Contract or suspend such Contract or the performance of work thereunder, or agree to the sale, assignment or disposition by any counterparty to such Contract of any part of its interest therein (all of which powers are rested in the Administrative Agent), except to the extent expressly permitted by the terms of the other Financing Agreements.

(c) Such Grantor will exercise promptly and diligently each and every material right which it may have under each Contract, except to the extent provided in any of the other Financing Agreements.

(d) Such Grantor will deliver to the Administrative Agent a copy of each material demand, notice or document received by it relating in any way to any Contract that questions the validity or enforceability of such Contract that is material to its business.

(e) In the event that such Grantor enters into any new contract that would qualify as either (i) a Material Project Document (as defined in the Disbursement Agreement) or (ii) a Material Contract (as defined in the Credit Agreement), such Grantor shall provide the Administrative Agent promptly with an amended *Schedule 7* hereto and any such new contract shall be deemed for all purposes to be a Contract hereunder.

5.11. *Intellectual Property.* (a) Such Grantor (either itself or through licensees) will (i) continue to use each of its material Trademarks on each and every trademark class of goods necessary in order to maintain such Trademark (in the trademark classes of goods in which it is used) in full force free from any claim of abandonment for non-use, (ii) use such Trademark with the appropriate notice of registration and all other notices and legends required by applicable Requirements of Law, (iii) not adopt or use any mark which is confusingly similar or a colorable imitation of such Trademark unless the Administrative Agent, for the ratable benefit of the Secured Parties, shall obtain a perfected security interest in such mark pursuant to this Agreement and the Intellectual Property Security Agreement, and (iv) not (and not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby such Trademark may become invalidated or impaired in any way.

(b) Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor (either itself or through licensees) will not do any act, or omit to do any act, whereby any material Patent may become forfeited, abandoned or dedicated to the public.

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(c) Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor (either itself or through licensees) (i) will employ each of its material Copyrights and (ii) will not (and will not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby any material portion of the Copyrights may become invalidated or otherwise impaired. Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor will not (either itself or through licensees) do any act whereby any material Copyright may fall into the public domain.

(d) Such Grantor (either itself or through licensees) will not do any act that knowingly uses any material Intellectual Property to infringe the intellectual property rights of any other Person.

(e) Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor (either itself or through licensees) will use proper statutory notice in connection with the use of each material Patent, Trademark and Copyright included in its Intellectual Property.

(f) Such Grantor will notify the Secured Parties promptly if it knows that any application or registration relating to any of its material Intellectual Property may become forfeited, abandoned or dedicated to the public, or of any adverse determination or development (including, without limitation, the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court or tribunal in any country) regarding such Grantor's ownership of, or the validity of, any material Intellectual Property or such Grantor's right to register the same or to own and maintain the same, unless such forfeiture, abandonment, dedication to the public, or adverse determination or development could not reasonably be expected to have a Material Adverse Effect.

(g) Whenever such Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, such Grantor shall report such filing to the Administrative Agent within five Business Days after the last day of the fiscal quarter in which such filing occurs. Upon request of the Administrative Agent, such Grantor shall execute and deliver, and have recorded, any and all agreements, instruments, documents, and papers as the Administrative Agent may request to evidence the Secured Parties' security interest in any Copyright, Patent, Trademark or other Intellectual Property included in the Collateral and the goodwill and general intangibles of such Grantor relating thereto or represented thereby.

(h) Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor will take all reasonable and necessary steps, including, without limitation, in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of its material Intellectual Property, including, without limitation, the payment of required fees and taxes, the filing of responses to office actions issued by the United States Patent and Trademark Office and the United States Copyright Office, the filing of applications for renewal or extension, the filing of affidavits of use and affidavits of incontestability, the filing of divisional, continuation, continuation-in-part, reissue, and renewal applications or extensions, the payment of maintenance fees, and the participation in interference, reexamination, opposition, cancellation, infringement and misappropriation proceedings.

(i) Such Grantor (either itself or through licensees) will not, without the prior written consent of the Administrative Agent, discontinue use of or otherwise abandon any of its Intellectual Property, or abandon any application or any right to file an application for letters patent, trademark, or copyright, unless such Grantor shall have previously determined that such use or the pursuit or maintenance of such Intellectual Property is no longer desirable in the

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conduct of such Grantor's business and that the loss thereof could not reasonably be expected to have a Material Adverse Effect and, in which case, such Grantor shall give prompt notice of any such abandonment of any material Intellectual Property to the Administrative Agent in accordance herewith.

(j) In the event that any of its material Intellectual Property is infringed, misappropriated or diluted by a third party, such Grantor shall (i) take such actions as such Grantor shall reasonably deem appropriate under the circumstances to protect such Intellectual Property and (ii) if such Intellectual Property is of material economic value, promptly notify the Administrative Agent after it learns thereof and sue for infringement, misappropriation or

dilution (as applicable), seek injunctive relief where appropriate and recover any and all damages awarded for any such infringement, misappropriation or dilution (or take other action as such Grantor deems appropriate in the exercise of its prudent business judgment).

(k) Such Grantor agrees that, should it obtain an ownership interest in any item of Intellectual Property which is not now a part of the Intellectual Property Collateral (the "*After-Acquired Intellectual Property*"), (i) the provisions of Section 3 shall automatically apply thereto, (ii) any such After-Acquired Intellectual Property, and in the case of trademarks, the goodwill of the business connected therewith or symbolized thereby, shall automatically become part of the Intellectual Property Collateral, (iii) with respect to any material Intellectual Property, it shall give prompt (and, in any event within five Business Days after the last day of the fiscal quarter in which such Grantor acquires such ownership interest in any material Intellectual Property) written notice thereof to the Administrative Agent in accordance herewith, and (iv) with respect to any material Intellectual Property, it shall provide the Administrative Agent promptly (and, in any event within five Business Days after the last day of the fiscal quarter in which such Grantor acquires such ownership interest in any material Intellectual Property) with an amended *Schedule 6* hereto and take the actions specified in 5.11(m).

(l) Such Grantor agrees to execute an Intellectual Property Security Agreement with respect to its Intellectual Property in substantially the form of *Exhibit B-1* in order to record the security interest granted herein to the Administrative Agent for the ratable benefit of the Secured Parties with the United States Patent and Trademark Office, the United States Copyright Office, and any other applicable Governmental Authority.

(m) Promptly after filing an application for the registration of any After-Acquired Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office, or any similar office or agency in any other county or any political subdivision thereof, such Grantor agrees to execute an After-Acquired Intellectual Property Security Agreement with respect to such After-Acquired Intellectual Property in substantially the form of *Exhibit B-2* in order to record the security interest granted herein to the Administrative Agent for the ratable benefit of the Secured Parties with the United States Patent and Trademark Office, the United States Copyright Office, or other Governmental Authority (as applicable).

5.12. *Vehicles.* (a) No Vehicle shall be removed from the state which has issued the certificate of title or ownership therefor for a period in excess of the period after which such vehicle would be required to be retitled under applicable state law.

(b) With respect to any Vehicles acquired by such Grantor subsequent to the date hereof, within 30 days after the date of acquisition thereof, all applications for certificates of title or ownership indicating the Administrative Agent's first priority security interest in the Vehicle covered by such certificate, and any other necessary documentation, shall be filed in each office in each jurisdiction which the Administrative Agent shall deem advisable to perfect its security interests in the Vehicles.

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5.13. *Non-Deliverable Collateral.* At no time shall any item of Non-Deliverable Collateral be delivered to or held by any Person (other than the Administrative Agent) as collateral security for any obligation of any Grantor.

SECTION 6. REMEDIAL PROVISIONS

6.1. *Nevada Gaming Laws and Intercreditor Agreements.* Each of the provisions of this Section 6 shall be subject to compliance with (i) applicable Nevada Gaming Laws and (ii) applicable provisions of the Intercreditor Agreements.

6.2. *Certain Matters Relating to Receivables.* (a) The Administrative Agent shall have the right to make test verifications of the Receivables in any manner and through any medium that it reasonably considers advisable, and each Grantor shall furnish all such assistance and information as the Administrative Agent may require in connection with such test verifications.

(b) The Administrative Agent hereby authorizes each Grantor to collect such Grantor's Receivables; provided that the Administrative Agent may curtail or terminate said authority at any time after the occurrence and during the continuance of an Event of Default. If required by the Administrative Agent at any time after the occurrence and during the continuance of an Event of Default, any payments of Receivables, when collected by any Grantor, (i) shall be forthwith (and, in any event, within two Business Days) deposited by such Grantor in the exact form received, duly endorsed by such Grantor to the Administrative Agent if required, in a Collateral Account maintained under the control of the Administrative Agent, subject to withdrawal by the Administrative Agent for the account of the Secured Parties only as provided in Section 6.4, and (ii) until so turned over, shall be held by such Grantor in trust for the Secured Parties, segregated from other funds of such Grantor. Each such deposit of Proceeds of Receivables shall be accompanied by a report identifying in reasonable detail the nature and source of the payments included in the deposit.

(c) At the Administrative Agent's request, each Grantor shall deliver to the Administrative Agent all original and other documents evidencing, and relating to, the agreements and transactions which gave rise to the Receivables, including, without limitation, all original orders, invoices and shipping receipts (other than Non-Deliverable Collateral).

6.3. *Communications with Obligors; Grantors Remain Liable.* (a) In addition to the rights of the Administrative Agent under the Consents, the Administrative Agent in its own name or in the name of others may at any time after the occurrence and during the continuance of an Event of Default communicate with obligors under the Receivables and parties to the Contracts to verify with them to the Administrative Agent's satisfaction the existence, amount and terms of any Receivables or Contracts.

(b) Upon the request of the Administrative Agent at any time after the occurrence and during the continuance of an Event of Default, each Grantor shall notify obligors on the Receivables and parties to the Contracts that the Receivables and the Contracts have been assigned to the Administrative Agent for the ratable benefit of the Secured Parties and that payments in respect thereof shall be made directly to the Administrative Agent.

(c) Anything herein to the contrary notwithstanding, each Grantor shall remain liable under each of the Receivables and Contracts to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. No Secured Party shall have any obligation or liability under any Receivable (or any agreement giving rise thereto) or Contract by reason of or arising out of this Agreement or the receipt by any Secured Party of any payment relating thereto, nor shall any Secured Party be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to

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any Receivable (or any agreement giving rise thereto) or Contract, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

6.4. *Pledged Securities.* (a) Unless an Event of Default shall have occurred and be continuing and the Administrative Agent shall have given notice to the relevant Grantor of the Administrative Agent's intent to exercise its corresponding rights pursuant to Section 6.4(b), each Grantor shall be permitted to receive all cash dividends paid in respect of the Pledged Stock and all payments made in respect of the Pledged Notes, in each case paid in the normal course of business of the relevant Issuer, to the extent permitted in the Credit Agreement, and to exercise all voting and corporate or other ownership rights with respect to the Pledged Securities; *provided, however*, that no vote shall be cast or corporate or other ownership right exercised or other action taken which, in the Administrative Agent's reasonable judgment, would impair the Collateral or which would be inconsistent with or result in any violation of any provision of the Credit Agreement, this Agreement or any other Loan Document.

(b) Subject to applicable provisions of Nevada Gaming Laws, if an Event of Default shall occur and be continuing and the Administrative Agent shall give notice of its intent to exercise such rights to the relevant Grantor or Grantors, (i) the Administrative Agent shall have the right to receive any and all cash dividends, payments or other Proceeds paid in respect of the Pledged Securities and make application thereof to the Obligations in the order set forth in Section 6.6, and (ii) any or all of the Pledged Securities shall be registered in the name of the Administrative Agent or its nominee, and the Administrative Agent or its nominee may thereafter exercise (x) all voting, corporate or other ownership and other rights pertaining to such Pledged Securities at any meeting of shareholders or other equity holders of the relevant Issuer or Issuers or otherwise and (y) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Pledged Securities as if it were the absolute owner thereof (including, without limitation, the right to exchange at its discretion any and all of the Pledged Securities upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate or other structure of any Issuer, or upon the exercise by any Grantor or the Administrative Agent of any right, privilege or option pertaining to such Pledged Securities, and in connection therewith, the right to deposit and deliver any and all of the Pledged Securities with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as the Administrative Agent may determine), all without liability except to account for property actually received by it, but the Administrative Agent shall have no duty to any Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(c) Each Grantor hereby authorizes and instructs each Issuer of any Pledged Securities pledged by such Grantor hereunder (i) to comply with any instruction received by it from the Administrative Agent in writing that (x) states that an Event of Default has occurred and is continuing and (y) is otherwise in accordance with the terms of this Agreement, without any other or further instructions from such Grantor, and each Grantor agrees that each Issuer shall be fully protected in so complying, and (ii) unless otherwise expressly permitted hereby, to pay any dividends or other payments with respect to the Pledged Securities directly to the Administrative Agent.

6.5. *Proceeds to be Turned Over To Administrative Agent.* In addition to the rights of the Secured Parties specified in Section 6.2, and subject to applicable provisions of Nevada Gaming Laws, with respect to payments of Receivables, if an Event of Default shall occur and be continuing, all Proceeds received by any Grantor consisting of cash, Cash Equivalents, checks and other near-cash items shall be held by such Grantor in trust for the Secured Parties, segregated from other funds of such Grantor,

and shall, forthwith upon receipt by such Grantor, be turned over to the Administrative Agent in the exact form received by such Grantor (duly endorsed by such Grantor to the Administrative Agent, if required). All Proceeds received by the Administrative Agent hereunder shall be held by the Administrative Agent in a Collateral Account maintained under its control. All Proceeds while held by the Administrative Agent in a Collateral Account (or by such Grantor in trust for the Secured Parties) shall continue to be held as collateral security for all the Obligations and shall not constitute payment thereof until applied as provided in Section 6.6.

6.6. *Application of Proceeds.* At such intervals as may be agreed upon by the Borrower and the Administrative Agent in writing, or, if an Event of Default shall have occurred and be continuing, at any time at the Administrative Agent's election, the Administrative Agent may, notwithstanding the provisions of Section 2.12 of the Credit Agreement, apply all or any part of Proceeds constituting Collateral realized through the exercise by the Administrative Agent of its remedies hereunder, whether or not held in any Collateral Account, and any proceeds of the guarantee set forth in Section 2, in payment of the Obligations in the following order:

First, to the Administrative Agent, to pay incurred and unpaid fees and expenses of the Secured Parties under the Loan Documents;

Second, to the Administrative Agent, for application by it towards payment of amounts then due and owing and remaining unpaid in respect of the Obligations, pro rata among the Lenders according to the amounts of the Obligations then due and owing and remaining unpaid to the Lenders;

Third, to the Administrative Agent, for application by it towards prepayment of the Obligations, *pro rata* among the Lenders according to the amounts of the Obligations then held by the Lenders; and

Fourth, any balance of such Proceeds remaining after the Obligations (other than unmatured contingent reimbursement and indemnification Obligations, and Obligations in respect of any Specified Hedge Agreement) shall have been paid in full, no Letters of Credit shall be outstanding and the Commitments shall have terminated or expired shall be paid over to the Borrower or to whomsoever may be lawfully entitled to receive the same.

6.7. *Code and Other Remedies.* (a) If an Event of Default shall occur and be continuing, the Administrative Agent, on behalf of the Secured Parties, may exercise (subject to obtaining any required approvals from any Governmental Authorities that may not be waived by the Grantors), in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the New York UCC (whether or not the New York UCC applies to the affected Collateral) or any other applicable law or in equity. Without limiting the generality of the foregoing, the Administrative Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, (and/or may forthwith sell, lease, license, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of any Secured Party or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or

for future delivery without assumption of any credit risk. Each Secured Party shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor, which right or equity is hereby waived and released. Each purchaser at any such sale shall hold the

property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Each Grantor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Administrative Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Administrative Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. The Administrative Agent may sell the Collateral without giving any warranties as to the Collateral. The Administrative Agent may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely effect the commercial reasonableness of any sale of the Collateral. Each Grantor agrees that it would not be commercially unreasonable for the Administrative Agent to dispose of the Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. Each Grantor hereby waives any claims against the Administrative Agent arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Administrative Agent accepts the first offer received and does not offer such Collateral to more than one offeree. Each Grantor further agrees, at the Administrative Agent's request, to assemble the Collateral and make it available to the Administrative Agent at places which the Administrative Agent shall reasonably select, whether at such Grantor's premises or elsewhere. The Administrative Agent shall apply the net proceeds of any action taken by it pursuant to this Section 6.7, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Secured Parties hereunder, including, without limitation, reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Obligations, in such order as the Administrative Agent may elect, and only after such application and after the payment by the Administrative Agent of any other amount required by any provision of law, including, without limitation, Section 9-615(a) of the New York UCC, need the Administrative Agent account for the surplus, if any, to any Grantor. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against any Secured Party arising out of the exercise by them of any rights hereunder.

(b) In the event of any Disposition of any of the Intellectual Property, the goodwill of the business connected with and symbolized by any Trademarks subject to such Disposition shall be included, and the applicable Grantor shall supply the Administrative Agent or its designee with such Grantor's know-how and expertise, and with documents and things embodying the same, relating to the manufacture, distribution, advertising and sale of products or the provision of services relating to any Intellectual Property subject to such Disposition, and such Grantor's customer lists and other records and documents relating to such Intellectual Property and to the manufacture, distribution, advertising and sale of such products and services.

6.8. *Registration Rights.* (a) If the Administrative Agent shall determine to exercise its right to sell any or all of the Pledged Stock pursuant to Section 6.7, and if in the opinion of the Administrative Agent it is necessary or advisable to have the Pledged Stock, or that portion thereof to be sold, registered under the provisions of the Securities Act, the relevant Grantor will cause, or with respect to any Issuer that is not an Affiliate of any Grantor, use commercially reasonable efforts to cause, the Issuer thereof to (i) execute and deliver, and cause the directors and officers of such Issuer to execute and deliver, all such instruments and documents, and do or cause to be done all such other acts as may be, in the opinion of the Administrative Agent, necessary or advisable to register the Pledged Stock, or that portion thereof to be sold, under the provisions of the Securities Act, (ii) use its best efforts to

cause the registration statement relating thereto to become effective and to remain effective for a period of one year from the date of the first public offering of the Pledged Stock, or that portion thereof to be sold, and (iii) make all amendments thereto and/or to the related prospectus which, in the opinion of the Administrative Agent, are necessary or advisable, all in conformity with the requirements of the Securities Act and the rules and regulations of the SEC applicable thereto. Each Grantor agrees to cause, or with respect to any Issuer that is not an Affiliate of any Grantor, use commercially reasonable efforts to cause, such Issuer to comply with the provisions of the securities or "Blue Sky" laws of any and all jurisdictions which the Administrative Agent shall designate and to make available to its security holders, as soon as practicable, an earnings statement (which need not be audited) which will satisfy the provisions of Section 11(a) of the Securities Act.

(b) Each Grantor recognizes that the Administrative Agent may be unable to effect a public sale of any or all the Pledged Stock or the Pledged Debt Securities, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. The Administrative Agent shall be under no obligation to delay a sale of any of the Pledged Stock or the Pledged Debt Securities for the period of time necessary to permit the Issuer thereof to register such securities for public sale under the Securities Act, or under applicable state securities laws, even if such Issuer would agree to do so.

(c) Each Grantor agrees to use its best efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of all or any portion of the Pledged Stock pursuant to this Section 6.8 valid and binding and in compliance with any and all other applicable Requirements of Law. Each Grantor further agrees that a breach of any of the covenants contained in this Section 6.8 will cause irreparable injury to the Secured Parties, that the Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 6.8 shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is continuing under the Credit Agreement or a defense of payment.

6.9. *Waiver; Deficiency.* Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay its Obligations and the fees and disbursements of any attorneys employed by any Secured Party to collect such deficiency.

SECTION 7. THE ADMINISTRATIVE AGENT

7.1. *Administrative Agent's Appointment as Attorney-in-Fact, etc.* (a) Subject to compliance with applicable Nevada Gaming Laws, each Grantor hereby irrevocably constitutes and appoints the Administrative Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each Grantor hereby gives the Administrative Agent

the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any or all of the following:

(i) in the name of such Grantor or its own name, or otherwise, take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Receivable or Contract or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Administrative Agent for the purpose of collecting any and all such moneys due under any Receivable or Contract or with respect to any other Collateral whenever payable;

(ii) in the case of any Intellectual Property, execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as the Administrative Agent may request to evidence the Secured Parties' security interest in such Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby;

(iii) pay or discharge taxes and Liens levied or placed on or threatened against the Collateral, effect any repairs or any insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;

(iv) execute, in connection with any sale provided for in Section 6.7 or 6.8, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(v) (1) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Administrative Agent or as the Administrative Agent shall direct; (2) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (3) sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (4) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (5) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (6) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Administrative Agent may deem appropriate; (7) assign any Copyright, Patent or Trademark (along with the goodwill of the business to which any such Copyright, Patent or Trademark pertains), throughout the world for such term or terms, on such conditions, and in such manner, as the Administrative Agent shall in its reasonable judgment determine; and (8) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Administrative Agent were the absolute owner thereof for all purposes, and do, at the Administrative Agent's option and such Grantor's expense, at any time, or from time to time, all acts and things which the Administrative Agent deems necessary to protect, preserve or realize upon the Collateral and the Secured Parties' security interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

Anything in this Section 7.1(a) to the contrary notwithstanding, the Administrative Agent agrees that, except as provided in Section 7.1(b), it will not exercise any rights under the power of attorney provided for in this Section 7.1(a) unless and until an Event of Default shall have occurred and be continuing.

(b) If any Grantor fails to perform or comply with any of its agreements contained herein, the Administrative Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement.

(c) The expenses of the Administrative Agent incurred in connection with actions undertaken as provided in this Section 7.1, together with interest thereon at a rate per annum equal to the rate per annum at which interest would then be payable on past due Revolving Credit Loans that are Base Rate Loans under the Credit Agreement, from the date of payment by the Administrative Agent to the date reimbursed by the relevant Grantor, shall be payable by such Grantor to the Administrative Agent on demand.

(d) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

7.2. *Duty of Administrative Agent.* The Administrative Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 or 9-208 of the New York UCC or otherwise, shall be to deal with it in the same manner as the Administrative Agent deals with similar property for its own account. Neither the Administrative Agent, nor any other Secured Party nor any of their respective officers, directors, partners, employees, agents, attorneys and other advisors, attorneys-in-fact or affiliates shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Secured Parties hereunder are solely to protect the Secured Parties' interests in the Collateral and shall not impose any duty upon any Secured Party to exercise any such powers. The Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, partners, employees, agents, attorneys and other advisors, attorneys-in-fact or affiliates shall be responsible to any Grantor for any act or failure to act hereunder, except to the extent that any such act or failure to act is found by a final and nonappealable decision of a court of competent jurisdiction to have resulted solely and proximately from their own gross negligence or willful misconduct in breach of a duty owed to such Grantor.

7.3 *Filing of Financing Statements.* Each Grantor acknowledges that pursuant to Section 9-509(b) of the New York UCC and any other applicable law, each Grantor authorizes the Administrative Agent to file or record financing or continuation statements, and amendments thereto, and other filing or recording documents or instruments with respect to the Collateral in such form and in such offices as the Administrative Agent reasonably determines appropriate to perfect

or maintain the perfection of the security interests of the Administrative Agent under this Agreement. Each Grantor hereby agrees that such financing statements may describe the collateral in the same manner as described in the Security Documents or as "all assets" or "all personal property" of the undersigned, whether now owned or hereafter existing or acquired by the undersigned. If and to the extent permitted by applicable law, a photographic or other reproduction of this Agreement shall be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction.

7.4. *Authority of Administrative Agent.* Each Grantor acknowledges that the rights and responsibilities of the Administrative Agent under this Agreement with respect to any action taken by the Administrative Agent or the exercise or non-exercise by the Administrative Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Administrative Agent and the other Secured Parties, be

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governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Administrative Agent and the Grantors, the Administrative Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

7.5. *Appointment of Co-Collateral Agents.* At any time or from time to time, in order to comply with any Requirement of Law, the Administrative Agent may appoint another bank or trust company or one of more other persons, either to act as co-agent or agents on behalf of the Secured Parties with such power and authority as may be necessary for the effectual operation of the provisions hereof and which may be specified in the instrument of appointment (which may, in the discretion of the Administrative Agent, include provisions for indemnification and similar protections of such co-agent or separate agent); provided that the Administrative Agent shall give prompt notice of such appointment to all Grantors pursuant to Section 8.2 hereof.

SECTION 8. MISCELLANEOUS

8.1. *Amendments in Writing.* None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 10.1 of the Credit Agreement.

8.2. *Notices.* All notices, requests and demands to or upon the Administrative Agent or any Grantor hereunder shall be effected in the manner provided for in Section 10.2 of the Credit Agreement; *provided* that any such notice, request or demand to or upon any Guarantor shall be addressed to such Guarantor at its notice address set forth on *Schedule 1*.

8.3. *No Waiver by Course of Conduct; Cumulative Remedies.* No Secured Party shall by any act (except by a written instrument pursuant to Section 8.1), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which such Secured Party would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

8.4. *Enforcement Expenses; Indemnification.* (a) Each Grantor agrees to pay or reimburse each Secured Party for all its costs and expenses incurred in collecting against such Grantor under the guarantee contained in Section 2 or otherwise enforcing or preserving any rights under this Agreement and the other Loan Documents to which such Grantor is a party, including, without limitation, the fees and disbursements of counsel to each Secured Party and of counsel to the Administrative Agent.

(b) Each Grantor agrees to pay, and to save the Secured Parties harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement.

(c) Each Grantor agrees to pay, and to save the Secured Parties harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement to the extent the Borrower would be required to do so pursuant to Section 10.5 of the Credit Agreement.

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(d) The agreements in this Section 8.4 shall survive repayment of the Obligations and all other amounts payable under the Credit Agreement and the other Loan Documents.

(e) Each Grantor agrees that the provisions of Section 2.20 of the Credit Agreement are hereby incorporated herein by reference, *mutatis mutandis*, and each Secured Party shall be entitled to rely on each of them as if they were fully set forth herein.

8.5. *Successors and Assigns.* This Agreement shall be binding upon the successors and assigns of each Grantor and shall inure to the benefit of the Secured Parties and their successors and assigns; *provided* that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Administrative Agent.

8.6. *Set-Off.* Each Grantor hereby irrevocably authorizes each Secured Party at any time and from time to time while an Event of Default shall have occurred and be continuing, without notice to such Grantor or any other Grantor, any such notice being expressly waived by each Grantor, to set-off and appropriate and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Secured Party to or for the credit or the account of such Grantor, or any part thereof in such amounts as such Secured Party may elect, against and on account of the obligations and liabilities of such Grantor to such Secured Party hereunder and claims of every nature and description of such Secured Party against such Grantor, in any

currency, whether arising hereunder, under the Credit Agreement, any other Loan Document or otherwise, as such Secured Party may elect, whether or not any Secured Party has made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured. Each Secured Party shall notify such Grantor promptly of any such set-off and the application made by such Secured Party of the proceeds thereof, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Secured Party under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which such Secured Party may have.

8.7. *Counterparts.* This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

8.8. *Severability.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction (including by reason of the application of Nevada Gaming Laws or non-approval of the Nevada Gaming Authorities as set forth in Section 8.17) shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.9. *Section Headings.* The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

8.10. *Integration.* This Agreement and the other Loan Documents represent the agreement of the Grantors, the Administrative Agent and the other Secured Parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by any Secured Party relative to subject matter hereof and thereof not expressly set forth or referred to herein or in the other Loan Documents.

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8.11. **GOVERNING LAW. SUBJECT TO COMPLIANCE WITH APPLICABLE NEVADA GAMING LAWS AND MANDATORY PROVISIONS OF NEW YORK LAW WHICH MAY REQUIRE APPLICATION OF NEVADA OR DELAWARE LAW AS TO CERTAIN ISSUES OF PERFECTION, THE EFFECT OF PERFECTION OR NON-PERFECTION, AND THE PRIORITY OF SECURITY INTERESTS, THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

8.12. *Submission to Jurisdiction; Waivers.* Each Grantor hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Grantor at its address referred to in Section 8.2 or at such other address of which the Administrative Agent shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

8.13. *Acknowledgments.* Each Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(b) no Secured Party has any fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Grantors, on the one hand, and the Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Secured Parties or among the Grantors and the Secured Parties.

8.14. *Additional Grantors.* Each Subsidiary of Valvino that is required to become a party to this Agreement pursuant to Section 6.10(b) of the Credit Agreement shall become a Grantor for all purposes of this Agreement upon execution and delivery by such Subsidiary of an Assumption Agreement in the form of Annex 1 hereto.

8.15. *Releases.* (a) At such time as the Loans, the Reimbursement Obligations and the other Obligations (other than unmatured contingent reimbursement and indemnification Obligations, and Obligations in respect of any Specified Hedge Agreement) shall have been paid in full, the Commitments have been terminated or expired and no Letters of Credit shall be outstanding, the Collateral shall be released from the Liens created hereby, and this Agreement and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent and each

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Grantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to the Grantors. At the request and sole expense of any Grantor following any such termination, the Administrative Agent shall deliver to such Grantor any of such Grantor's Collateral held by the Administrative Agent hereunder, and execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence such termination.

(b) If any of the Collateral shall be Disposed of by any Grantor in a transaction permitted by the Credit Agreement, then the Administrative Agent, at the request and sole expense of such Grantor, shall execute and deliver to such Grantor all releases or other documents reasonably necessary or desirable for the release of the Liens created hereby on such Collateral. At the request and sole expense of the Borrower, a Guarantor shall be released from its obligations hereunder in the event that all the Capital Stock of such Guarantor shall be Disposed of in a transaction permitted by the Credit Agreement; provided that the Borrower shall have delivered to the Administrative Agent, at least ten Business Days prior to the date of the proposed release, a written request for release identifying the relevant Guarantor and the terms of the Disposition in reasonable detail, including the price thereof and any expenses in connection therewith, together with a certification by the Borrower stating that such transaction is in compliance with the Credit Agreement and the other Loan Documents and that the Proceeds of such Disposition will be applied in accordance therewith.

(c) Each Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement originally filed in connection herewith without the prior written consent of the Administrative Agent subject to such Grantor's rights under Section 9-509(d)(2) of the New York UCC.

8.16. WAIVER OF JURY TRIAL. EACH GRANTOR AND THE ADMINISTRATIVE AGENT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

8.17. *Regulatory Matters.* The Administrative Agent, on behalf of the Lenders, acknowledges and agrees that:

(a) At such time as any Grantor becomes subject to the jurisdiction of the Nevada Gaming Authorities as a licensee or registered company under the Nevada Gaming Laws (or prior to such time in furtherance of any Grantor's application to become a licensee or registered company under the Nevada Gaming Laws), the pledge of any Pledged Stock or other equity securities issued by such Grantor ("*Pledged Gaming Stock*") under this Agreement will require the approval of the Nevada Gaming Authorities in order to remain effective.

(b) In the event that a Secured Party exercises a remedy set forth in this Agreement with respect to any Pledged Gaming Stock, that is a foreclosure, transfer of a possessory security interest in such Collateral, the exercise of voting and consensual rights with respect thereto afforded hereunder and/or re-registration of such Collateral, such exercise of remedies would be deemed a separate transfer of such Collateral and would require the separate and prior approval of the Nevada Gaming Authorities pursuant to applicable Nevada Gaming Laws as in effect on the date hereof and the licensing of such Secured Party or other transferee, unless such licensing requirement is waived by the Nevada Gaming Authorities.

(c) In the event that after a Secured Party exercises a remedy set forth in this Agreement with respect to Collateral consisting of gaming devices, cashless wagering systems and associated equipment (as those terms are defined in the Nevada Gaming Laws) a transfer, sale, distribution, or other disposition of such Collateral occurs (separate from any foreclosure action by a Secured Party unless such Secured Party utilizes such Collateral for gaming purposes), such transfer, sale,

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distribution, or other disposition of such Collateral would require the separate and prior approval of the Nevada Gaming Authorities pursuant to applicable Nevada Gaming Laws as in effect on the date hereof or the licensing of such Secured Party or other transferee.

(d) The approval by the applicable Nevada Gaming Authorities of this Agreement shall not act or be construed as the approval, either express or implied, for a Secured Party to take any actions or steps provided for in this Agreement for which prior approval of the Nevada Gaming Authorities is required, without first obtaining such prior and separate approval of the applicable Nevada Gaming Authorities to the extent then required applicable Nevada Gaming Laws.

(e) The physical location of all certificates evidencing Pledged Gaming Stock shall at all times remain within the territory of the State of Nevada at a location designated to the Nevada Gaming Authorities, and each of such certificate shall be made available for inspection by agents of the Nevada Gaming Authorities immediately upon request during normal business hours. Neither the Administrative Agent nor any agent of the Administrative Agent shall surrender possession of the Pledged Gaming Stock to any Person other than the Grantor pledging such Pledged Gaming Stock without the prior approval of the Nevada Gaming Authorities or as otherwise permitted by applicable Nevada Gaming Laws.

(f) It shall cooperate with the Nevada Gaming Authorities in connection with the administration of their regulatory jurisdiction over certain of the Grantors, including, without limitation, through the provision of such documents or other information as may be requested by the Nevada Gaming Authorities relating to the Administrative Agent, the Lenders or such Grantors.

(g) The Administrative Agent, the Lenders and their respective assignees are subject to being called forward by the Nevada Gaming Authorities, in their discretion, for licensing or a finding of suitability in order to remain entitled to the benefits of this Agreement as it relates to Pledged Gaming Stock.

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IN WITNESS WHEREOF, each of the undersigned has caused this Guarantee and Collateral Agreement to be duly executed and delivered as of the date first above written.

WYNN LAS VEGAS, LLC,
a Nevada limited liability company,

By: Wynn Resorts Holdings, LLC,

a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

VALVINO LAMORE, LLC,
a Nevada limited liability company,

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

WYNN LAS VEGAS CAPITAL CORP.,
a Nevada corporation,

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: President

PALO, LLC,
a Delaware limited liability company,

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

DESERT INN WATER COMPANY, LLC,
a Nevada limited liability company,

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

WYNN RESORTS HOLDINGS, LLC,
a Nevada limited liability company,

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

WYNN DESIGN & DEVELOPMENT, LLC,
a Nevada limited liability company,

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

WORLD TRAVEL, LLC,
a Nevada limited liability company,

By: Wynn Las Vegas LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

LAS VEGAS JET, LLC,
a Nevada limited liability company,

By: Wynn Las Vegas LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Administrative Agent

By: /s/ LINDA WANG

Name: Linda Wang

Title: Vice President

Schedule 1

NOTICE ADDRESSES OF GUARANTORS

Schedule 2

DESCRIPTION OF PLEDGED INVESTMENT PROPERTY

Pledged Stock:

| Issuer | Issuer's Jurisdiction Under New York UCC Section 9-305(a)(2) | Class of Stock or other equity interest | Stock or Membership Interest Certificate No. | Percentage of Shares | No. of Shares | Owner of Record |
|--------|--|---|--|----------------------|---------------|-----------------|
|--------|--|---|--|----------------------|---------------|-----------------|

Pledged Notes:

| Issuer | Payee | Principal Amount |
|--------|-------|------------------|
|--------|-------|------------------|

Pledged Debt Securities:

| Issuer | Issuer's Jurisdiction Under New York UCC | Payee | Principal Amount |
|--------|--|-------|------------------|
|--------|--|-------|------------------|

Pledged Security Entitlements:

| Issuer of Financial Asset | Description of Financial Asset | Securities Intermediary (Name and Address) | Securities Account (Number and Location) | Securities Intermediary's Jurisdiction Under New York UCC Section 9-305(a)(3) |
|---------------------------|--------------------------------|--|--|---|
|---------------------------|--------------------------------|--|--|---|

Pledged Commodity Contracts:

| Description of Commodity Contract | Commodity Intermediary (Name and Address) | Commodity Account (Number and Location) | Commodity Intermediary's Jurisdiction Under New York UCC Section 9-305(a)(4) |
|-----------------------------------|---|---|--|
|-----------------------------------|---|---|--|

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Schedule 3

**FILINGS AND OTHER ACTIONS
REQUIRED TO PERFECT SECURITY INTERESTS**

Uniform Commercial Code Filings

[List each office where a financing statement is to be filed]

Copyright, Patent and Trademark Filings

[List all filings]

Actions with respect to Investment Property

[Describe all actions required to obtain "control" of Investment Property]

Other Actions

[Describe other actions to be taken]

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Schedule 4

**EXACT LEGAL NAME, LOCATION OF JURISDICTION OF ORGANIZATION AND
CHIEF EXECUTIVE OFFICE**

| Grantor | Location |
|---------|----------|
|---------|----------|

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Schedule 5

LOCATION OF INVENTORY AND EQUIPMENT

| Grantor | Locations |
|---------|-----------|
|---------|-----------|

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COPYRIGHTS

PATENTS

TRADEMARKS

TRADE SECRETS

INTELLECTUAL PROPERTY LICENSES

OTHER INTELLECTUAL PROPERTY

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Schedule 7

CONTRACTS

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Schedule 8

VEHICLES

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Exhibit A to
Guarantee and Collateral Agreement

FORM OF ACKNOWLEDGMENT AND CONSENT

The undersigned hereby acknowledges receipt of a copy of the Guarantee and Collateral Agreement dated as of October 30, 2002 (the "Agreement"), made by the Grantors parties thereto for the benefit of Deutsche Bank Trust Company Americas, as administrative agent (in such capacity the "Administrative Agent"); capitalized terms used but not defined herein have the meanings given such terms therein. The undersigned agrees for the benefit of the Administrative Agent and the Lenders as follows:

1. The undersigned will be bound by the terms of the Agreement and will comply with such terms insofar as such terms are applicable to the undersigned.
2. The undersigned confirms the statements made in the Agreement with respect to the undersigned including, without limitation, in Section 4.7 and Schedule 2.
3. The undersigned will notify the Administrative Agent promptly in writing of the occurrence of any of the events described in Section 5.8(a) of the Agreement.
4. The terms of Sections 6.4(c) and 6.8 of the Agreement shall apply to it, *mutatis mutandis*, with respect to all actions that may be required of it pursuant to Section 6.4(c) or 6.8 of the Agreement.

[NAME OF ISSUER]

By

Name:
Title:

Address for Notices:

Fax:

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Exhibit B-1 to
Guarantee and Collateral Agreement

This INTELLECTUAL PROPERTY SECURITY AGREEMENT, dated as of _____, 2002 (as amended, supplemented or otherwise modified from time to time, the "*Intellectual Property Security Agreement*"), is made by each of the signatories hereto (collectively, the "*Grantors*") in favor of Deutsche Bank Trust Company Americas, as administrative agent (in such capacity, the "*Administrative Agent*") for the Secured Parties (as defined in the Credit Agreement referred to below).

WHEREAS, Wynn Las Vegas, LLC, a Nevada limited liability company (the "*Borrower*"), has entered into a Credit Agreement, dated as of October 30, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "*Credit Agreement*"), with the banks and other financial institutions and entities from time to time party thereto, Deutsche Bank Trust Company Americas, as administrative agent and swing line lender, Deutsche Bank Securities Inc., as lead arranger and joint book running manager, Banc of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York and Grand Cayman Branches, as arranger and joint documentation agent, and JPMorgan Chase Bank, as joint documentation agent. Capitalized terms used and not defined herein have the meanings given such terms in the Credit Agreement.

WHEREAS, it is a condition precedent to the obligation of the Lenders to make their respective extensions of credit to the Borrower under the Credit Agreement that the Grantors shall have executed and delivered that certain Guarantee and Collateral Agreement, dated as of October 30, 2002, in favor of the Administrative Agent (as amended, supplemented, replaced or otherwise modified from time to time, the "*Guarantee and Collateral Agreement*").

WHEREAS, under the terms of the Guarantee and Collateral Agreement, the Grantors have granted a security interest in certain Property, including, without limitation, certain Intellectual Property of the Grantors, to the Administrative Agent for the ratable benefit of the Secured Parties, and have agreed as a condition thereof to execute Intellectual Property Security Agreements for recording with the United States Patent and Trademark Office, the United States Copyright Office, and other applicable Governmental Authorities.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantors agree as follows:

SECTION 1. *Grant of Security.* Subject to compliance with applicable Nevada Gaming Laws, each Grantor hereby grants to the Administrative Agent for the ratable benefit of the Secured Parties a security interest in and to all of such Grantor's right, title and interest in and to the following (the "*Intellectual Property Collateral*"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of such Grantor's Obligations:

(a) (i) all trademarks, service marks, trade names, corporate names, company names, business names, trade dress, trade styles, logos, or other indicia of origin or source identification, internet domain names, trademark and service mark registrations, and applications for trademark or service mark registrations and any new renewals thereof, including, without limitation, each registration and application identified in Schedule 1, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith,

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and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto, together in each case with the goodwill of the business connected with the use of, and symbolized by, each of the above (collectively, the "*Trademarks*");

(b) (i) all patents, patent applications and patentable inventions, including, without limitation, each issued patent and patent application identified in Schedule 1, and all certificates of invention or similar industrial property rights, (ii) all inventions and improvements described and claimed therein, (iii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iv) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (v) all reissues, divisions, continuations, continuations-in-part, substitutes, renewals, and extensions thereof, all improvements thereon and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto (collectively, the "*Patents*");

(c) (i) all copyrights, whether or not the underlying works of authorship have been published, including but not limited to copyrights in software and databases, all Mask Works (as defined in 17 U.S.C. 901 of the U.S. Copyright Act) and all such underlying works of authorship and other intellectual property rights therein, all copyrights of works based on, incorporated in, derived from or relating to works covered by such copyrights, all right, title and interest to make and exploit all derivative works based on or adopted from works covered by such copyrights, and all copyright registrations and copyright applications, and any renewals or extensions thereof, including, without limitation, each registration and application identified in Schedule 1, (ii) the rights to print, publish and distribute any of the foregoing, (iv) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iv) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (v) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto ("*Copyrights*");

(d) (i) all trade secrets and all confidential and proprietary information, including know-how, manufacturing and production processes and techniques, inventions, research and development information, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, and customer and supplier lists and information, including, without limitation, any of the foregoing identified in Schedule 1, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto (collectively, the "*Trade Secrets*");

(e) (i) all licenses or agreements, whether written or oral, providing for the grant by or to any Grantor of: (A) any right to use any Trademark or Trade Secret, (B) any right to manufacture, use or sell any invention covered in whole or in part by a Patent, and (C) any right under any Copyright including, without limitation, the grant of rights to manufacture, distribute, exploit and sell materials derived from any Copyright including, without limitation, any of the foregoing identified in Schedule 1, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations of any of the foregoing, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith,

and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto; and

(f) any and all proceeds of the foregoing.

SECTION 2. *Recordation.* Each Grantor authorizes and requests that the Register of Copyrights, the Commissioner of Patents and Trademarks and any other applicable government officer record this Intellectual Property Security Agreement.

SECTION 3. *Execution in Counterparts.* This Agreement may be executed in any number of counterparts (including by telecopy), each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SECTION 4. *Governing Law.* Subject to compliance with applicable Nevada Gaming Laws, this Intellectual Property Security Agreement shall be governed by, and construed and interpreted in accordance with, the law of the State of New York.

SECTION 5. *Conflict Provision.* This Intellectual Property Security Agreement has been entered into in conjunction with the provisions of the Guarantee and Collateral Agreement and the Credit Agreement. The rights and remedies of each party hereto with respect to the security interest granted herein are without prejudice to, and are in addition to those set forth in the Guarantee and Collateral Agreement and the Credit Agreement, all terms and provisions of which are incorporated herein by reference. In the event that any provisions of this Intellectual Property Security Agreement are in conflict with the Guarantee and Collateral Agreement or the Credit Agreement, the provisions of the Guarantee and Collateral Agreement or the Credit Agreement shall govern.

IN WITNESS WHEREOF, each of the undersigned has caused this Intellectual Property Security Agreement to be duly executed and delivered as of the date first above written.

[NAME OF GRANTOR]

By:

Name:

Title:

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Schedule 1

COPYRIGHTS

PATENTS

TRADEMARKS

TRADE SECRETS

INTELLECTUAL PROPERTY LICENSES

Exhibit B-2 to
Guarantee and Collateral Agreement

FORM OF AFTER-ACQUIRED INTELLECTUAL PROPERTY SECURITY AGREEMENT

(FIRST SUPPLEMENTAL FILING)

This INTELLECTUAL PROPERTY SECURITY AGREEMENT (FIRST SUPPLEMENTAL FILING), dated as of _____, 200 (as amended, supplemented or otherwise modified from time to time, the "*First Supplemental Intellectual Property Security Agreement*"), is made by each of the signatories hereto (collectively, the "*Grantors*") in favor of Deutsche Bank Trust Company Americas, as administrative agent (in such capacity, the "*Administrative Agent*") for the Secured Parties (as defined in the Credit Agreement referred to below).

WHEREAS, Wynn Las Vegas, LLC, a Nevada limited liability company (the "*Borrower*"), has entered into a Credit Agreement, dated as of October 30, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "*Credit Agreement*"), with the banks and other financial institutions and entities from time to time party thereto, Deutsche Bank Trust Company Americas, as administrative agent and swing line lender, Deutsche Bank Securities Inc., as lead arranger and joint book running manager, Banc of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York and Grand Cayman Branches, as arranger and joint documentation agent, and JPMorgan Chase Bank, as joint documentation agent. Capitalized terms used and not defined herein have the meanings given such terms in the Credit Agreement.

WHEREAS, it is a condition precedent to the obligation of the Lenders to make their respective extensions of credit to the Borrower under the Credit Agreement that the Grantors shall have executed and delivered that certain Guarantee and Collateral Agreement, dated as of October 30, 2002, in favor of the Administrative Agent (as amended, supplemented, replaced or otherwise modified from time to time, the "*Guarantee and Collateral Agreement*").

WHEREAS, under the terms of the Guarantee and Collateral Agreement, the Grantors have granted a security interest in certain Property, including, without limitation, certain Intellectual Property, including but not limited to After-Acquired Intellectual Property of the Grantors, to the Administrative Agent for the ratable benefit of the Secured Parties, and have agreed as a condition thereof to execute an After-Acquired Intellectual Property Security Agreement for recording with the United States Patent and Trademark Office, the United States Copyright Office, and other applicable Governmental Authorities.

WHEREAS, the Intellectual Property Security Agreement was recorded against certain United States Intellectual Property at [INSERT REEL/FRAME NUMBER] [IF SECOND OR LATER SUPPLEMENTAL, ADD PRIOR REEL/FRAME NUMBERS].

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantors agree as follows:

SECTION 1. *Grant of Security.* Subject to compliance with applicable Nevada Gaming Laws, each Grantor hereby grants to the Administrative Agent for the ratable benefit of the Secured Parties a security interest in and to all of such Grantor's right, title and interest in and to the following (the "*Intellectual Property Collateral*"), as collateral security for the prompt and complete payment and

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performance when due (whether at the stated maturity, by acceleration or otherwise) of such Grantor's Obligations:

(a) (i) all trademarks, service marks, trade names, corporate names, company names, business names, trade dress, trade styles, logos, or other indicia of origin or source identification, internet domain names, trademark and service mark registrations, and applications for trademark or service mark registrations and any new renewals thereof, including, without limitation, each registration and application identified in Schedule 1, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto, together in each case with the goodwill of the business connected with the use of, and symbolized by, each of the above (collectively, the "*Trademarks*");

(b) (i) all patents, patent applications and patentable inventions, including, without limitation, each issued patent and patent application identified in Schedule 1, and all certificates of invention or similar industrial property rights, (ii) all inventions and improvements described and claimed therein, (iii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iv) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (v) all reissues, divisions, continuations, continuations-in-part, substitutes, renewals, and extensions thereof, all improvements thereon and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto (collectively, the "*Patents*");

(c) (i) all copyrights, whether or not the underlying works of authorship have been published, including, but not limited to, copyrights in software and databases, all Mask Works (as defined in 17 U.S.C. 901 of the U.S. Copyright Act) and all such underlying works of authorship and other intellectual property rights therein, all copyrights of works based on, incorporated in, derived from or relating to works covered by such copyrights, all right, title and interest to make and exploit all derivative works based on or adopted from works covered by such copyrights, and all copyright registrations and copyright applications, and any renewals or extensions thereof, including, without limitation, each registration and application identified in Schedule 1, (ii) the rights to print, publish and distribute any of the foregoing, (iii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iv) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (v) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto ("*Copyrights*");

(d) (i) all trade secrets and all confidential and proprietary information, including know-how, manufacturing and production processes and techniques, inventions, research and development information, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, and customer and supplier lists and information, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto (collectively, the "*Trade Secrets*");

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(e) (i) all licenses or agreements, whether written or oral, providing for the grant by or to any Grantor of: (A) any right to use any Trademark or Trade Secret, (B) any right under any Patent, and (C) any right under any Copyright, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations of any of the foregoing, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto; and

(f) any and all proceeds of the foregoing.

SECTION 2. *Recordation.* Each Grantor authorizes and requests that the Register of Copyrights, the Commissioner of Patents and Trademarks and any other applicable government officer record this First Supplemental Intellectual Property Security Agreement.

SECTION 3. *Execution in Counterparts.* This Agreement may be executed in any number of counterparts (including by telecopy), each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SECTION 4. *Governing Law.* Subject to compliance with applicable Nevada Gaming Laws, this First Supplemental Intellectual Property Security Agreement shall be governed by, and construed and interpreted in accordance with, the law of the State of New York.

SECTION 5. *Conflict Provision.* This First Supplemental Intellectual Property Security Agreement has been entered into in conjunction with the provisions of the Guarantee and Collateral Agreement and the Credit Agreement. The rights and remedies of each party hereto with respect to the security interest granted herein are without prejudice to, and are in addition to those set forth in the Guarantee and Collateral Agreement and the Credit Agreement, all terms and provisions of which are incorporated herein by reference. In the event that any provisions of this First Supplemental Intellectual Property Security Agreement are in conflict with the Guarantee and Collateral Agreement or the Credit Agreement, the provisions of the Guarantee and Collateral Agreement or the Credit Agreement shall govern.

IN WITNESS WHEREOF, each of the undersigned has caused this Intellectual Property Security Agreement to be duly executed and delivered as of the date first above written.

[NAME OF GRANTOR]

By:

Name:
Title:

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Schedule 1

COPYRIGHTS

PATENTS

TRADEMARKS

TRADE SECRETS

INTELLECTUAL PROPERTY LICENSES

Exhibit C to
Guarantee and Collateral Agreement

FORM OF CONTROL AGREEMENT

This CONTROL AGREEMENT (as amended, supplemented or otherwise modified from time to time, the "*Control Agreement*") dated as of _____, 200 , is made by and among _____, a _____ (the "*Grantor*"), Deutsche Bank Trust Company Americas, as administrative agent (in such capacity, the "*Administrative Agent*") for the Secured Parties (as defined in the Guarantee and Collateral Agreement referred to below), and _____, a _____ (the "*Issuer*").

WHEREAS, the Grantor has granted to the Administrative Agent for the benefit of the Secured Parties a security interest in the uncertificated securities of the Issuer owned by the Grantor from time to time (collectively, the "*Pledged Securities*"), and all additions thereto and substitutions and proceeds thereof (collectively, with the Pledged Securities, the "*Collateral*") pursuant to a Guarantee and Collateral Agreement, dated as of October 30, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "*Guarantee and Collateral Agreement*"), among the Grantor and the other persons party thereto as grantors in favor of the Administrative Agent.

WHEREAS, the following terms which are defined in Articles 8 and 9 of the Uniform Commercial Code in effect in the State of New York on the date hereof (the "*UCC*") are used herein as so defined: Adverse Claim, Control, Instruction, Proceeds and Uncertificated Security. Capitalized terms used and not defined herein have the meanings given such terms in that certain Credit Agreement dated as of October 30, 2002 among Wynn Las Vegas, LLC, a Nevada limited liability company, the Administrative Agent and the banks and other financial institutions and entities from time to time party thereto.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. *Notice of Security Interest.* The Grantor, the Administrative Agent and the Issuer are entering into this Control Agreement to perfect, and to confirm the priority of, the Administrative Agent's security interest in the Collateral. The Issuer acknowledges that this Control Agreement constitutes written notification to the Issuer of the Administrative Agent's security interest in the Collateral. The Issuer agrees to promptly make all necessary entries or notations in its books and records to reflect the Administrative Agent's security interest in the Collateral and, upon request by the Administrative Agent, to register the Administrative Agent as the registered owner of any or all of the Pledged Securities. The Issuer acknowledges that the Administrative Agent has control over the Collateral.

SECTION 2. *Collateral.* The Issuer hereby represents and warrants to, and agrees with the Grantor and the Administrative Agent that (i) the terms of any limited liability company interests or partnership interests included in the Collateral from time to time shall expressly provide that they are securities governed by Article 8 of the Uniform Commercial Code in effect from time to time in the State of Nevada and any other applicable jurisdiction, (ii) the Pledged Securities are uncertificated securities, (iii) the issuer's jurisdiction is, and during the term of this Control Agreement shall remain, the State of _____, (iv) *Schedule 1* contains a true and complete description of the Pledged Securities as of the date hereof and (v) except for the claims and interests of the Administrative Agent and the Grantor in the Collateral, the Issuer does not know of any claim to or security interest or other interest in the Collateral.

SECTION 3. *Control.* The Issuer hereby agrees, upon written direction from the Administrative Agent and without further consent from the Grantor, (a) to comply with all instructions and directions

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of any kind originated by the Administrative Agent concerning the Collateral, to liquidate or otherwise dispose of the Collateral as and to the extent directed by the Administrative Agent and to pay over to the Administrative Agent all proceeds without any setoff or deduction, and (b) except as otherwise directed by the Administrative Agent, not to comply with the instructions or directions of any kind originated by the Grantor or any other person at any time after the Issuer has received notice from the Administrative Agent that an Event of Default exists and is continuing (and thereafter not until such time as the Administrative Agent sends written notice to the Issuer that such Event of Default has been cured or waived). Until such time as the Issuer has received notice from the Administrative Agent of the occurrence and continuation of an Event of Default (and after such time as the Issuer has received notice from the Administrative Agent that such Event of Default has been cured or waived), the Issuer shall comply with all instructions and directions of any kind originated by the Grantor to the extent they do not conflict with any instructions or directions of the Administrative Agent, except that the Issuer shall not deliver the Collateral to the Grantor.

SECTION 4. *Other Agreements.* The Issuer shall notify promptly the Administrative Agent and the Grantor if any other person asserts any lien, encumbrance, claim (including any adverse claim) or security interest in or against any of the Collateral upon becoming aware of such assertion. In the event of any conflict between the provisions of this Control Agreement and any other agreement governing the Pledged Securities or the Collateral, the provisions of this Control Agreement shall control.

SECTION 5. *Protection of Issuer.* The Issuer may rely and shall be protected in acting upon any notice, instruction or other communication that it reasonably believes to be genuine and authorized.

SECTION 6. *Termination.* This Control Agreement shall terminate automatically upon receipt by the Issuer of written notice executed by the Administrative Agent that (i) all of the Obligations (excluding unmatured contingent reimbursement and indemnification obligations, and obligations that arise under any Specified Hedge Agreement) secured by the Collateral have been paid in full in immediately available funds, or (ii) all of the Collateral has been released, whichever is sooner, and the Issuer shall thereafter be relieved of all duties and obligations hereunder.

SECTION 7. *Notices.* All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three days after being deposited in the mail and sent by first-class mail, postage prepaid, or, in the case of telecopy notice, when received, to the Grantor's and the Administrative Agent's addresses as set forth in the Guarantee and Collateral Agreement, and to the Issuer's address as set forth below, or to such other address as any party may give to the others in writing for such purpose:

[Name of Issuer]

[Address of Issuer]

Attention:

Telephone: () -

Telecopy: () -

SECTION 8. *Amendments in Writing.* None of the terms or provisions of this Control Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the parties hereto.

SECTION 9. *Entire Agreement.* This Control Agreement and the Guarantee and Collateral Agreement constitute the entire agreement and supersede all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

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SECTION 10. *Execution in Counterparts.* This Control Agreement may be executed in any number of counterparts (including by telecopy), each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SECTION 11. *Successors and Assigns.* This Control Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Grantor may not assign, transfer or delegate any of its rights or obligations under this Control Agreement without the prior written consent of the Administrative Agent.

SECTION 12. *Governing Law and Jurisdiction.* This Control Agreement has been delivered to and accepted by the Administrative Agent and will be deemed to be made in the State of New York. **SUBJECT TO COMPLIANCE WITH APPLICABLE NEVADA GAMING LAWS, THIS CONTROL AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.** Each of the parties hereto submits for itself and its property in any legal action or proceeding relating to this Control Agreement, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof.

SECTION 13. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS CONTROL AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.

IN WITNESS WHEREOF, each of the undersigned has caused this Control Agreement to be duly executed and delivered as of the date first above written.

[NAME OF GRANTOR]

By:

Name:
Title:
DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Administrative Agent

By:

Name:
Title:
[NAME OF ISSUER]

By:

Name:
Title:

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Exhibit D to
Guarantee and Collateral Agreement

FORM OF CONTROL AGREEMENT

This CONTROL AGREEMENT (as amended, supplemented or otherwise modified from time to time, the "*Control Agreement*") dated as of _____, 200____, among _____ (the "*Grantor*"), Deutsche Bank Trust Company Americas, as administrative agent (the "*Secured Party*") for the secured parties under the Guarantee and Collateral Agreement (as defined below) and _____ in its capacity as a "securities intermediary" (as defined in Section 8-102 of the UCC and a "bank" as defined in Section 9-102 of the UCC (in such capacities, the "*Financial Institution*"). Capitalized terms used but not defined herein shall have the meaning assigned in the Credit Agreement dated as of October 30, 2002 among Wynn Las Vegas, LLC, a Nevada limited liability company, the Administrative Agent and the banks and other financial institutions and entities from time to time party thereto. All references herein to the "UCC" shall mean the Uniform Commercial Code as from time to time in effect in the State of New York.

WHEREAS, the Grantor has granted to the Secured Party a security interest in the Pledged Accounts (as hereinafter defined) pursuant to the Guarantee and Collateral Agreement, dated as of October 30, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "*Guarantee and Collateral Agreement*"), among the Grantor and the other persons party thereto as grantors in favor of the Administrative Agent;

WHEREAS, the parties hereto are entering into this agreement to perfect and ensure the priority of such security interest;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. *Establishment and Maintenance of Collateral Accounts.*

(a) The Financial Institution hereby represents and warrants that it has established and currently maintains the accounts listed on *Schedule 1* hereto and that the Secured Party is its sole customer or entitlement holder with respect to each such account. Each such account and any successor account and all other accounts which the Grantor now or hereafter maintains with the Financial Institution, being referred to herein individually as a "Pledged Account" and collectively as the "Pledged Accounts." The Financial Institution covenants and agrees that it shall not change the name or account number of any Pledged Account without the prior written consent of the Secured Party.

(b) [Each of the parties hereto acknowledges and agrees that the accounts listed on Part A of *Schedule 1* hereto are intended to be deposit accounts (as defined in Section 9-102(a)(29) of the UCC) and the accounts listed on Part B of *Schedule 1* hereto are intended to be securities accounts (as defined in Section 8-501 of the UCC).] or [Each of the parties hereto acknowledges and agrees that all of the Pledged Accounts are intended to be [deposit accounts/securities accounts] (as defined in the UCC)] Notwithstanding such intention, as used herein "Deposit Account" shall mean any Pledged Account (or any part thereof) which is determined to be a "deposit account" (within the meaning of Section 9-102(a)(29) of the UCC) and "Securities Account" shall mean any Pledged Account (or any part thereof) which is determined to be a "securities account" (within the meaning of Section 8-501 of the UCC).

(c) The Financial Institution covenants and agrees that: (i) all securities or other property underlying any financial assets credited to any Securities Account shall be registered in the name of the Financial Institution, indorsed to the Financial Institution or indorsed in blank or credited to another securities account maintained in the name of the Financial Institution and in no case will any financial asset credited to any Securities Account be registered in the name of the Grantor, payable to the order of the Grantor or specially indorsed to the Grantor except to the extent the foregoing have been specially indorsed to the Financial Institution or in blank; and

(ii) all property delivered to the Financial Institution pursuant to the Guarantee and Collateral Agreement will be promptly credited to one of the Pledged Accounts.

SECTION 2. "*Financial Assets Election.*" The Financial Institution hereby agrees that each item of property (including, without limitation, all Permitted Investments and any investment property, financial asset, security, instrument or cash) credited to any Pledged Account that is a Securities Account shall be treated as a "financial asset" within the meaning of Section 8-102(a)(9) of the UCC.

SECTION 3. *Secured Party's Control of the Pledged Accounts.* If at any time the Financial Institution shall receive from the Secured Party an entitlement order (i.e. an order directing transfer or redemption of any financial asset relating to a Pledged Account) or any instruction (within the meaning of Section 9-104 of the UCC) originated by the Secured Party (i.e., an instruction directing the disposition of funds in a Pledged Account), the Financial Institution shall comply with such entitlement order or instruction without further consent by the Grantor or any other person. The Grantor is entitled to give entitlement orders and instructions with respect to the Pledged Accounts, subject to Section 4 hereof, provided that if such entitlement orders or instructions conflict with instructions of the Secured Party, the Financial Institution shall comply with the entitlement orders and instructions issued by the Secured Party.

SECTION 4. *Grantor's Access to the Account.* If at any time the Secured Party delivers to the Financial Institution a Notice of Sole Control in substantially the form set forth in *Exhibit A* hereto, the Financial Institution agrees that after receipt of such notice, it will take all directions with respect to the Pledged Accounts solely from the Secured Party and shall not comply with instructions or entitlement orders of the Grantor or any other person (unless and until the Secured Party instructs otherwise).

SECTION 5. *Subordination of Lien; Waiver of Set-Off.* In the event that the Financial Institution has or subsequently obtains by agreement, by operation of law or otherwise a security interest in any Pledged Account or any financial assets, cash or other property credited thereto, the Financial Institution hereby agrees that such security interest shall be subordinate to the security interest of the Secured Party. The financial assets, money and other items credited to any Pledged Account will not be subject to deduction, set-off, banker's lien, or any other right in favor of any person other than the Secured Party (except that the Financial Institution may set off (i) all amounts due to the Financial Institution in respect of customary fees and expenses for the routine maintenance and operation of the respective Pledged Account and (ii) the face amount of any checks which have been credited to such Pledged Account but are subsequently returned unpaid because of uncollected or insufficient funds).

SECTION 6. *Choice of Law.* **SUBJECT TO COMPLIANCE WITH APPLICABLE NEVADA GAMING LAWS, THIS CONTROL AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.** Regardless of any provision in any other agreement, for purposes of the UCC, with respect to each Pledged Account New York shall be deemed to be the bank's jurisdiction (within the meaning of Section 9-304 of the UCC) and the securities intermediary's jurisdiction (within the meaning of Section 8-110 of the UCC). The Pledged Accounts shall be governed by the laws of the State of New York.

SECTION 7. *Conflict with Other Agreements.* The Financial Institution hereby represents, warrants, covenants and agrees that:

(a) There are no other agreements entered into between the Financial Institution and the Grantor with respect to any Pledged Account [except for [identify other agreements]] (the "*Account Agreements*").

(b) It has not entered into, and until the termination of this agreement will not enter into, any agreement with any other person relating the Pledged Accounts and/or any financial assets

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credited thereto pursuant to which it has agreed to comply with entitlement orders (as defined in Section 8-102(a)(8) of the UCC) or instructions (within the meaning of Section 9-104 of the UCC) of such other person (except any such other agreement with the Grantor under which the obligations of the Financial Institution are subordinated to the Financial Institution's obligations hereunder).

(c) It has not entered into, and until the termination of this agreement will not enter into, any agreement with the Grantor purporting to limit or condition the obligation of the Financial Institution to comply with entitlement orders or instructions from the Secured Party.

(d) In the event of any conflict between this Control Agreement (or any portion thereof) and any other agreement now existing or hereafter entered into, the terms of this Control Agreement shall prevail.

SECTION 8. *Adverse Claims.* The Financial Institution represents and warrants that, except for the claims and interest of the Secured Party and of the Grantor in the Pledged Accounts, it does not know of any lien on or claim to, or interest in, any Pledged Account or in any "financial asset" (as defined in Section 8-102(a) of the UCC) credited thereto. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Pledged Accounts or in any financial asset carried therein, the Financial Institution will promptly notify the Secured Party and the Grantor thereof upon becoming aware of such assertion.

SECTION 9. *Additional Provisions Regarding Maintenance of Accounts.* The Financial Institution covenants and agrees:

(a) *Statements and Confirmations.* The Financial Institution will promptly send copies of all statements, confirmations and other correspondence concerning (i) any Securities Account and/or any financial assets credited thereto and (ii) any Deposit Account, simultaneously to each of the Grantor and the Secured Party at the address for each set forth in Section 13 of this Agreement.

(b) *Tax Reporting.* All items of income, gain, expense and loss recognized in any Securities Account and all interest, if any, relating to any Deposit Account, shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of the Grantor.

(c) *Voting Rights.* At any time during which the Grantor is entitled to give entitlement orders pursuant to Section 3 hereof, the Grantor shall direct the Financial Institution with respect to the voting of any financial assets credited to the Pledged Accounts.

(d) *Permitted Investments.* At any time during which the Grantor is entitled to give entitlement orders pursuant to Section 3 hereof, the Grantor shall direct the Financial Institution with respect to the selection of investments to be made for any Pledged Account that is a Securities Account; provided, however, that the Financial Institution shall not honor any instruction to purchase any investments other than investments (i) prior to the Completion Date (as defined below), of a type described as "Permitted Securities" on *Exhibit B* hereto and (ii) on or after the Completion Date, of a type described as "Cash Equivalents" on *Exhibit B* hereto. For purposes of the foregoing, "Completion Date" shall be the date upon which the Secured Party notifies the Financial Institution that "Completion" has occurred pursuant to and in accordance with the Disbursement Agreement.

SECTION 10. *Additional Representation and Warranty of the Financial Institution.* The Financial Institution represents and warrants that this Control Agreement is the legal, valid, binding and enforceable obligation of the Financial Institution.

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SECTION 11. *Indemnification of Financial Institution.* The Grantor and the Secured Party hereby agree that (a) the Financial Institution is released from any and all liabilities to the Grantor and the Secured Party arising from the terms of this Control Agreement and the compliance of the Financial Institution with the terms hereof, except to the extent that such liabilities arise from the Financial Institution's gross negligence or willful misconduct and (b) the Grantor, its successors and assigns shall at all times indemnify and save harmless the Financial Institution from and against any and all claims, actions and suits of others arising out of the terms of this Control Agreement or the compliance of the Financial Institution with the terms hereof, except to the extent that such arises from the Financial Institution's negligence, and from and against any and all liabilities, losses, damages, costs, charges, counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this Control Agreement.

SECTION 12. *Successors; Assignment.* The terms of this Control Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective corporate successors and assigns, except that the neither the Grantor nor the Financial Institution may delegate their obligations hereunder without the prior written consent of the Secured Party. Additionally, in the event that the Secured Party is replaced as Administrative Agent under the Guarantee and Collateral Agreement any entity that succeeds to such role shall be entitled to the benefits of this Control Agreement. The Secured Party agrees to send written notice to the Financial Institution of any such replacement.

SECTION 13. *Notices.* All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three days after being deposited in the mail and sent by first class mail, postage prepaid, or, in the case of telecopy notice, when received, to the address as set forth below, or to such other address as any party may give to the others in writing for such purpose:

[Name of Bank]

[Address of Bank]

Attention:

Telephone: () -

Telecopy: () -

Deutsche Bank Trust Company Americas

31 West 52nd Street

New York, New York 10019

Attention:

Telephone: () -

Telecopy: () -

[Name of Grantor]

[Address]

Attention:

Telephone: () -

Telecopy: () -

SECTION 14. *Amendment.* No amendment or modification of this Control Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto.

SECTION 15. *Termination.* The obligations of the Financial Institution to the Secured Party pursuant to this Control Agreement shall continue in effect until the security interests of the Secured Party in each of the Pledged Accounts have been terminated pursuant to the terms of the Guarantee

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and Collateral Agreement and the Secured Party has notified the Financial Institution of such termination in writing. The Secured Party agrees to provide Notice of Termination in substantially the form of *Exhibit C* hereto to the Financial Institution upon the request of the Grantor on or after the termination of the Secured Party's security interest in the Pledged Accounts pursuant to the terms of the Guarantee and Collateral Agreement. The termination of this Control Agreement shall not terminate the Pledged Accounts or alter the obligations of the Financial Institution to the Grantor pursuant to any other agreement with respect to the Pledged Accounts.

SECTION 16. *Counterparts.* This Control Agreement may be executed in any number of counterparts (including by telecopy), all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

[NAME OF GRANTOR]

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Administrative Agent

By: _____

Name:

Title:

NAME OF INSTITUTION SERVING AS
FINANCIAL INSTITUTION

By: _____

Name:

Title:

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SCHEDULE 1

Part A List of Existing Deposit Accounts Subject to this Control Agreement:

Exact Name of Account

Account Number

Part B List of Existing Securities Accounts Subject to this Control Agreement:

Exact Name of Account

Account Number

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Exhibit A

DEUTSCHE BANK TRUST COMPANY AMERICAS
31 West 52nd Street
New York, New York 10019

[Date]

[Name and Address of Financial Institution]

Attention:

Re: *Notice of Sole Control*

Ladies and Gentlemen:

As referenced in the Deposit Account Control Agreement, dated _____, 200____, among [insert name of the Grantor], you and the undersigned (a copy of which is attached) we hereby give you notice of our sole control over each of the Pledged Accounts and all financial assets or funds credited thereto. You are hereby instructed not to accept any directions or instructions with respect to the Pledged Accounts or funds credited thereto from any person other than the undersigned, unless otherwise ordered by a court of competent jurisdiction or otherwise directed by us in writing.

You are instructed to deliver a copy of this notice by facsimile transmission to [insert name of the Grantor].

Very truly yours,

DEUTSCHE BANK TRUST COMPANY
AMERICAS, as Administrative Agent

By: _____

Title

cc: [Name of Grantor]

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Exhibit B

Permitted Investments

"Cash Equivalents": (a) United States dollars; (b) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (as long as the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than six months from the date of acquisition; (c) interest-bearing demand or time deposits (which may be represented by certificates of deposit) issued by banks having general obligations rated (on the date of acquisition thereof) at least "A" or the equivalent by Standard & Poor's Ratings Group ("S&P") or Moody's Investors Service, Inc. ("Moody's") or, if not so rated, secured at all times, in the manner and to the extent provided by law, by collateral security of the type specified in clause (a) or (b) of this definition, with a market value of no less than the amount of monies so invested; (d) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (b) and (c) above entered into with any financial institution meeting the qualifications specified in clause (c) above; (e) commercial paper having the highest rating obtainable from Moody's or S&P and in each

case maturing within six months after the date of acquisition; (f) money market funds or mutual funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (d) of this definition; and (g) to the extent not permitted in clauses (a) through (f) of this definition, Permitted Securities.

"Permitted Securities": (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within 18 months from the date of acquisition, or (b) shares of money market, mutual or similar funds which invest exclusively in assets satisfying the requirements of clause (a) of this definition.

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Exhibit C

DEUTSCHE BANK TRUST COMPANY AMERICAS
31 West 52nd Street
New York, New York 10019

[Date]

[Name and Address of Financial Institution]

Attention:

Re: *Termination of Control Agreement*

You are hereby notified that the Control Agreement between you, the Grantor and the undersigned (a copy of which is attached) is terminated and you have no further obligations to the undersigned pursuant to such Control Agreement. Notwithstanding any previous instructions to you, you are hereby instructed to accept all future directions with respect to account number(s) from the Grantor. This notice terminates any obligations you may have to the undersigned with respect to such account, however nothing contained in this notice shall alter any obligations which you may otherwise owe to the Grantor pursuant to any other agreement.

You are instructed to deliver a copy of this notice by facsimile transmission to [insert name of Grantor].

Very truly yours,

DEUTSCHE BANK TRUST COMPANY AMERICAS, as
Administrative Agent

By:

Name:
Title:

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Exhibit E to
Guarantee and Collateral Agreement

FORM OF CONTROL AGREEMENT

This CONTROL AGREEMENT (as amended, supplemented or otherwise modified from time to time, the "*Control Agreement*") dated as of _____, 2002, is made by and among _____, a _____ (the "*Grantor*"), Deutsche Bank Trust Company Americas, as administrative agent (in such capacity, the "*Administrative Agent*") for the Secured Parties (as defined in the Guarantee and Collateral Agreement referred to below), and _____, a _____ (the "*Broker*").

WHEREAS, the Broker maintains for the Grantor a commodity account, Account No. _____ (the "*Pledged Account*"), in the name of the Grantor.

WHEREAS, the Grantor has granted to the Administrative Agent for the benefit of the Secured Parties a security interest in the Pledged Account, the commodity contracts and any free credit balance carried therein, and all additions thereto and substitutions and proceeds thereof (collectively, the "*Collateral*") pursuant to a Guarantee and Collateral Agreement, dated as of October 30, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "*Guarantee and Collateral Agreement*"), among the Grantor and the other persons party thereto as grantors in favor of the Administrative Agent.

WHEREAS, the following terms which are defined in Articles 8 and 9 of the Uniform Commercial Code in effect in the State of New York on the date hereof (the "*UCC*") are used herein as so defined: Commodity Account, Commodity Contract, Commodity Intermediary's Jurisdiction, Control and Proceeds. Capitalized terms used and not defined herein have the meanings given such terms in that certain Credit Agreement dated as of October 30, 2002 among Wynn Las Vegas, LLC, a Nevada limited liability company, the Administrative Agent and the banks and other financial institutions and entities from time to time party thereto.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. *Notice of Security Interest.* The Grantor, the Administrative Agent and the Broker are entering into this Control Agreement to perfect, and to confirm the priority of, the Administrative Agent's security interest in the Collateral. The Broker acknowledges that this Control Agreement constitutes written notification to the Broker of the Administrative Agent's security interest in the Collateral. The Broker agrees to promptly make all necessary entries or notations

in its books and records to reflect the Administrative Agent's security interest in the Collateral. The Broker acknowledges that the Administrative Agent has control over the Pledged Account and all commodity contracts and any free credit balance carried therein from time to time.

SECTION 2. *Collateral; Pledged Account.* (a) The Grantor hereby represents and warrants to, and agrees with the Administrative Agent and the Broker that, all commodity contracts carried by the Broker on its books for the Grantor are and shall be credited to the Pledged Account.

(b) The Broker hereby represents and warrants to, and agrees with the Grantor and the Administrative Agent that (i) the Broker is a commodity intermediary with respect to the Grantor and the Pledged Account is a commodity account, (ii) the commodity intermediary's jurisdiction (within the meaning of Section 9305(b) of the UCC) is, and during the term of this Control Agreement shall for all purposes of this Control Agreement remain, the State of New York, (iii) *Schedule 1* contains a true and complete statement of the Pledged Account and the commodity contracts and any free credit balance carried therein as of the date hereof, and (iv) the Pledged Account is and shall remain a cash account, and the Broker will not extend, directly or indirectly, any "purpose credit" (within the meaning of such term under Regulation T of the Board of

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Governors of the Federal Reserve System of the United States) to the Grantor in respect of the Pledged Account.

(c) The Administrative Agent hereby instructs the Broker, and the Broker hereby confirms and agrees that, unless the Administrative Agent shall otherwise direct the Broker in writing, all commodity contracts carried by the Broker on its books for the Grantor shall be credited only to, and carried only in, the Pledged Account.

SECTION 3. *Control.* The Broker hereby agrees, upon written direction from the Administrative Agent and without further consent from the Grantor, (a) to apply any value distributed on account of the commodity contracts carried in the Pledged Account as directed by the Administrative Agent, to liquidate or otherwise dispose of the Collateral as and to the extent directed by the Administrative Agent and to pay over to the Administrative Agent all proceeds and other value therefrom or otherwise distributed with respect thereto without any setoff or deduction, and (b) except as otherwise directed by the Administrative Agent, not to apply any value distributed on account of any commodity contract carried in the Pledged Account as directed by the Grantor or any other person at any time after the Broker has received notice from the Administrative Agent that an Event of Default exists and is continuing (and thereafter not until such time as the Administrative Agent sends written notice to the Broker that such Event of Default has been cured or waived). Subject to all other terms of this Control Agreement, and subject to the terms of the Guarantee and Collateral Agreement, until such time as the Broker has received notice from the Administrative Agent of the occurrence and continuation of an Event of Default (and after such time as the Issuer has received notice from the Administrative Agent that such Event of Default has been cured or waived), the Grantor shall be entitled to issue directions concerning the application of any value distributed on account of any commodity contract carried in the Pledge Account, and the Broker shall comply with such directions; provided, however, that if and when the Broker receives conflicting directions from the Grantor and the Administrative Agent, the Bank shall only follow the directions of the Administrative Agent.

SECTION 4. *Other Agreements; Termination; Successor Brokers.* The Broker shall simultaneously send to the Administrative Agent copies of all notices given and statements rendered pursuant to the Pledged Account. The Broker shall notify promptly the Administrative Agent and the Grantor if any other person asserts any lien, encumbrance, claim or security interest in or against any of the Collateral. As long as the Guarantee and Collateral Agreement remains in effect, neither the Grantor nor the Broker shall terminate the Pledged Account without thirty (30) days' prior written notice to the other party and the Administrative Agent. In the event of any conflict between the provisions of this Control Agreement and any other agreement governing the Pledged Account or the Collateral, the provisions of this Control Agreement shall control. In the event the Broker no longer serves as Broker for the Collateral, the Pledged Account, the commodity contracts and any free credit balance carried therein shall be transferred to a successor broker, custodian or futures commission merchant satisfactory to the Administrative Agent, provided, that prior to such transfer, such successor broker, custodian or futures commission merchant shall execute an agreement that is substantially in the form of this Control Agreement or is otherwise in form and substance satisfactory to the Administrative Agent.

SECTION 5. *Protection of Broker.* The Broker may rely and shall be protected in acting upon any notice, instruction or other communication that it reasonably believes to be genuine and authorized.

SECTION 6. *Termination.* This Control Agreement shall terminate automatically upon receipt by the Broker of written notice executed by the Administrative Agent that (i) all of the Obligations (excluding unmatured contingent reimbursement and indemnification obligations, and obligations that arise under any Specified Hedge Agreement) secured by the Collateral have been paid in full in

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immediately available funds, or (ii) all of the Collateral has been released, whichever is sooner, and the Broker shall thereafter be relieved of all duties and obligations hereunder.

SECTION 7. *Waiver; Priority of Administrative Agent's Interests.* Other than with respect to its fees and customary commissions with respect to the Pledged Account, the Broker hereby waives its right to set off any obligations of the Grantor to the Broker against any or all of the Collateral, and hereby agrees that any and all liens, encumbrances, claims or security interests which the Broker may have against the Collateral, either now or in the future in connection with the Pledged Account are and shall be subordinate and junior to the prior payment in full in immediately available funds of all obligations of the Grantor now or hereafter existing under the Credit Agreement, the Guarantee and Collateral Agreement, and all other documents related thereto, whether for principal, interest (including, without limitation, interest as provided in the Credit Agreement, whether or not such interest accrues after the filing of such petition for purposes of the federal Bankruptcy Code or is an allowed claim in such proceeding), indemnities, fees, premiums, expenses or otherwise. Except for the foregoing and claims and interests of the Administrative Agent and the Grantor in the Collateral, the Broker does not know of any claim to or security interest or other interest in the Collateral.

SECTION 8. *Notices.* All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three days after being deposited in the mail and sent by first-class mail, postage prepaid, or, in the case of telecopy notice, when received, to the Grantor's and the Administrative Agent's addresses as set forth in the Guarantee and Collateral Agreement, and to the Broker's address as set forth below, or to such other address as any party may give to the others in writing for such purpose:

[Name of Broker]
[Address of Broker]

Attention:
Telephone: () -
Teletype: () -

SECTION 9. *Amendments in Writing.* None of the terms or provisions of this Control Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the parties hereto.

SECTION 10. *Entire Agreement.* This Control Agreement and the Guarantee and Collateral Agreement constitute the entire agreement and supersede all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

SECTION 11. *Execution in Counterparts.* This Control Agreement may be executed in any number of counterparts (including by teletype), each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SECTION 12. *Successors and Assigns.* This Control Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Grantor may not assign, transfer or delegate any of its rights or obligations under this Control Agreement without the prior written consent of the Administrative Agent.

SECTION 13. *Governing Law and Jurisdiction.* This Control Agreement has been delivered to and accepted by the Administrative Agent and will be deemed to be made in the State of New York. **SUBJECT TO COMPLIANCE WITH APPLICABLE NEVADA GAMING LAWS, THIS CONTROL AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.** Each of the parties hereto submits for itself and its property in any legal action or proceeding relating to this Control Agreement,

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or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof.

SECTION 14. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS CONTROL AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.

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IN WITNESS WHEREOF, each of the undersigned has caused this Control Agreement to be duly executed and delivered as of the date first above written.

[NAME OF GRANTOR]

By: _____

Name:
Title:

DEUTSCHE BANK TRUST COMPANY AMERICAS, as
Administrative Agent

By: _____

Name:
Title:

[NAME OF BROKER]

By: _____

Name:
Title:

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**Annex 1 to
Guarantee and Collateral Agreement**

ASSUMPTION AGREEMENT, dated as of _____, 200____, made by _____, a _____ (the "Additional Grantor"), in favor of Deutsche Bank Trust Company Americas, as administrative agent (in such capacity, the "Administrative Agent") for (i) the banks and other financial institutions and entities (the "Lenders") parties to the Credit Agreement referred to below, and (ii) the other Secured Parties (as defined in the Guarantee and Collateral Agreement (as hereinafter defined)). All capitalized terms not defined herein shall have the meaning ascribed to them in such Credit Agreement.

RECITALS:

WHEREAS, Wynn Las Vegas, LLC (the "Borrower"), the Lenders, Deutsche Bank Securities Inc., as lead arranger and joint book running manager, Banc of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York and Grand Cayman Branches, as arranger and joint documentation agent, JPMorgan Chase Bank, as joint documentation agent, and the Administrative Agent have entered into a Credit Agreement, dated as of October 30, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "Credit Agreement");

WHEREAS, in connection with the Credit Agreement, the Borrower and certain of its Affiliates (other than the Additional Grantor) have entered into the Guarantee and Collateral Agreement, dated as of October 30, 2002 (as amended, supplemented or otherwise modified from time to time, the "Guarantee and Collateral Agreement") in favor of the Administrative Agent for the benefit of the Secured Parties;

WHEREAS, the Credit Agreement requires the Additional Grantor to become a party to the Guarantee and Collateral Agreement; and

WHEREAS, the Additional Grantor has agreed to execute and deliver this Assumption Agreement in order to become a party to the Guarantee and Collateral Agreement;

NOW, THEREFORE, IT IS AGREED:

1. *Guarantee and Collateral Agreement.* By executing and delivering this Assumption Agreement, the Additional Grantor, as provided in Section 8.14 of the Guarantee and Collateral Agreement, hereby becomes a party to the Guarantee and Collateral Agreement as a Grantor thereunder with the same force and effect as if originally named therein as a Grantor and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Grantor thereunder. The information set forth in Annex 1-A hereto is hereby added to the information set forth in Schedules _____ to the Guarantee and Collateral Agreement. The Additional Grantor hereby represents and warrants that each of the representations and warranties contained in Section 4 of the Guarantee and Collateral Agreement is true and correct on and as the date hereof (after giving effect to this Assumption Agreement) as if made by such Additional Grantor on and as of such date.

2. GOVERNING LAW. SUBJECT TO COMPLIANCE WITH APPLICABLE NEVADA GAMING LAWS, THIS ASSUMPTION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, the undersigned has caused this Assumption Agreement to be duly executed and delivered as of the date first above written.

[ADDITIONAL GRANTOR]

By:

Name:

Title:

QuickLinks

[Exhibit 10.20](#)

PARENT GUARANTY

This PARENT GUARANTY, dated as of October 30, 2002 (this "*Agreement*"), is made by WYNN RESORTS, LIMITED, a Nevada corporation ("Wynn Resorts"), in favor of Wells Fargo Bank Nevada National Association not in its individual capacity, but solely as Collateral Agent (in such capacity, the "*Collateral Agent*"), the Arrangers (as defined in the Loan Agreement) and the Lenders (the "*Lenders*") from time to time parties to the Loan Agreement, dated as of October 30, 2002 (as amended, supplemented or otherwise modified from time to time, the "*Loan Agreement*"), among Wynn Las Vegas, LLC, a Nevada limited liability company (the "*Borrower*"), the Lenders and the Collateral Agent.

RECITALS

WHEREAS, pursuant to the Loan Agreement, the Lenders have severally agreed to make loans to the Borrower upon the terms and subject to the conditions set forth therein;

WHEREAS, Wynn Resorts indirectly owns 100% of the Capital Stock of the Borrower;

WHEREAS, the proceeds of the loans under the Loan Agreement will be used, in part, to enable the Borrower to make valuable transfers to one or more other Persons, each of which are directly or indirectly wholly-owned Subsidiaries of Wynn Resorts;

WHEREAS, Wynn Resorts will derive substantial direct and indirect benefit from the making of the loans under the Loan Agreement; and

WHEREAS, it is a condition precedent to the obligations of the Lenders to make their respective loans to the Borrower under the Loan Agreement that Wynn Resorts shall have executed and delivered this Agreement to the Collateral Agent for the ratable benefit of the Secured Parties;

NOW, THEREFORE, in consideration of the premises and to induce the Lenders to enter into the Loan Agreement and to induce the Lenders to make their respective loans to the Borrower thereunder, Wynn Resorts hereby agrees with the Collateral Agent, for the ratable benefit of the Secured Parties, as follows:

DEFINED TERMS

Section 1.1. Definitions. Any capitalized terms used in this Agreement which are not otherwise defined herein shall have the respective meanings ascribed to such terms in the Loan Agreement.

(b) The following terms shall have the following meanings:

"Borrower Obligations": the collective reference to the Obligations of the Borrower.

"Guarantor Obligations": with respect to Wynn Resorts, all obligations and liabilities of Wynn Resorts which may arise under or in connection with this Agreement (including, without limitation, under **Section 2**) or any other Loan Document to which Wynn Resorts is a party, in each case whether on account of guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to any Secured Party that are required to be paid by Wynn Resorts pursuant to the terms of this Agreement or any other Loan Document).

"Obligations": (i) in the case of the Borrower, the Borrower Obligations, and (ii) in the case of Wynn Resorts, its Guarantor Obligations.

"Other Guarantors": collectively, the Guarantors other than Wynn Resorts and any other Person who guaranties the Borrower Obligations for the benefit of the Secured Parties.

"Secured Parties": collectively, the Arranger, the Collateral Agent and the Lenders.

"Wynn Put Agreement": the Agreement, dated as of June 13, 2002, among Stephen A. Wynn and Wynn Resorts, relating to the Buy-Sell Agreement, dated as of June 13, 2002, among Stephen A. Wynn, Kazuo Okada, Aruze USA and Aruze Corp.

Section 1.2. Other Definitional Provisions. (a) The words "*hereof*," "*herein*," "*hereto*" and "*hereunder*" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and Schedule references are to this Agreement unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(c) The expressions "*payment in full*," "*paid in full*" and any other similar terms or phrases when used herein with respect to the Borrower Obligations shall mean the unconditional, final and irrevocable payment in full, in immediately available funds, of all of the Borrower Obligations.

SECTION 2

GUARANTEE

Section 2.1. Guarantee. (a) Wynn Resorts hereby unconditionally and irrevocably, guarantees to the Secured Parties and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by the Borrower when due (whether at the stated maturity, by acceleration or otherwise) of the Borrower Obligations.

(b) The guarantee contained in this **Section 2** shall remain in full force and effect until payment in full of all Borrower Obligations.

(c) No payment made by the Borrower, Wynn Resorts, any Other Guarantor or any other Person or received or collected by any Secured Party from the Borrower, Wynn Resorts, any Other Guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of Wynn Resorts hereunder which shall, notwithstanding any such payment (other than any payment made by Wynn Resorts in respect of the Obligations or any payment received or collected from Wynn Resorts in respect of the Obligations), remain liable for the Obligations up to the maximum liability of Wynn Resorts hereunder until the Guarantor Obligations are paid in full.

Section 2.2. Rights of Reimbursement, Contribution and Subrogation. (a) In case any payment is made on account of the Obligations by Wynn Resorts or is received or collected on account of the Obligations from Wynn Resorts or its property, Wynn Resorts may be entitled, subject to and upon payment in full of the Obligations, (A) to demand and enforce reimbursement for the full amount of such payment from the Borrower and (B) to demand and enforce contribution in respect of such payment from each Other Guarantor which has not paid its fair share of such payment, as necessary to ensure that (after giving effect to any enforcement of reimbursement rights provided hereby) Wynn Resorts and each Other Guarantor pays its fair share of the unreimbursed portion of such payment.

(b) [Reserved]

(c) All rights and claims arising under this **Section 2.2** or based upon or relating to any other right of reimbursement, indemnification, contribution or subrogation that may at any time arise or exist in favor of Wynn Resorts as to any payment on account of the Obligations made by it or received or collected from its property shall be fully subordinated in all respects to the prior payment in full of all of the Obligations. Until payment in full of the Obligations, Wynn Resorts shall not demand or receive any payment or distribution whatsoever (whether in cash, property or securities or otherwise) on account of any such right or claim. If any such payment or distribution is made or becomes available to

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Wynn Resorts in any bankruptcy case or receivership, insolvency or liquidation proceeding, such payment or distribution shall be delivered by the Person making such payment or distribution directly to the Collateral Agent, for application to the payment of the Obligations. If any such payment or distribution is received by Wynn Resorts, it shall be held by Wynn Resorts in trust, as trustee of an express trust for the benefit of the Secured Parties, and shall forthwith be transferred and delivered by Wynn Resorts to the Collateral Agent, in the exact form received and, if necessary, duly endorsed.

(d) The obligations of Wynn Resorts under this Agreement, including its liability for the Obligations, are not contingent upon the validity, legality, enforceability, collectibility or sufficiency of any right of reimbursement, contribution or subrogation arising under this **Section 2.2**. The invalidity, insufficiency, unenforceability or uncollectibility of any such right shall not in any respect diminish, affect or impair any such obligation or any other claim, interest, right or remedy at any time held by any Secured Party against Wynn Resorts or its property. The Secured Parties make no representations or warranties in respect of any such right and shall have no duty to assure, protect, enforce or ensure any such right or otherwise relating to any such right.

(e) Wynn Resorts reserves any and all other rights of reimbursement, contribution or subrogation at any time available to it as against any Other Guarantor, but (i) the exercise and enforcement of such rights shall be subject to **Section 2.2** and (ii) neither the Collateral Agent nor any other Secured Party shall ever have any duty or liability whatsoever in respect of any such right, except as provided in **Section 2.2(c)**.

(f) Wynn Resorts waives any right or claims of right to cause a marshalling of the Borrower's, Wynn Resorts' or any Other Guarantor's assets or to proceed against Wynn Resorts, the Borrower or any Other Guarantor in any particular order, including, but not limited to, any right arising out of Nevada Revised Statutes 40.430.

Section 2.3. Amendments, etc. with respect to the Borrower Obligations. Wynn Resorts shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Other Guarantor and without notice to or further assent by any such guarantor, any demand for payment of any of the Borrower Obligations made by any Secured Party may be rescinded by such Secured Party and any of the Borrower Obligations continued, and the Borrower Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, increased, extended, amended, modified, accelerated, compromised, waived, surrendered or released by any Secured Party, and the Loan Agreement and the other Loan Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Collateral Agent (or the requisite Lenders under the Loan Agreement or all Lenders, as the case may be) may deem advisable from time to time, and any collateral security, guarantee or right of offset at any time held by any Secured Party for the payment of the Borrower Obligations may be sold, exchanged, waived, surrendered or released. No Secured Party shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Borrower Obligations or for the guarantee contained in this **Section 2** or any property subject thereto.

Section 2.4. Guarantee Absolute and Unconditional. Wynn Resorts waives any and all notice of the creation, renewal, extension or accrual of any of the Borrower Obligations and notice of or proof of reliance by any Secured Party upon the guarantee contained in this **Section 2** or acceptance of the guarantee contained in this **Section 2**; the Borrower Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this **Section 2**; and all dealings between the Borrower and Wynn Resorts or any of the Other Guarantors, on the one hand, and the Secured Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the

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guarantee contained in this **Section 2**. Wynn Resorts waives diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Borrower, Wynn Resorts or any of the Other Guarantors. Wynn Resorts understands and agrees that the guarantee contained in this **Section 2** shall be

construed as a continuing, absolute and unconditional guarantee of payment and performance without regard to (a) the validity or enforceability of the Loan Agreement or any other Loan Document, any of the Borrower Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by any Secured Party, (b) any defense, set-off or counterclaim (other than a defense of payment or performance hereunder) which may at any time be available to or be asserted by the Borrower or any other Person against any Secured Party, or (c) any other circumstance whatsoever (with or without notice to or knowledge of the Borrower or Wynn Resorts) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrower for the Borrower Obligations, or of Wynn Resorts under the guarantee contained in this **Section 2**, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against Wynn Resorts, any Secured Party may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against the Borrower, any Other Guarantor or any other Person or against any guarantee for the Borrower Obligations or any right of offset with respect thereto, and any failure by any Secured Party to make any such demand, to pursue such other rights or remedies or to collect any payments from the Borrower, any Other Guarantor or any other Person or to realize upon any such guarantee or to exercise any such right of offset, or any release of the Borrower, any Other Guarantor or any other Person or any such guarantee or right of offset, shall not relieve Wynn Resorts of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of any Secured Party against Wynn Resorts. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

Section 2.5. Reinstatement. The guarantee contained in this **Section 2** shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Obligations is rescinded or must otherwise be restored or returned by any Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower, Wynn Resorts or any Other Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower, Wynn Resorts or any Other Guarantor or any substantial part of its property, or otherwise, all as though such payments had not been made.

Section 2.6. Payments. Wynn Resorts hereby guarantees that payments pursuant to **Sections 2.1** and **6.4** hereof will be paid to the Collateral Agent without set-off or counterclaim in Dollars in immediately available funds at the office of the Collateral Agent specified in the Loan Agreement.

SECTION 3

ASSURANCES

Section 3.1. [Reserved]

Section 3.2. Further Assurances. Wynn Resorts shall execute and deliver such additional instruments, certificates or documents, and take all such actions as may be reasonably required from time to time in order to (a) carry out more effectively the purposes of this Agreement, (b) ensure that this Agreement has the ranking required under this Agreement; and (c) ensure that any of the rights granted or intended to be granted to the Secured Parties under this Agreement or under any other instrument executed in connection therewith or granted to Wynn Resorts thereunder or under any other instrument executed in connection therewith are protected and enforced.

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SECTION 4

SEPARATENESS

Wynn Resorts hereby agrees that, for so long as there continues to be any outstanding Borrower Obligations, it shall comply with each of the following:

(a) Wynn Resorts shall not conduct business in the name of any of the Loan Parties or the Completion Guarantor (collectively, the "Wynn Group Members"), nor shall it refer to any of the Wynn Group Members as a division, department or other subdivision of Wynn Resorts that is not recognized as a separate and distinct legal entity under applicable law. Wynn Resorts shall have separate stationery, invoices and checks in its own name and shall observe all organizational formalities. Wynn Resorts shall not refer to employees of a Wynn Group Member as employees of Wynn Resorts or of any Affiliate of Wynn Resorts that is not a Wynn Group Member. Wynn Resorts shall maintain arms'-length relationships with the Wynn Group Members, except for management fees, distributions and other specific transactions, to the extent expressly permitted by the Loan Documents. Wynn Resorts shall maintain adequate capital in light of its contemplated business purpose, transactions and liabilities. Wynn Resorts shall not commingle its funds with those of the Wynn Group Entities, and in all transactions involving the Wynn Group Entities and Wynn Resorts, the separate funds of each of the Wynn Group Members and Wynn Resorts shall be clearly traceable. The assets of Wynn Resorts shall remain identifiably separate from those of the Wynn Group Members such that there will be no material difficulty in segregating the assets of the Wynn Group Members from those of Wynn Resorts.

(b) Wynn Resorts shall not hold out the Wynn Group Members to be other than legal entities separate and distinct from Wynn Resorts, and Wynn Resorts shall not hold out that the assets of the Wynn Group Members are available to satisfy the liabilities of Wynn Resorts. In any communications with creditors of Wynn Resorts that refer in any way directly or indirectly to the assets, liabilities, operations or results from operations of the Wynn Group Members, Wynn Resorts shall ensure that such communications accurately describe the separate existence of the Wynn Group Members and the fact that the assets of the Wynn Group Members are not available to satisfy the liabilities of Wynn Resorts.

(c) Wynn Resorts shall maintain books, records and accounts separate and apart from each of the Wynn Group Members. In any consolidated financial statements of Wynn Resorts that refer to assets, liabilities, operations or results from operations of the Wynn Group Members, Wynn Resorts shall, in footnotes or otherwise, describe the assets, liabilities, operations and results from operations of the Wynn Group Members separately from those of Wynn Resorts and further shall note that (i) each Wynn Group Member is organized as a legal entity separate and distinct from Wynn Resorts, (ii) there is no agreement or other arrangement or relationship under which or pursuant to which the assets of a Wynn Group Member have been pledged or otherwise made available to satisfy the obligations of Wynn Resorts or any of its Affiliates that are not Wynn Group Members and (iii) each Wynn Group Member has issued or guaranteed indebtedness that is secured by Liens on substantially all of the assets of said Wynn Group Member (except as otherwise permitted by the terms of the Loan Documents).

(d) In addition to the foregoing, Wynn Resorts shall not take any other action that would reasonably be expected to call into question the separate identity of each Wynn Group Member from Wynn Resorts, or to create or increase any risk that the assets of any Wynn Group Member will be

SECTION 5

WYNN PUT AGREEMENT

Wynn Resorts hereby agrees that it shall not amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, or otherwise fail to enforce, or terminate or abandon, any of the provisions of the Wynn Put Agreement, if such amendment, modification, waiver or other change, failure to enforce, termination or abandonment (individually or collectively with all such amendments, modifications, waivers and other changes, failures to enforce, terminations or abandonments taken as a whole) would (a) have a material adverse affect on the ability of the Borrower or any other Loan Party to develop, construct or operate the Project, (b) cause the Completion Date to occur or result in that date occurring after the Scheduled Completion Deadline, (c) materially impair the rights or remedies of the Lenders or (d) materially impair the development, use or operation of the Project. Notwithstanding the provisions of this Agreement, in no event shall Wynn Resorts be required, by reason of this Agreement, to become a Loan Party or otherwise to become subject to the restrictive covenants or other terms of the Loan Agreement.

SECTION 6

MISCELLANEOUS

Section 6.1. Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 13.5 of the Loan Agreement.

Section 6.2. Notices. All notices, requests and demands to or upon the Collateral Agent or Wynn Resorts hereunder shall be effected in the manner provided for in Section 13.6 of the Loan Agreement; *provided* that any such notice, request or demand to or upon Wynn Resorts shall be addressed to Wynn Resorts at its notice address set forth below:

Wynn Resorts, Limited
c/o Wynn Resorts, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Mr. Marc H. Rubinstein
Sr. Vice President & General Counsel
Phone: (702) 733-4556
Fax: (702) 733-4596

Section 6.3. No Waiver by Course of Conduct; Cumulative Remedies. No Secured Party shall by any act (except by a written instrument pursuant to **Section 6.1**), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which such Secured Party would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

Section 6.4. Enforcement Expenses; Indemnification. (a) Wynn Resorts agrees to pay or reimburse each Secured Party for all its costs and expenses incurred in collecting against Wynn Resorts under the guarantee contained in **Section 2** or otherwise enforcing or preserving any rights under this Agreement,

including, without limitation, the fees and disbursements of counsel to each Secured Party and of counsel to the Collateral Agent.

(b) Wynn Resorts agrees to pay, and to save the Secured Parties harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement to the extent the Borrower would be required to do so pursuant to **Section 12** of the Loan Agreement.

(c) The agreements in this **Section 6.4** shall survive repayment of the Borrower Obligations and all other amounts payable under the Loan Agreement and the other Loan Documents.

(d) Wynn Resorts agrees that the provisions of Section 12.2 of the Loan Agreement are hereby incorporated herein by reference, *mutatis mutandis*, and each Secured Party shall be entitled to rely on each of them as if they were fully set forth herein.

Section 6.5. Successors and Assigns. This Agreement shall be binding upon the successors and assigns of Wynn Resorts and shall inure to the benefit of the Secured Parties and their successors and assigns; *provided*, that Wynn Resorts may not assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Collateral Agent.

Section 6.6. Set-Off. Wynn Resorts hereby irrevocably authorizes each Secured Party at any time and from time to time while an Event of Default shall have occurred and be continuing, without notice to Wynn Resorts or any Other Guarantor, any such notice being expressly waived by Wynn Resorts, to set-off and appropriate and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Secured Party to or for the credit or the account of Wynn Resorts, or any part thereof in such amounts as such Secured Party may elect, against and on account of the obligations and liabilities of Wynn Resorts to such Secured Party hereunder and claims of every nature and description of such Secured Party against Wynn Resorts, in any currency, whether arising hereunder or otherwise, as such Secured Party may elect, whether or not any Secured Party has made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured. Each Secured Party shall notify Wynn Resorts promptly of any such set-off and the application made by such Secured Party of the proceeds thereof, *provided* that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Secured Party under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which such Secured Party may have.

Section 6.7. Representations and Warranties. Wynn Resorts hereby represents and warrants as follows: (a) Wynn Resorts has the requisite corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder, (b) the execution, delivery and performance by Wynn Resorts of this Agreement have been duly approved by all necessary corporate action of Wynn Resorts and no other corporate proceedings on the part of Wynn Resorts are necessary to consummate the transactions contemplated by this Agreement, (c) this Agreement has been duly executed and delivered by Wynn Resorts and (d) this Agreement is the legal, valid and binding obligation of Wynn Resorts, enforceable against Wynn Resorts in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

Section 6.8. Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

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Section 6.9. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 6.10. Section Headings. The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

Section 6.11. Integration. This Agreement represents the agreement of Wynn Resorts, the Collateral Agent and the other Secured Parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by any Secured Party relative to subject matter hereof and thereof not expressly set forth or referred to herein.

Section 6.12. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

Section 6.13. Submission to Jurisdiction; Waivers. Wynn Resorts hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to Wynn Resorts at its address referred to in **Section 6.2** or at such other address of which the Collateral Agent shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

Section 6.14. Acknowledgments. Wynn Resorts hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement;

(b) no Secured Party has any fiduciary relationship with or duty to Wynn Resorts arising out of or in connection with this Agreement, and the relationship between Wynn Resorts, on the one hand, and the Secured Parties, on the other hand, in connection herewith or therewith is solely that of obligor/obligee; and

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(c) no joint venture is created hereby or otherwise exists by virtue of the transactions contemplated hereby among the Secured Parties or between Wynn Resorts and the Secured Parties.

Section 6.15. Releases. At such time as the Guarantor Obligations shall have been paid in full, this Agreement and all obligations (other than those expressly stated to survive such termination) of Wynn Resorts hereunder shall terminate, all without delivery of any instrument or performance of any act by any party. At the request and sole expense of Wynn Resorts following any such termination, the Collateral Agent shall execute and deliver to Wynn Resorts such documents as Wynn Resorts shall reasonably request to evidence such termination.

Section 6.16. WAIVER OF JURY TRIAL. WYNN RESORTS AND THE SECURED PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

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IN WITNESS WHEREOF, the undersigned has caused this Agreement to be duly executed and delivered as of the date first above written.

WYNN RESORTS, LIMITED,
a Nevada corporation

By /s/ MARC. H. RUBINSTEIN

Name: Marc. H. Rubinstein

Title: *Sr. Vice President, General Counsel and Secretary*

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PARENT GUARANTY

This PARENT GUARANTY, dated as of October 30, 2002, is made by WYNN RESORTS, LIMITED, a Nevada corporation ("*Wynn Resorts*"), in favor of DEUTSCHE BANK TRUST COMPANY AMERICAS, as administrative agent (in such capacity, the "*Administrative Agent*") for (i) the banks and other financial institutions or entities (the "*Lenders*") from time to time parties to the Credit Agreement, dated as of October 30, 2002 (as amended, supplemented or otherwise modified from time to time, the "*Credit Agreement*"), among Wynn Las Vegas, LLC, a Nevada limited liability company (the "*Borrower*"), the Lenders, Deutsche Bank Securities Inc., as lead arranger and joint book running manager, Banc of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York and Grand Cayman Branches, as arranger and joint documentation agent, JPMorgan Chase Bank, as joint documentation agent, and the Administrative Agent, and (ii) the other Secured Parties (as hereinafter defined).

RECITALS:

WHEREAS, pursuant to the Credit Agreement, the Lenders have severally agreed to make extensions of credit to the Borrower upon the terms and subject to the conditions set forth therein;

WHEREAS, Wynn Resorts indirectly owns 100% of the Capital Stock of the Borrower;

WHEREAS, the proceeds of the extensions of credit under the Credit Agreement will be used in part to enable the Borrower to make valuable transfers to one or more other Persons, each of which are directly or indirectly wholly-owned Subsidiaries of Wynn Resorts;

WHEREAS, Wynn Resorts will derive substantial direct and indirect benefit from the making of the extensions of credit under the Credit Agreement; and

WHEREAS, it is a condition precedent to the obligations of the Lenders to make their respective extensions of credit to the Borrower under the Credit Agreement that Wynn Resorts shall have executed and delivered this Agreement to the Administrative Agent for the ratable benefit of the Secured Parties;

NOW, THEREFORE, in consideration of the premises and to induce the Arrangers, the Managers, the Agents, including, without limitation, the Administrative Agent, and the Lenders to enter into the Credit Agreement and to induce the Lenders to make their respective extensions of credit to the Borrower thereunder, Wynn Resorts hereby agrees with the Administrative Agent, for the ratable benefit of the Secured Parties, as follows:

SECTION 1. DEFINED TERMS

1.1 *Definitions.* Any capitalized terms used in this Agreement which are not otherwise defined herein shall have the respective meanings ascribed to such terms in the Credit Agreement. The following terms shall have the following meanings:

"*Agreement*": this Parent Guaranty, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"*Borrower Obligations*": the collective reference to the Obligations of the Borrower.

"*Disbursement Agreement*": that certain Master Disbursement Agreement, dated as of October 30, 2002, among the Borrower, the Administrative Agent and the other parties signatory thereto, as the same may hereafter be amended or modified in accordance with its terms and the terms of the Credit Agreement.

"*Excluded Assets*": any Capital Stock held by Wynn Resorts, other than the Capital Stock of Valvino Lamore, LLC, or any other Loan Party.

"*Other Guarantors*": collectively, the Guarantors other than Wynn Resorts and any other Person who guaranties the Borrower Obligations for the benefit of the Administrative Agent.

"*Secured Parties*": collectively, the Arrangers, the Agents, the Managers, the Lenders and, with respect to any Specified Hedge Agreement, any affiliate of any Lender party thereto or any Person that was a Lender or an affiliate thereof when such Specified Hedge Agreement was entered into that has agreed to be bound by the provisions of Section 7.2 of the Guarantee and Collateral Agreement as if it were a party thereto and by the provisions of Section 9 of the Credit Agreement as if it were a Lender party thereto.

"*Wynn Put Agreement*": the Agreement, dated as of June 13, 2002, among Stephen A. Wynn and Wynn Resorts, relating to the Buy-Sell Agreement, dated as of June 13, 2002, among Stephen A. Wynn, Kazuo Okada, Aruze USA and Aruze Corp.

1.2 *Other Definitional Provisions.* (a) The words "hereof", "herein", "hereto" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and Schedule references are to this Agreement unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(c) The expressions "payment in full," "paid in full" and any other similar terms or phrases when used herein with respect to the Borrower Obligations shall mean the unconditional, final and irrevocable payment in full, in immediately available funds, of all of the Borrower Obligations.

SECTION 2. GUARANTEE

2.1. *Guarantee.*

(a) Wynn Resorts hereby unconditionally and irrevocably, guarantees to the Administrative Agent, for the ratable benefit of the Secured Parties and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by the Borrower when due (whether at the stated maturity, by acceleration or otherwise) of the Borrower Obligations.

(b) The guarantee contained in this Section 2 shall remain in full force and effect until payment in full of all Borrower Obligations, notwithstanding that from time to time during the term of the Credit Agreement the Borrower may be free from any Borrower Obligations.

(c) No payment made by the Borrower, Wynn Resorts, any Other Guarantor or any other Person or received or collected by any Secured Party from the Borrower, Wynn Resorts, any Other Guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Borrower Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of Wynn Resorts hereunder which shall, notwithstanding any such payment (other than any payment made by Wynn Resorts in respect of the Borrower Obligations or any payment received or collected from Wynn Resorts in respect of the Borrower Obligations), remain liable for the Borrower Obligations up to the maximum liability of Wynn Resorts hereunder until the Borrower Obligations are paid in full, no Letter of Credit shall be outstanding and the Commitments are terminated or have expired.

2.2. *Rights of Reimbursement, Contribution and Subrogation.*

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(a) In case any payment is made on account of the Borrower Obligations by Wynn Resorts or is received or collected on account of the Obligations from Wynn Resorts or its property, Wynn Resorts may be entitled, subject to and upon payment in full of the Borrower Obligations, (A) to demand and enforce reimbursement for the full amount of such payment from the Borrower and (B) to demand and enforce contribution in respect of such payment from each Other Guarantor which has not paid its fair share of such payment, as necessary to ensure that (after giving effect to any enforcement of reimbursement rights provided hereby) Wynn Resorts and each Other Guarantor pays its fair share of the unreimbursed portion of such payment.

(b) If and whenever (after payment in full of the Borrower Obligations) any right of reimbursement or contribution becomes enforceable by Wynn Resorts against any Other Guarantor as described in Section 2.2(a) or otherwise, Wynn Resorts may be entitled, subject to and upon payment in full of the Borrower Obligations, to be subrogated (equally and ratably with all Other Guarantors entitled to reimbursement or contribution from Wynn Resorts or any Other Guarantor as described in this Section 2.2) to any security interest that may then be held by the Administrative Agent upon any Collateral granted to it pursuant to the Security Documents. Such right of subrogation shall be enforceable solely against the Other Guarantors, and not against the Secured Parties, and neither the Administrative Agent nor any other Secured Party shall have any duty whatsoever to warrant, ensure or protect any such right of subrogation or to obtain, perfect, maintain, hold, enforce or retain any Collateral for any purpose related to any such right of subrogation. If subrogation is demanded by Wynn Resorts, then (after payment in full of the Borrower Obligations) the Administrative Agent shall deliver to Wynn Resorts, or to a representative of Wynn Resorts or of the guarantors of the Borrower Obligations generally, at the expense of Wynn Resorts, an instrument satisfactory to the Administrative Agent transferring, on a quitclaim basis without any recourse, representation, warranty or obligation whatsoever, whatever security interest the Administrative Agent then may hold in whatever Collateral may then exist that was not previously released or disposed of by the Administrative Agent.

(c) All rights and claims arising under this Section 2.2 or based upon or relating to any other right of reimbursement, indemnification, contribution or subrogation that may at any time arise or exist in favor of Wynn Resorts as to any payment on account of the Borrower Obligations made by it or received or collected from its property shall be fully subordinated in all respects to the prior payment in full of all of the Borrower Obligations. Until payment in full of the Borrower Obligations, Wynn Resorts shall not demand or receive any collateral security, payment or distribution whatsoever (whether in cash, property or securities or otherwise) on account of any such right or claim. If any such payment or distribution is made or becomes available to Wynn Resorts in any bankruptcy case or receivership, insolvency or liquidation proceeding, such payment or distribution shall be delivered by the Person making such payment or distribution directly to the Administrative Agent, for application to the payment of the Borrower Obligations. If any such payment or distribution is received by Wynn Resorts, it shall be held by Wynn Resorts in trust, as trustee of an express trust for the benefit of the Secured Parties, and shall forthwith be transferred and delivered by Wynn Resorts to the Administrative Agent, in the exact form received and, if necessary, duly endorsed.

(d) The obligations of Wynn Resorts under this Agreement, including its liability for the Borrower Obligations, are not contingent upon the validity, legality, enforceability, collectibility or sufficiency of any right of reimbursement, contribution or subrogation arising under this Section 2.2. The invalidity, insufficiency, unenforceability or uncollectibility of any such right shall not in any respect diminish, affect or impair any such obligation or any other claim, interest, right or remedy at any time held by any Secured Party against Wynn Resorts or its property. The Secured Parties make no representations or warranties in respect of any such right and shall have no duty to assure, protect, enforce or ensure any such right or otherwise relating to any such right.

(e) Wynn Resorts reserves any and all other rights of reimbursement, contribution or subrogation at any time available to it as against any Other Guarantor, but (i) the exercise and enforcement of such

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rights shall be subject to Section 2.2(d) and (ii) neither the Administrative Agent nor any other Secured Party shall ever have any duty or liability whatsoever in respect of any such right, except as provided in Section 2.2(c).

(f) Wynn Resorts waives any right or claims of right to cause a marshalling of the Borrower's, Wynn Resorts' or any Other Guarantor's assets or to proceed against Wynn Resorts, the Borrower or any Other Guarantor in any particular order, including, but not limited to, any right arising out of Nevada Revised Statutes 40.430.

2.3 *Amendments, etc. with respect to the Borrower Obligations.*

Wynn Resorts shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Other Guarantor and without notice to or further assent by any such guarantor, any demand for payment of any of the Borrower Obligations made by any Secured Party may be rescinded by such Secured Party and any of the Borrower Obligations continued, and the Borrower Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from

time to time, in whole or in part, be renewed, increased, extended, amended, modified, accelerated, compromised, waived, surrendered or released by any Secured Party, and the Credit Agreement and the other Loan Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Administrative Agent (or the requisite Lenders under the Credit Agreement or all Lenders, as the case may be) may deem advisable from time to time, and any collateral security, guarantee or right of offset at any time held by any Secured Party for the payment of the Borrower Obligations may be sold, exchanged, waived, surrendered or released. No Secured Party shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Borrower Obligations or for the guarantee contained in this Section 2 or any property subject thereto.

2.4 Guarantee Absolute and Unconditional. Wynn Resorts waives any and all notice of the creation, renewal, extension or accrual of any of the Borrower Obligations and notice of or proof of reliance by any Secured Party upon the guarantee contained in this Section 2 or acceptance of the guarantee contained in this Section 2; the Borrower Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this Section 2; and all dealings between the Borrower and Wynn Resorts or any of the Other Guarantors, on the one hand, and the Secured Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Section 2. Wynn Resorts waives diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Borrower, Wynn Resorts or any of the Other Guarantors. Wynn Resorts understands and agrees that the guarantee contained in this Section 2 shall be construed as a continuing, absolute and unconditional guarantee of payment and performance without regard to (a) the validity or enforceability of the Credit Agreement or any other Loan Document, any of the Borrower Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by any Secured Party, (b) any defense, set-off or counterclaim (other than a defense of payment or performance hereunder) which may at any time be available to or be asserted by the Borrower or any other Person against any Secured Party, or (c) any other circumstance whatsoever (with or without notice to or knowledge of the Borrower or Wynn Resorts) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrower for the Borrower Obligations, or of Wynn Resorts under the guarantee contained in this Section 2, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against Wynn Resorts, any Secured Party may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against the Borrower, any Other Guarantor or any other Person or against any collateral security or guarantee for the Borrower Obligations or any right of offset with respect thereto, and any failure by any Secured Party to make any such demand, to pursue such other

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rights or remedies or to collect any payments from the Borrower, any Other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Borrower, any Other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve Wynn Resorts of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of any Secured Party against Wynn Resorts. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

2.5 Reinstatement. The guarantee contained in this Section 2 shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Borrower Obligations is rescinded or must otherwise be restored or returned by any Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower, Wynn Resorts or any Other Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower, Wynn Resorts or any Other Guarantor or any substantial part of its property, or otherwise, all as though such payments had not been made.

2.6 Payments. Wynn Resorts hereby guarantees that payments hereunder will be paid to the Administrative Agent without set-off or counterclaim in Dollars in immediately available funds at the office of the Administrative Agent located at the Payment Office specified in the Credit Agreement.

SECTION 3. SECURITY INTERESTS

3.1. Restriction on Grant of Security Interest. Wynn Resorts hereby agrees that it shall not grant any security interests in any of its assets or properties (other than a security interest in favor of the Administrative Agent for the benefit of the Lenders and security interests granted in Excluded Assets or assets or properties that individually or in the aggregate have a fair market value of less than \$10,000,000) in favor of any Person to secure (i) any Indebtedness of any of its Affiliates, (ii) any Guarantee Obligations by Wynn Resorts of Indebtedness of any of its Affiliates, or (iii) any Indebtedness incurred by Wynn Resorts (any such grant of security interest, a "*Granted Security Interest*"), unless:

(a) Wynn Resorts concurrently executes and delivers to the Administrative Agent a security agreement in substantially the form of the security agreement related to the Granted Security Interest (a "*Parent Security Agreement*") and thereby grants a perfected, enforceable security interest in those assets or properties in favor of the Administrative Agent for the benefit of the Lenders to secure the obligations of Wynn Resorts pursuant to this Agreement; and

(b) subject to the Intercreditor Agreements, the security interest described in clause (a) above ranks senior to or is *pari passu* with the Granted Security Interest.

3.2. Further Assurances. Wynn Resorts shall execute and deliver such additional instruments, certificates or documents, and take all such actions as may be reasonably required from time to time in order to (a) carry out more effectively the purposes of this Agreement and the Parent Security Agreement (if any), (b) create, grant, perfect and maintain the validity, effectiveness, perfection and priority of the Parent Security Agreement (if any) and the Liens created, or intended to be created, thereby (if any), (c) ensure that this Agreement and the Liens created or purported to be created under the Parent Security Agreement (if any) have the ranking required under this Agreement; and (d) ensure that any of the rights granted or intended to be granted to the Administrative Agent under this Agreement or the Parent Security Agreement (if any) or under any other instrument executed in connection therewith or granted to Wynn Resorts thereunder or under any other instrument executed in connection therewith are protected and enforced. Upon the exercise by the Administrative Agent or any Secured Party of any power, right, privilege or remedy under this Agreement or the Parent Security Agreement which requires any consent, approval, recording, qualification or authorization of any governmental authority, Wynn Resorts shall execute and deliver all applications, certifications,

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instruments and other documents and papers that may be required from Wynn Resorts for such governmental consent, approval, recording, qualification or authorization.

SECTION 4. SEPARATENESS

Wynn Resorts hereby agrees that, for so long as there continues to be any outstanding Borrower Obligations, it shall comply with each of the following:

(a) Wynn Resorts shall not conduct business in the name of any of the Loan Parties or the Completion Guarantor (collectively, the "Wynn Group Members"), nor shall it refer to any of the Wynn Group Members as a division, department or other subdivision of Wynn Resorts that is not recognized as a separate and distinct legal entity under applicable law. Wynn Resorts shall have separate stationery, invoices and checks in its own name and shall observe all organizational formalities. Wynn Resorts shall not refer to employees of a Wynn Group Member as employees of Wynn Resorts or of any Affiliate of Wynn Resorts that is not a Wynn Group Member. Wynn Resorts shall maintain arms'-length relationships with the Wynn Group Members, except for management fees, distributions and other specific transactions, to the extent expressly permitted by the Loan Documents. Wynn Resorts shall maintain adequate capital in light of its contemplated business purpose, transactions and liabilities. Wynn Resorts shall not commingle its funds with those of the Wynn Group Entities, and in all transactions involving the Wynn Group Entities and Wynn Resorts, the separate funds of each of the Wynn Group Members and Wynn Resorts shall be clearly traceable. The assets of Wynn Resorts shall remain identifiably separate from those of the Wynn Group Members such that there will be no material difficulty in segregating the assets of the Wynn Group Members from those of Wynn Resorts.

(b) Wynn Resorts shall not hold out the Wynn Group Members to be other than legal entities separate and distinct from Wynn Resorts, and Wynn Resorts shall not hold out that the assets of the Wynn Group Members are available to satisfy the liabilities of Wynn Resorts. In any communications with creditors of Wynn Resorts that refer in any way directly or indirectly to the assets, liabilities, operations or results from operations of the Wynn Group Members, Wynn Resorts shall ensure that such communications accurately describe the separate existence of the Wynn Group Members and the fact that the assets of the Wynn Group Members are not available to satisfy the liabilities of Wynn Resorts.

(c) Wynn Resorts shall maintain books, records and accounts separate and apart from each of the Wynn Group Members. In any consolidated financial statements of Wynn Resorts that refer to assets, liabilities, operations or results from operations of the Wynn Group Members, Wynn Resorts shall, in footnotes or otherwise, describe the assets, liabilities, operations and results from operations of the Wynn Group Members separately from those of Wynn Resorts and further shall note that (i) each Wynn Group Member is organized as a legal entity separate and distinct from Wynn Resorts, (ii) there is no agreement or other arrangement or relationship under which or pursuant to which the assets of a Wynn Group Member have been pledged or otherwise made available to satisfy the obligations of Wynn Resorts or any of its Affiliates that are not Wynn Group Members, and (iii) each Wynn Group Member has issued or guaranteed indebtedness that is secured by Liens on substantially all of the assets of said Wynn Group Member (except as otherwise permitted by the terms of the Loan Documents).

(d) In addition to the foregoing, Wynn Resorts shall not take any other action that would reasonably be expected to call into question the separate identity of each Wynn Group Member from Wynn Resorts, or to create or increase any risk that the assets of any Wynn Group Member will be consolidated with those of Wynn Resorts or any other Person (other than another Wynn Group Member) under applicable federal or state bankruptcy or insolvency law.

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SECTION 5. WYNN PUT AGREEMENT

Wynn Resorts hereby agrees that it shall not amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, or otherwise fail to enforce, or terminate or abandon, any of the provisions of the Wynn Put Agreement, if such amendment, modification, waiver or other change, failure to enforce, termination or abandonment (individually or collectively with all such amendments, modifications, waivers and other changes, failures to enforce, terminations or abandonments taken as a whole) would (a) have a material adverse affect on the ability of the Borrower or any other Loan Party to develop, construct or operate the Project, (b) cause the Completion Date to occur or result in that date occurring after the Scheduled Completion Deadline, (c) materially impair the rights or remedies of the Lenders, or (d) materially impair the development, use or operation of the Project. Notwithstanding the provisions of this Agreement, in no event shall Wynn Resorts be required, by reason of this Agreement or the Parent Security Agreement (if any), to become a Loan Party or otherwise to become subject to the restrictive covenants or other terms of the Credit Agreement.

SECTION 6. MISCELLANEOUS

6.1. *Amendments in Writing.* None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 10.1 of the Credit Agreement.

6.2. *Notices.* All notices, requests and demands to or upon the Administrative Agent or Wynn Resorts hereunder shall be effected in the manner provided for in Section 10.2 of the Credit Agreement; *provided* that any such notice, request or demand to or upon Wynn Resorts shall be addressed to Wynn Resorts at its notice address set forth below:

Wynn Resorts, Limited
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attention: Ron Kramer
Telephone: (702) 733-4444
Facsimile: (702) 791-0167

6.3. *No Waiver by Course of Conduct; Cumulative Remedies.* No Secured Party shall by any act (except by a written instrument pursuant to Section 6.1), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which such Secured Party would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

6.4. *Enforcement Expenses; Indemnification.* (a) Wynn Resorts agrees to pay or reimburse each Secured Party for all its costs and expenses incurred in collecting against Wynn Resorts under the guarantee contained in Section 2 or otherwise enforcing or preserving any rights under this Agreement, including, without limitation, the fees and disbursements of counsel to each Secured Party and of counsel to the Administrative Agent.

(b) Wynn Resorts agrees to pay, and to save the Secured Parties harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or

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disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement to the extent the Borrower would be required to do so pursuant to Section 10.5 of the Credit Agreement.

(c) The agreements in this Section 6.4 shall survive repayment of the Borrower Obligations and all other amounts payable under the Credit Agreement and the other Loan Documents.

(d) Wynn Resorts agrees that the provisions of Section 2.20 of the Credit Agreement are hereby incorporated herein by reference, *mutatis mutandis*, and each Secured Party shall be entitled to rely on each of them as if they were fully set forth herein.

6.5. *Successors and Assigns.* This Agreement shall be binding upon the successors and assigns of Wynn Resorts and shall inure to the benefit of the Secured Parties and their successors and assigns; *provided*, that Wynn Resorts may not assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Administrative Agent.

6.6. *Set-Off.* Wynn Resorts hereby irrevocably authorizes each Secured Party at any time and from time to time while an Event of Default shall have occurred and be continuing, without notice to Wynn Resorts or any Other Guarantor, any such notice being expressly waived by Wynn Resorts, to set-off and appropriate and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Secured Party to or for the credit or the account of Wynn Resorts, or any part thereof in such amounts as such Secured Party may elect, against and on account of the obligations and liabilities of Wynn Resorts to such Secured Party hereunder and claims of every nature and description of such Secured Party against Wynn Resorts, in any currency, whether arising hereunder or otherwise, as such Secured Party may elect, whether or not any Secured Party has made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured. Each Secured Party shall notify Wynn Resorts promptly of any such set-off and the application made by such Secured Party of the proceeds thereof, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Secured Party under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which such Secured Party may have.

6.7. *Representations and Warranties.* Wynn Resorts hereby represents and warrants as follows: (a) Wynn Resorts has the requisite corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder and under the Parent Security Agreement (if any), (b) the execution, delivery and performance by Wynn Resorts of this Agreement and the Parent Security Agreement (if any) have been duly approved by all necessary corporate action of Wynn Resorts and no other corporate proceedings on the part of Wynn Resorts are necessary to consummate the transactions contemplated by this Agreement and the Parent Security Agreement (if any), (c) this Agreement has been duly executed and delivered by Wynn Resorts, and (d) this Agreement is (and, upon the execution and delivery thereof by Wynn Resorts, the Parent Security Agreement will be) the legal, valid and binding obligations of Wynn Resorts, enforceable against Wynn Resorts in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

6.8. *Counterparts.* This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

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6.9. *Severability.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

6.10. *Section Headings.* The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

6.11. *Integration.* This Agreement represents the agreement of Wynn Resorts, the Administrative Agent and the other Secured Parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by any Secured Party relative to subject matter hereof and thereof not expressly set forth or referred to herein.

6.12. **GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

6.13. *Submission to Jurisdiction; Waivers.* Wynn Resorts hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or

claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to Wynn Resorts at its address referred to in Section 6.2 or at such other address of which the Administrative Agent shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

6.14. *Acknowledgments.* Wynn Resorts hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement;

(b) no Secured Party has any fiduciary relationship with or duty to Wynn Resorts arising out of or in connection with this Agreement, and the relationship between Wynn Resorts, on the one hand, and the Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or otherwise exists by virtue of the transactions contemplated hereby among the Secured Parties or between Wynn Resorts and the Secured Parties.

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6.15. *Releases.* At such time as the Loans, the Reimbursement Obligations and the other Obligations shall have been paid in full, the Commitments have been terminated or expired and no Letters of Credit shall be outstanding, this Agreement and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent and Wynn Resorts hereunder shall terminate, all without delivery of any instrument or performance of any act by any party. At the request and sole expense of Wynn Resorts following any such termination, the Administrative Agent shall execute and deliver to Wynn Resorts such documents as Wynn Resorts shall reasonably request to evidence such termination.

6.16. **WAIVER OF JURY TRIAL. WYNN RESORTS AND THE ADMINISTRATIVE AGENT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.**

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IN WITNESS WHEREOF, each of the undersigned has caused this Parent Guaranty to be duly executed and delivered as of the date first above written.

WYNN RESORTS, LIMITED,
a Nevada corporation,

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: *Chief Executive Officer*

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Administrative Agent

By: /s/ LINDA WANG

Name: Linda Wang

Title: *Vice President*

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[PARENT GUARANTY](#)

PURCHASE AGREEMENT

October 25, 2002

To Stephen A. Wynn:

Wynn Resorts, Limited, a Nevada corporation (the "Company"), proposes to issue and sell to you (the "Purchaser") five million five hundred seventy six thousand nine hundred twenty three (5,576,923) shares of the Company's Common Stock, par value \$0.01 per share (the "Common Stock"). Terms not otherwise defined herein shall have the same meanings set forth in the Underwriting Agreement, dated as of October 25, 2002, by and among the Company and Deutsche Bank Securities Inc., Bear, Stearns & Co. Inc., Banc of America Securities LLC, as Representatives of the Several Underwriters set forth in Schedule I thereto (the "Underwriters"), as such Underwriting Agreement may be amended from time to time (the "Underwriting Agreement"). The Common Stock to be purchased by the Purchaser hereunder will be purchased pursuant to an offering by the Company under the Registration Statement.

1. *Purchase, Sale and Delivery of the Common Stock.* On the basis of the representations, warranties, covenants and agreements herein contained, and subject to the terms and conditions herein set forth, the Company agrees to sell to the Purchaser and the Purchaser agrees to purchase from the Company five million five hundred seventy six thousand nine hundred twenty three (5,576,923) shares of the Common Stock (the "Purchased Shares") at a purchase price of \$13 per share (the "Per Share Price").

Delivery of the payment of the purchase price for the Purchased Shares shall be made at the place determined in accordance with Section 2 of the Underwriting Agreement. Such delivery and payment shall be made at the Closing Date as set forth in such Section 2. Delivery of the Purchased Shares shall be made to the Purchaser against payment by the Purchaser of the purchase price for the Purchased Shares to the order of the Company by certified or official bank check payable in New York Clearing House funds or by wire transfer of immediately available funds to an account designated by the Company.

2. *Conditions to the Purchaser's Obligations.* The obligations of the Purchaser to purchase and pay for the Purchased Shares shall be subject only to the condition that the Closing under the Underwriting Agreement shall have occurred concurrently with the closing under this Agreement.

3. *Effective Date of Agreement; Termination.* This Agreement shall become effective upon the effectiveness of the Underwriting Agreement, and shall terminate solely upon the termination of the Underwriting Agreement.

4. *Consent and Waiver.* Reference is hereby made to: (i) that certain Purchase Agreement, dated concurrently herewith, between the Company and Aruze USA, Inc., pursuant to which, subject to certain conditions, Aruze USA, Inc. or its assignee is to purchase five million five hundred seventy six thousand nine hundred twenty three (5,576,923) shares of Common Stock at the Per Share Price; (ii) that certain Purchase Agreement, dated concurrently herewith, among the Company, Baron Asset Fund, a Massachusetts business trust, on behalf of the Baron Growth Fund Series, and Baron Asset Fund, a Massachusetts business trust, on behalf of the Baron Small Cap Fund Series, pursuant to which, subject to certain conditions, Baron Asset Fund, on behalf of the Baron Growth Fund Series and on behalf of the Baron Small Cap Fund Series, is to purchase seven hundred thousand (700,000) shares of Common Stock at the Per Share Price and three hundred thousand (300,000) shares of Common Stock at the Per Share Price, respectively; and (iii) that certain Purchase Agreement, dated concurrently herewith, between the Company and Zenith Insurance Company, a California corporation, pursuant to which, subject to certain conditions, Zenith Insurance Company is to purchase one million (1,000,000) shares of Common Stock at the Per Share Price (collectively, the "Other Stock Purchase Transactions"). The Purchaser hereby consents to the Other Stock Purchase Transactions and waives

any pre-emptive or other rights to purchase the equity interests contemplated to be issued in the Other Stock Purchase Transactions.

5. *Amendment.* This Agreement may be amended only with the written consent of the Company, the Purchaser and each of the Underwriters.

6. *Parties.* Except as set forth in this Section, this Agreement shall inure solely to the benefit of, and shall be binding upon, the Company and the Purchaser and their respective successors and assigns, and no other person shall have or be construed to have any legal or equitable right, remedy or claim under or in respect of or by virtue of this Agreement or any provision therein contained. The Purchaser shall have the right to assign the Purchaser's right to purchase shares of Common Stock under this Agreement to the extent necessary in order for the Purchaser and the Company not to be required to make filings, if required, with the Federal Trade Commission and the Department of Justice of notification forms under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, in connection with the purchase of shares of Common Stock purchased hereunder. Notwithstanding anything to the contrary in the foregoing, it is expressly agreed that: (i) the Underwriters are intended to be third party beneficiaries of this Agreement, except for Section 4 hereof, and the Underwriters shall, except to that extent, be entitled to bring an action for damages or for specific enforcement of this Agreement in the event of any breach of this Agreement by either the Company or the Purchaser; and (ii) the parties to the Other Stock Purchase Transactions are intended to be third party beneficiaries of Section 4 of this Agreement.

7. *Construction.* This Agreement shall be construed in accordance with the internal laws of the State of Nevada.

8. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.

If the foregoing correctly sets forth the understanding between you and the Company, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement between us.

Very truly yours,

WYNN RESORTS, LIMITED,
a Nevada corporation

By: /s/ RONALD KRAMER

Name: Ronald Kramer
Title: *President*

Accepted as of the date first above written:

/s/ STEPHEN A. WYNN

STEPHEN A. WYNN

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[PURCHASE AGREEMENT](#)

PURCHASE AGREEMENT

October 25, 2002

To Aruze USA, Inc.,
a Nevada corporation

Ladies and Gentlemen:

Wynn Resorts, Limited, a Nevada corporation (the "Company"), proposes to issue and sell to Aruze USA, Inc., a Nevada corporation (the "Purchaser"), five million five hundred seventy six thousand nine hundred twenty three (5,576,923) shares of the Company's Common Stock, par value \$0.01 per share (the "Common Stock"). Terms not otherwise defined herein shall have the same meanings set forth in the Underwriting Agreement, dated as of October 25, 2002, by and among the Company and Deutsche Bank Securities Inc., Bear, Stearns & Co. Inc., Banc of America Securities LLC, as Representatives of the Several Underwriters set forth in Schedule I thereto (the "Underwriters"), as such Underwriting Agreement may be amended from time to time (the "Underwriting Agreement"). The Common Stock to be purchased by the Purchaser hereunder will be purchased pursuant to an offering by the Company under the Registration Statement.

1. *Purchase, Sale and Delivery of the Common Stock.* On the basis of the representations, warranties, covenants and agreements herein contained, and subject to the terms and conditions herein set forth, the Company agrees to sell to the Purchaser and the Purchaser agrees to purchase from the Company five million five hundred seventy six thousand nine hundred twenty three (5,576,923) shares of the Common Stock (the "Purchased Shares") at a purchase price of \$13 per share (the "Per Share Price").

Delivery of the payment of the purchase price for the Purchased Shares shall be made at the place determined in accordance with Section 2 of the Underwriting Agreement. Such delivery and payment shall be made at the Closing Date as set forth in such Section 2. Delivery of the Purchased Shares shall be made to the Purchaser, subject to Section 4 hereof, against payment by the Purchaser of the purchase price for the Purchased Shares to the order of the Company by certified or official bank check payable in New York Clearing House funds or by wire transfer of immediately available funds to an account designated by the Company.

2. *Conditions to the Purchaser's Obligations.* The obligations of the Purchaser to purchase and pay for the Purchased Shares shall be subject only to the condition that the Closing under the Underwriting Agreement shall have occurred concurrently with the closing under this Agreement.

3. *Effective Date of Agreement; Termination.* This Agreement shall become effective upon the effectiveness of the Underwriting Agreement, and shall terminate solely upon the termination of the Underwriting Agreement.

4. *Buy-Sell Agreement.* It is acknowledged and agreed that (i) the Purchased Shares shall be subject to that certain Buy-Sell Agreement, dated as of June 13, 2002, by and among Stephen A. Wynn, Kazuo Okada, the Purchaser, and Aruze Corp., a Japanese public corporation (the "Buy-Sell Agreement"), and (ii) pursuant to Section 4 of the Buy-Sell Agreement, the Purchased Shares shall be held in escrow by Stephen A. Wynn and, concurrently with the closing under this Agreement, the Purchaser shall deliver to Stephen A. Wynn a Stock Assignment Separate From Certificate with respect to the Purchased Shares. Under the Buy-Sell Agreement, upon a purchase and sale of any Shares (as defined therein), in determining the Investment Amount (as defined therein), appropriate adjustments shall be made to reflect the amount of cash paid hereunder for the Purchased Shares, any distributions made hereafter by the Company in respect of the Purchased Shares, and the number of the Purchased Shares.

5. *Consent and Waiver.* Reference is hereby made to: (i) that certain Purchase Agreement, dated concurrently herewith, between the Company and Stephen A. Wynn, pursuant to which, subject to certain conditions, Stephen A. Wynn or his assignee is to purchase five million five hundred seventy six thousand nine hundred twenty three (5,576,923) shares of Common Stock at the Per Share Price; (ii) that certain Purchase Agreement, dated concurrently herewith, among the Company, Baron Asset Fund, a Massachusetts business trust, on behalf of the Baron Growth Fund Series, and Baron Asset Fund, a Massachusetts business trust, on behalf of the Baron Small Cap Fund Series, pursuant to which, subject to certain conditions, Baron Asset Fund, on behalf of the Baron Growth Fund Series and on behalf of the Baron Small Cap Fund Series, is to purchase seven hundred thousand (700,000) shares of Common Stock at the Per Share Price and three hundred thousand (300,000) shares of Common Stock at the Per Share Price, respectively; and (iii) that certain Purchase Agreement, dated concurrently herewith, between the Company and Zenith Insurance Company, a California corporation, pursuant to which, subject to certain conditions, Zenith Insurance Company is to purchase one million (1,000,000) shares of Common Stock at the Per Share Price (collectively, the "Other Stock Purchase Transactions"). The Purchaser hereby consents to the Other Stock Purchase Transactions and waives any pre-emptive or other rights to purchase the equity interests contemplated to be issued in the Other Stock Purchase Transactions.

6. *Amendment.* This Agreement may be amended only with the written consent of the Company, the Purchaser and each of the Underwriters; provided, however, that Section 4 hereof may be amended with (and only with) the written consent of each of the parties to the Buy-Sell Agreement.

7. *Parties.* Except as set forth in this Section, this Agreement shall inure solely to the benefit of, and shall be binding upon, the Company and the Purchaser and their respective successors and assigns, and no other person shall have or be construed to have any legal or equitable right, remedy or claim under or in respect of or by virtue of this Agreement or any provision therein contained. The Purchaser shall have the right to assign the Purchaser's right to purchase shares of Common Stock under this Agreement to the extent necessary in order for the Purchaser and the Company not to be required to make filings, if required, with the Federal Trade Commission and the Department of Justice of notification forms under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, in connection with the purchase of shares of Common Stock purchased hereunder.

enforcement of this Agreement in the event of any breach of this Agreement by either the Company or the Purchaser; (ii) Stephen A. Wynn, Kazuo Okada, and Aruze Corp., a Japanese public corporation, by their signatures immediately following the signature of the Purchaser below, are acknowledging and agreeing to the provisions of Sections 4 and 6 hereof, and they shall be treated as parties hereto, and this Agreement shall inure to their benefit, to that extent; and (iii) the parties to the Other Stock Purchase Transactions are intended to be third party beneficiaries of Section 5 of this Agreement.

8. *Construction.* This Agreement shall be construed in accordance with the internal laws of the State of Nevada.

9. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.

If the forgoing correctly sets forth the understanding between you and the Company, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement between us.

Very truly yours,

WYNN RESORTS, LIMITED,
a Nevada corporation

By: /s/ RONALD KRAMER

Name:

Title:

Accepted as of the date first above written:

ARUZE USA, INC.,
a Nevada corporation

By: /s/ KAZUO OKADA

Name:

Title:

By their signatures below, the following parties hereby acknowledge and agree, as of the date first above written, to the provisions of Sections 4 and 6 of this Agreement and hereby join in this Agreement to that extent:

/s/ STEPHEN A. WYNN

Stephen A. Wynn

/s/ KAZUO OKADA

Kazuo Okada

ARUZE CORP.,
a Japanese public corporation

By: /s/ KAZUO OKADA

Name:

Title:

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[PURCHASE AGREEMENT](#)

PURCHASE AGREEMENT

October 25, 2002

To Baron Asset Fund,
a Massachusetts business trust

Ladies and Gentlemen,

Wynn Resorts, Limited, a Nevada corporation (the "Company") proposes to issue and sell to Baron Asset Fund, a Massachusetts business trust, on behalf of the Baron Growth Fund Series ("Purchaser 1"), and Baron Asset Fund, a Massachusetts business trust, on behalf of the Baron Small Cap Fund Series ("Purchaser 2"), seven hundred thousand (700,000) shares and three hundred thousand (300,000) shares, respectively, of the Company's Common Stock, par value \$0.01 per share (the "Common Stock"). Terms not otherwise defined herein shall have the same meanings set forth in the Underwriting Agreement, dated as of October 25, 2002, by and among the Company and Deutsche Bank Securities Inc., Bear, Stearns & Co. Inc., Banc of America Securities LLC, as Representatives of the Several Underwriters set forth in Schedule I thereto (the "Underwriters"), as such Underwriting Agreement may be amended from time to time (the "Underwriting Agreement"). The Common Stock to be purchased by Purchaser 1 and Purchaser 2 hereunder will be purchased pursuant to an offering by the Company under the Registration Statement.

1. *Purchase, Sale and Delivery of the Common Stock.* On the basis of the representations, warranties, covenants and agreements herein contained, and subject to the terms and conditions herein set forth: (i) the Company agrees to sell to Purchaser 1 and Purchaser 1 agrees to purchase from the Company seven hundred thousand (700,000) shares of the Common Stock (the "Purchaser 1 Shares") at a purchase price of \$13 per share (the "Per Share Price"); and (ii) the Company agrees to sell to Purchaser 2 and Purchaser 2 agrees to purchase from the Company three hundred thousand (300,000) shares of the Common Stock (the "Purchaser 2 Shares") at the Per Share Price.

Delivery of the payment of the purchase price for the Purchaser 1 Shares and the Purchaser 2 Shares shall be made at the place determined in accordance with Section 2 of the Underwriting Agreement. Such delivery and payment shall be made at the Closing Date as set forth in such Section 2. Delivery of the Purchaser 1 Shares and the Purchaser 2 Shares shall be made to Purchaser 1 and Purchaser 2, respectively, against payment by them of the purchase price for the Purchaser 1 Shares and the Purchaser 2 Shares, respectively, to the order of the Company by certified or official bank check payable in New York Clearing House funds or by wire transfer of immediately available funds to an account designated by the Company.

Each of Purchaser 1 and Purchaser 2 hereby represents and warrants that in connection with its acquisition of shares of Common Stock pursuant to this Agreement, no filings with the Federal Trade Commission and the Department of Justice of notification forms under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, are required by the appropriate parties.

2. *Conditions to Purchase Obligations.* The obligations of Purchaser 1 and Purchaser 2 to purchase and pay for the Purchaser 1 Shares and the Purchaser 2 Shares, respectively, shall be subject only to the condition that the Closing under the Underwriting Agreement shall have occurred concurrently with the closing under this Agreement.

3. *Effective Date of Agreement; Termination.* This Agreement shall become effective upon the effectiveness of the Underwriting Agreement, and shall terminate solely upon the termination of the Underwriting Agreement.

4. *Consent and Waiver.* Reference is hereby made to: (i) that certain Purchase Agreement, dated concurrently herewith, between the Company and Stephen A. Wynn, pursuant to which, subject to certain conditions, Stephen A. Wynn or his assignee is to purchase five million five hundred seventy six

thousand nine hundred twenty three (5,576,923) shares of Common Stock at the Per Share Price; (ii) that certain Purchase Agreement, dated concurrently herewith, between the Company and Aruze USA, Inc., a Nevada corporation, pursuant to which, subject to certain conditions, Aruze USA, Inc., or its assignee is to purchase five million five hundred seventy six thousand nine hundred twenty three (5,576,923) shares of Common Stock at the Per Share Price; and (iii) that certain Purchase Agreement, dated concurrently herewith, between the Company and Zenith Insurance Company, a California corporation, pursuant to which, subject to certain conditions, Zenith Insurance Company is to purchase one million (1,000,000) shares of Common Stock at the Per Share Price (collectively, the "Other Stock Purchase Transactions"). Purchaser 1 and Purchaser 2 each hereby consents to the Other Stock Purchase Transactions and waives any pre-emptive or other rights to purchase the equity interests contemplated to be issued in the Other Stock Purchase Transactions.

5. *Amendment.* This Agreement may be amended only with the written consent of the Company, Purchaser 1, Purchaser 2 and each of the Underwriters.

6. *Parties.* Except as set forth in this Section, this Agreement shall inure solely to the benefit of, and shall be binding upon, the Company, Purchaser 1, Purchaser 2 and their respective successors and assigns, and no other person shall have or be construed to have any legal or equitable right, remedy or claim under or in respect of or by virtue of this Agreement or any provision therein contained. Notwithstanding anything to the contrary in the foregoing, it is expressly agreed that: (i) the Underwriters are intended to be third party beneficiaries of this Agreement, except for Section 4 hereof, and the Underwriters shall, except to that extent, be entitled to bring an action for damages or for specific enforcement of this Agreement in the event of any breach of this Agreement by either the Company, Purchaser 1 or Purchaser 2; and (ii) the parties to the Other Stock Purchase Transactions are intended to be third party beneficiaries of Section 4 of this Agreement.

7. *Construction.* This Agreement shall be construed in accordance with the internal laws of the State of Nevada.

8. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.

If the foregoing correctly sets forth the understanding between you and the Company, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement among us.

2

Very truly yours,

WYNN RESORTS, LIMITED,
a Nevada corporation

By: _____ /s/ RONALD KRAMER

Name: Ronald Kramer
Title: *President*

Accepted as of the date first above written:

BARON ASSET FUND,
a Massachusetts business trust, on
behalf of the Baron Growth Fund Series

By: _____ /s/ LINDA S. MARTINSON

Name: Linda S. Martinson
Title: *V.P. & General Counsel*

BARON ASSET FUND,
a Massachusetts business trust, on
behalf of the Baron Small Cap Fund Series

By: _____ /s/ LINDA S. MARTINSON

Name: Linda S. Martinson
Title: *V.P. & General Counsel*

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[PURCHASE AGREEMENT](#)

PURCHASE AGREEMENT

October 25, 2002

To Zenith Insurance Company,
a California corporation

Ladies and Gentlemen:

Wynn Resorts, Limited, a Nevada corporation (the "Company"), proposes to issue and sell to Zenith Insurance Company, a California corporation (the "Purchaser"), one million (1,000,000) shares of the Company's Common Stock, par value \$0.01 per share (the "Common Stock"). Terms not otherwise defined herein shall have the same meanings set forth in the Underwriting Agreement, dated as of October 25, 2002, by and among the Company and Deutsche Bank Securities Inc., Bear, Stearns & Co. Inc., Banc of America Securities LLC, as Representatives of the Several Underwriters set forth in Schedule I thereto (the "Underwriters"), as such Underwriting Agreement may be amended from time to time (the "Underwriting Agreement"). The Common Stock to be purchased by the Purchaser hereunder will be purchased pursuant to an offering by the Company under the Registration Statement.

1. *Purchase, Sale and Delivery of the Common Stock.* On the basis of the representations, warranties, covenants and agreements herein contained, and subject to the terms and conditions herein set forth, the Company agrees to sell to the Purchaser and the Purchaser agrees to purchase from the Company one million (1,000,000) shares of the Common Stock (the "Purchased Shares") at a purchase price of \$13 per share.

Delivery of the payment of the purchase price for the Purchased Shares shall be made at the place determined in accordance with Section 2 of the Underwriting Agreement. Such delivery and payment shall be made at the Closing Date as set forth in such Section 2. Delivery of the Purchased Shares shall be made to the Purchaser against payment by the Purchaser of the purchase price for the Purchased Shares to the order of the Company by certified or official bank check payable in New York Clearing House funds or by wire transfer of immediately available funds to an account designated by the Company.

2. *Conditions to the Purchaser's Obligations.* The obligations of the Purchaser to purchase and pay for the Purchased Shares shall be subject only to the condition that the Closing under the Underwriting Agreement shall have occurred concurrently with the closing under this Agreement.

3. *Effective Date of Agreement; Termination.* This Agreement shall become effective upon the effectiveness of the Underwriting Agreement, and shall terminate solely upon the termination of the Underwriting Agreement.

4. *Amendment.* This Agreement may be amended only with the written consent of the Company, the Purchaser and each of the Underwriters.

5. *Parties.* Except as set forth in this Section, this Agreement shall inure solely to the benefit of, and shall be binding upon, the Company and the Purchaser and their respective successors and assigns, and no other person shall have or be construed to have any legal or equitable right, remedy or claim under or in respect of or by virtue of this Agreement or any provision therein contained. Notwithstanding anything to the contrary in the foregoing, it is expressly agreed that the Underwriters are intended to be third party beneficiaries of this Agreement and the Underwriters shall be entitled to bring an action for damages or for specific enforcement of this Agreement in the event of any breach of this Agreement by either the Company or the Purchaser.

6. *Construction.* This Agreement shall be construed in accordance with the internal laws of the State of Nevada.

7. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.

If the foregoing correctly sets forth the understanding between you and the Company, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement between us.

Very truly yours,

WYNN RESORTS, LIMITED,
a Nevada corporation

By:

/s/ RONALD KRAMER

Name:

Title:

Accepted as of the date first above written:

ZENITH ISNURANCE COMPANY,
a California corporation

By: /s/ STANLEY ZAX

Name: Stanley Zax

Title: Chairman & Pres.

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[PURCHASE AGREEMENT](#)

PURCHASE AGREEMENT

October 25, 2002

To Stephen A. Wynn:

Wynn Las Vegas, LLC, a Nevada limited liability company ("WLV"), and Wynn Las Vegas Capital Corp., a Nevada corporation (together with WLV, the "Issuers"), propose to issue and sell to you (the "Purchaser") 12% Second Mortgage Notes due 2010 (the "Notes") in the aggregate principal amount at maturity of two million six hundred ninety four thousand dollars (\$2,694,000). Terms not otherwise defined herein shall have the same meanings set forth in the Underwriting Agreement, dated as of October 25, 2002, by and among the Issuers and Deutsche Bank Securities Inc., Banc of America Securities LLC, Bear, Stearns & Co. Inc., Dresdner Kleinwort Wasserstein - Grantchester, Inc., as Representatives of the Several Underwriters listed on Schedule 1 thereto (the "Underwriters"), as such Underwriting Agreement may be amended from time to time (the "Underwriting Agreement"). The Notes to be purchased by the Purchaser hereunder will be purchased pursuant to an offering by the Issuers under a registration statement.

1. *Purchase, Sale and Delivery of the Notes.* On the basis of the representations, warranties, covenants and agreements herein contained, and subject to the terms and conditions herein set forth, the Issuers agree to sell to the Purchaser, and the Purchaser agrees to purchase from the Issuers, Notes in the aggregate principal amount at maturity of two million six hundred ninety four thousand dollars (\$2,694,000) (the "Purchased Notes") for the aggregate purchase price of two million five hundred thousand dollars (\$2,500,000).

Delivery of the payment of the purchase price for the Purchased Notes shall be made at the place determined in accordance with Section 2 of the Underwriting Agreement. Such delivery and payment shall be made at the Closing Date as set forth in such Section 2. Delivery of the Purchased Notes shall be made to the Purchaser against payment by the Purchaser of the purchase price for the Purchased Notes to the order of WLV by certified or official bank check payable in New York Clearing House funds or by wire transfer of immediately available funds to an account designated by WLV.

2. *Conditions to the Purchaser's Obligations.* The obligations of the Purchaser to purchase and pay for the Purchased Notes shall be subject only to the condition that the Closing under the Underwriting Agreement shall have occurred concurrently with the closing under this Agreement.

3. *Effective Date of Agreement; Termination.* This Agreement shall become effective upon the effectiveness of the Underwriting Agreement, and shall terminate solely upon the termination of the Underwriting Agreement.

4. *Amendment.* This Agreement may be amended only with the written consent of each of the Issuers, the Purchaser and each of the Underwriters.

5. *Parties.* Except as set forth in this Section, this Agreement shall inure solely to the benefit of, and shall be binding upon, the Issuers and the Purchaser and their respective successors and assigns, and no other person shall have or be construed to have any legal or equitable right, remedy or claim under or in respect of or by virtue of this Agreement or any provision therein contained. Notwithstanding anything to the contrary in the foregoing, it is expressly agreed that the Underwriters are intended to be third party beneficiaries of this Agreement and the Underwriters shall be entitled to bring an action for damages or for specific enforcement of this Agreement in the event of any breach of this Agreement by either the Issuers or the Purchaser.

6. *Construction.* This Agreement shall be construed in accordance with the internal laws of the State of Nevada.

7. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.

If the foregoing correctly sets forth the understanding between you and the Issuers, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement between us.

Very truly yours,

WYNN LAS VEGAS, LLC,
a Nevada limited liability company

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ RONALD KRAMER

Name:
Title:

WYNN LAS VEGAS CAPITAL CORP.,
a Nevada corporation

By: /s/ RONALD KRAMER

Name:
Title:

Accepted as of the date first above written:

/s/ STEPHEN A. WYNN

STEPHEN A. WYNN

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[PURCHASE AGREEMENT](#)

PURCHASE AGREEMENT

October 25, 2002

To Aruze USA, Inc.,
a Nevada corporation

Ladies and Gentlemen:

Wynn Las Vegas, LLC, a Nevada limited liability company ("WLV"), and Wynn Las Vegas Capital Corp., a Nevada corporation (together with WLV, the "Issuers"), propose to issue and sell to Aruze USA, Inc., a Nevada corporation (the "Purchaser"), 12% Second Mortgage Notes due 2010 (the "Notes") in the aggregate principal amount at maturity of two million six hundred ninety four thousand dollars (\$2,694,000). Terms not otherwise defined herein shall have the same meanings set forth in the Underwriting Agreement, dated as of October 25, 2002, by and among the Issuers and Deutsche Bank Securities, Inc., Banc of America Securities LLC, Bear, Stearns & Co. Inc., Dresdner Kleinwort Wasserstein - Grantchester, Inc., as Representatives of the Several Underwriters listed on Schedule I thereto (the "Underwriters"), as such Underwriting Agreement may be amended from time to time (the "Underwriting Agreement"). The Notes to be purchased by the Purchaser hereunder will be purchased pursuant to an offering by the Issuers under a registration statement.

1. *Purchase, Sale and Delivery of the Notes.* On the basis of the representations, warranties, covenants and agreements herein contained, and subject to the terms and conditions herein set forth, the Issuers agree to sell to the Purchaser, and the Purchaser agrees to purchase from the Issuers, Notes in the aggregate principal amount at maturity of two million six hundred ninety four thousand dollars (\$2,694,000) (the "Purchased Notes") for the aggregate purchase price of two million five hundred thousand dollars (\$2,500,000).

Delivery of the payment of the purchase price for the Purchased Notes shall be made at the place determined in accordance with Section 2 of the Underwriting Agreement. Such delivery and payment shall be made at the Closing Date as set forth in such Section 2. Delivery of the Purchased Notes shall be made to the Purchaser against payment by the Purchaser of the purchase price for the Purchased Notes to the order of WLV by certified or official bank check payable in New York Clearing House funds or by wire transfer of immediately available funds to an account designated by WLV.

2. *Conditions to the Purchaser's Obligations.* The obligations of the Purchaser to purchase and pay for the Purchased Notes shall be subject only to the condition that the Closing under the Underwriting Agreement shall have occurred concurrently with the closing under this Agreement.

3. *Effective Date of Agreement; Termination.* This Agreement shall become effective upon the effectiveness of the Underwriting Agreement, and shall terminate solely upon the termination of the Underwriting Agreement.

4. *Amendment.* This Agreement may be amended only with the written consent of each of the Issuers, the Purchaser and each of the Underwriters.

5. *Parties.* Except as set forth in this Section, this Agreement shall inure solely to the benefit of, and shall be binding upon, the Issuers and the Purchaser and their respective successors and assigns, and no other person shall have or be construed to have any legal or equitable right, remedy or claim under or in respect of or by virtue of this Agreement or any provision therein contained. Notwithstanding anything to the contrary in the foregoing, it is expressly agreed that the Underwriters are intended to be third party beneficiaries of this Agreement and the Underwriters shall be entitled to bring an action for damages or for specific enforcement of this Agreement in the event of any breach of this Agreement by either the Issuers or the Purchaser.

6. *Construction.* This Agreement shall be construed in accordance with the internal laws of the State of Nevada.

7. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.

If the foregoing correctly sets forth the understanding between you and the Issuers, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement between us.

2

Very truly yours,

WYNN LAS VEGAS, LLC,
a Nevada limited liability company

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By:

/s/ RONALD KRAMER

Name:
Title:

WYNN LAS VEGAS CAPITAL CORP.,
a Nevada corporation

By: /s/ RONALD KRAMER

Name:
Title:

Accepted as of the date first above written:

ARUZE USA, INC.,
a Nevada corporation

By: /s/ KAZUO OKADA

Name: Kazuo Okada
Title: *Chairman*

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[PURCHASE AGREEMENT](#)

MASTER DISBURSEMENT AGREEMENT

among

WYNN LAS VEGAS, LLC,

WYNN LAS VEGAS CAPITAL CORP.

and

WYNN DESIGN & DEVELOPMENT, LLC,

jointly and severally as the Company,

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as the Bank Agent,

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as the Indenture Trustee,

WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION,
as the FF&E Agent,

and

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as the Disbursement Agent

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| Exhibit P | Schedule of Security Filings |
| Exhibit Q | Opinion List |
| Exhibit R | Form of Payment and Performance Bond |
| Exhibit S | Form of Consent to Assignment |
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| Exhibit V-2 | Form of Construction Consultant's Twenty Five Percent Completion Date Certificate |
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| Exhibit V-6 | Form of Construction Consultant's Completion Guaranty Release Certificate |
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| Exhibit W-15 | Form of Project Architect's Final Completion Certificate |
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THIS MASTER DISBURSEMENT AGREEMENT (the "*Agreement*"), dated as of October 30, 2002, is entered into by and among **WYNN LAS VEGAS, LLC**, a Nevada limited liability company ("*Wynn Las Vegas*"), **WYNN LAS VEGAS CAPITAL CORP.**, a Nevada corporation ("*Capital Corp.*"), **WYNN DESIGN & DEVELOPMENT, LLC**, a Nevada limited liability company ("*Wynn Design*" and, jointly and severally with Wynn Las Vegas and Capital Corp., the "*Company*"), **DEUTSCHE BANK TRUST COMPANY AMERICAS**, as the initial Bank Agent, **WELLS FARGO BANK, NATIONAL ASSOCIATION**, as the initial Indenture Trustee, **WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION**, as the initial FF&E Agent, and **DEUTSCHE BANK TRUST COMPANY AMERICAS**, as the initial Disbursement Agent.

RECITALS

A. *The Project.* The Company proposes to develop, construct and operate the Le Rêve Casino Resort, a hotel and casino resort, with related parking structure and golf course facilities, as part of the redevelopment of the site of the former Desert Inn in Las Vegas, Nevada.

B. *Bank Credit Agreement.* Concurrently herewith, Wynn Las Vegas, the Bank Agent, Deutsche Bank Securities, Inc., as advisor, lead arranger and joint book running manager, Banc of America Securities LLC, as advisor, lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as advisor, arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York and Grand Cayman Branches, as arranger and joint documentation agent, JP Morgan Chase Bank, as joint documentation agent and the Bank Lenders have entered into the Bank Credit Agreement pursuant to which the Bank Lenders have agreed, subject to the terms thereof and hereof, to provide certain revolving loans to Wynn Las Vegas in an aggregate principal amount not to exceed \$750,000,000 and certain delay draw term loans to Wynn Las Vegas in an aggregate principal amount not to exceed \$250,000,000, as more particularly described therein and herein. Of the Bank Revolving Facility amount, \$747,000,000 is intended to finance Project Costs as more particularly described therein and herein. Valvino, Wynn Resorts Holdings and certain other guarantors have, pursuant to the Bank Guarantee and Collateral Agreement, guaranteed the obligations of Wynn Las Vegas under the Bank Credit Agreement.

C. *Second Mortgage Notes Indenture.* Concurrently herewith, Wynn Las Vegas, Capital Corp., certain guarantors signatory thereto (including Valvino and Wynn Resorts Holdings) and the Indenture Trustee have entered into the Second Mortgage Notes Indenture pursuant to which Wynn Las Vegas and Capital Corp. will issue the Second Mortgage Notes due 2010 to finance Project Costs, as more particularly described therein and herein.

D. *FF&E Facility Agreement.* Concurrently herewith, the Company, the FF&E Agent, and the FF&E Lenders have entered into the FF&E Facility Agreement pursuant to which the FF&E Lenders have agreed, subject to the terms thereof and hereof, to provide certain loans in an aggregate principal amount not to exceed \$188,500,000 to finance acquisition and installation costs for the FF&E Component, as more particularly described therein and herein.

E. *Intercreditor Agreements.* Concurrently herewith, (i) the Bank Agent (acting on behalf of itself and the Bank Lenders) and the Indenture Trustee (acting on behalf of itself and the Second Mortgage Note Holders) have entered into the Project Lenders Intercreditor Agreement and (ii) the Bank Agent (acting on behalf of itself and the Bank Lenders), the Indenture Trustee (acting on behalf of itself and the Mortgage Note Holders) and the FF&E Agent (acting on behalf of itself and the FF&E Lenders) have entered into the FF&E Intercreditor Agreement, pursuant to each of which the parties thereto have set forth certain intercreditor provisions, including the priority of the liens, the method of decision making among the Lenders party thereto, the arrangements applicable to actions in respect of approval

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rights and waivers, the limitations on rights of enforcement upon default and the application of proceeds upon enforcement.

F. *Completion Guaranty.* Concurrently herewith, the Completion Guarantor has executed in favor of the Bank Agent (acting on behalf of the Bank Lenders) and the Indenture Trustee (acting on behalf of the Second Mortgage Note Holders) the Completion Guaranty pursuant to which the Completion Guarantor has agreed, subject to the terms and limitations thereof, to guaranty completion of the Project and payment by the Company of certain Project Costs.

G. *Purpose.* The parties are entering into this Agreement in order to set forth, among other things, (a) the mechanics for and allocation of the Company's requests for Advances under the various Facilities and from the Company's Funds Account, (b) the conditions precedent to the Closing Date, to the initial Advance and to subsequent Advances, (c) certain common representations, warranties and covenants of the Company in favor of the Funding Agents and the Lenders and (d) the common events of default and remedies.

AGREEMENT

NOW, THEREFORE, in consideration of the Bank Agent, the Indenture Trustee, the Disbursement Agent, the FF&E Agent and the other Secured Parties entering into the respective Facility Agreements and Financing Agreements, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1.

—DEFINITIONS; RULES OF INTERPRETATION

1.1. *Definitions.* Except as otherwise expressly provided herein, capitalized terms used in this Agreement and its exhibits shall have the meanings given in *Exhibit A* hereto. To the extent such terms are defined by reference to the Financing Agreements, such terms shall continue to have their original definitions notwithstanding any termination, expiration or amendment of such agreements unless each of the parties hereto is a signatory to any such amendment, in which case all references herein shall be to such terms or provisions as so amended.

1.2. *Rules of Interpretation.* Except as otherwise expressly provided herein, the rules of interpretation set forth in *Exhibit A* hereto shall apply to this Agreement.

1.3. *Conflict with a Facility Agreement.* This Agreement and each of the Facility Agreements is being drafted concurrently and are each intended to cover the respective matters specifically set forth therein. In the case of any express conflict between the terms of this Agreement and the terms of any Facility

ARTICLE 2.

—FUNDING

2.1. **Representations Regarding Project Status.** The parties hereto acknowledge that prior to the date hereof, the Company has entered into certain Contracts in respect of the Project and has incurred and paid for certain Project Costs. In order to account for such costs for purposes of the funding procedures and mechanics set forth herein, the Company has certified and made certain representations in the Company's Closing Certificate as to various facts pertaining to the status of the Project, including, without limitation, the work performed, the Contracts entered into and the Project Costs incurred to date. The Company has further represented that the Project Budget attached hereto as *Exhibit H-1*, the Summary Anticipated Cost Report attached hereto as *Exhibit H-2*, the Monthly

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Requisition Report attached as *Appendix III* to the Company's initial Advance Request submitted on the Closing Date and the Project Schedule attached hereto as *Exhibit I* are true and accurate in all material respects as of the Closing Date and incorporate and reflect the work performed and Project Costs incurred to date. Such certifications and representations of the Company have been confirmed by the Construction Consultant to the extent set forth in the Construction Consultant's Closing Certificate.

2.2 **Availability of Advances.**

2.2.1 *Generally.* Each of the Bank Lenders, the Indenture Trustee and the FF&E Lenders shall make or cause to be made Advances under its Facility to the Company in accordance with and pursuant to the terms of this Agreement and the respective Facility Agreement.

2.2.2 *Availability.* Subject to the satisfaction of all conditions precedent listed in *Article 3* and the other terms and provisions of this Agreement, Advances under the Facilities and from the Company's Funds Account shall be made during the Availability Period. Advances shall be made no more frequently than once in any calendar month; *provided that* the advances and transfers of funds contemplated in *Sections 2.6.3, 2.9, 2.10 and 2.11* shall be disregarded for purposes of this sentence.

2.3 **Company Accounts.**

2.3.1 *Company's Funds Account.* On or prior to the Closing Date, there shall be established at Deutsche Bank Trust Company Americas, as the Securities Intermediary, the Company's Funds Account pursuant to the Company Collateral Account Agreements. There shall be deposited into the Company's Funds Account (a) all cash amounts described in *Section 3.1.25(e)*, (b) the amounts required pursuant to *Sections 5.8.1, 5.8.2 and 5.8.3* including such funds as may be transferred from the Completion Guaranty Deposit Account and the Project Liquidity Reserve Account pursuant to the terms of the Completion Guaranty and this Agreement, (c) all amounts received by the Company prior to the Final Completion Date in respect of liquidated or other damages under the Project Documents and the Company's insurance policies, amounts paid to the Company under the Construction Guaranty and any Payment and Performance Bond, (d) amounts required to be withdrawn from the Operating Account pursuant to *Section 2.3.8*, (e) the FF&E Reimbursement Advance, (f) all amounts required pursuant to *Sections 2.5.1(b) and 5.1.1*, (g) investment income from Permitted Investments in the Interest Payment Account, the Company's Payment Account, the Completion Guaranty Deposit Account and the Project Liquidity Reserve Account, as provided in this Agreement, and (h) all other funds or amounts (other than On-Site Cash) received by the Company and not otherwise provided for in this Agreement, in each case, prior to the Final Completion Date. There shall also be deposited in the Company's Funds Account all Loss Proceeds received by the Company, the Disbursement Agent or any other Person as required pursuant to *Section 5.21* and all amounts received by the Disbursement Agent or any of the Bank Agent, the Indenture Trustee or the FF&E Agent and required to be deposited in the Company's Funds Account pursuant to the Project Lenders Intercreditor Agreement or the FF&E Intercreditor Agreement. Subject to the provisions of *Section 10.2* and the Company Collateral Account Agreements, amounts on deposit in the Company's Funds Account shall (i) from time to time, be transferred by the Disbursement Agent to the Disbursement Account for application to pay Project Costs in accordance with *Section 2.4.4(a)*, (ii) from time to time be applied by the Disbursement Agent to prepayment of the Obligations in accordance with *Section 5.21*, (iii) from time to time be transferred by the Disbursement Agent to the Operating Account to pay Operating Costs set forth in the Project Budget anticipated to become due and payable through the end of the ensuing calendar month and (iv) on the Final Completion Date, be applied by the Disbursement Agent as provided in *Section 2.11*. The Disbursement Agent shall cause investment income from Permitted Investments on amounts on deposit in the Company's Funds Account to be deposited at all times therein until applied to the payment of Project Costs or as otherwise

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described above. From and after the Completion Date, no amounts shall be transferred from the "Funding Accounts" established under *Section 6.11(b)* of the Bank Credit Agreement to the Company's Funds Account.

2.3.2 *Second Mortgage Notes Proceeds Account.* On or prior to the Closing Date, there shall be established at Deutsche Bank Trust Company Americas, as the Securities Intermediary, the Second Mortgage Notes Proceeds Account pursuant to the Second Mortgage Notes Company Collateral Account Agreement. There shall be deposited into the Second Mortgage Notes Proceeds Account (a) the Second Mortgage Notes Proceeds and (b) investment income from Permitted Investments on amounts on deposit in the Disbursement Account to the extent arising from funds withdrawn from the Second Mortgage Notes Proceeds Account. Subject to the provisions of *Section 10.2* and the Second Mortgage Notes Company Collateral Account Agreement, amounts on deposit in the Second Mortgage Notes Proceeds Account shall, from time to time, be applied by the Disbursement Agent to pay Debt Service on the Second Mortgage Notes as provided in *Section 2.5.6*, transferred by the Disbursement Agent to the Disbursement Account for application to pay Project Costs in accordance with *Section 2.4.4(a)* and, on the Final Completion Date, applied by the Disbursement Agent as provided in *Section 2.11*. The Disbursement Agent shall cause investment income from Permitted Investments on amounts on deposit in the Second Mortgage Notes Proceeds Account to be deposited at all times therein until applied to the payment of Project Costs or applied in accordance with *Section 2.11*.

2.3.3 *Disbursement Account.* On or prior to the Closing Date, there shall be established at Deutsche Bank Trust Company Americas, as the Securities Intermediary, the Disbursement Account pursuant to the Company Collateral Account Agreements. There shall be deposited in the Disbursement Account (a) all funds from time to time advanced by the Bank Lenders (and/or withdrawn from the Bank Proceeds Account pursuant to

Section 2.5.3) other than any Letters of Credit issued under the Bank Credit Facility and amounts withdrawn from the Bank Proceeds Account pursuant to Section 2.6.3, and (b) all funds withdrawn by the Disbursement Agent from the Company's Funds Account and the Second Mortgage Notes Proceeds Account, in each case, pursuant to Section 2.4.4(a). Subject to the provisions of Section 10.2 and the Company Collateral Account Agreements, amounts on deposit in the Disbursement Account shall, from time to time, be transferred by the Disbursement Agent to the Soft Costs Cash Management Account, the Hard Costs Cash Management Account, the Interest Payment Account, the Bank Proceeds Account, the Company's Payment Account and/or applied by the Disbursement Agent to pay Project Costs in accordance with Section 2.6. On the Final Completion Date, funds remaining in the Disbursement Account shall be applied by the Disbursement Agent as provided in Section 2.11. The deposit of funds into the Disbursement Account shall not create, vest in, or give the Company any rights to such funds, and the Company shall have no right to draw, obtain the release or otherwise use such funds until (x) the requirements of Section 2.4 (except, prior to the initial Advance of funds from the Second Mortgage Notes Proceeds Account, as such requirements may be modified pursuant to Section 3.2) have been satisfied and (y) the conditions set forth in Sections 3.1, 3.2 or 3.3, as the case may be, have been satisfied or waived in accordance with the terms hereof. If any funds deposited in the Disbursement Account are, for any reason, not withdrawn therefrom pursuant to Section 2.6 on or before the next Banking Day after the day on which they were deposited, such funds shall, on the Second Banking Day after the day on which they were deposited, be withdrawn by the Disbursement Agent from the Disbursement Account and (A) in the case of funds advanced by the Bank Lenders or withdrawn from the Bank Proceeds Account, deposited by the Disbursement Agent in the Bank Proceeds Account, (B) in the case of funds withdrawn from the Company's Funds Account, deposited by the Disbursement Agent in the Company's Funds Account, and (C) in the case of funds withdrawn from the Second Mortgage Notes Proceeds Account, deposited by the Disbursement Agent in the Second Mortgage Notes Proceeds Account. The Disbursement Agent shall cause investment income from Permitted Investments on amounts

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on deposit in the Disbursement Account to be deposited in (1) the Bank Proceeds Account, to the extent arising from funds advanced by the Bank Lenders or withdrawn from the Bank Proceeds Account, (2) the Company's Funds Account, to the extent arising from funds withdrawn from the Company's Funds Account, and (3) the Second Mortgage Notes Proceeds Account, to the extent arising from funds withdrawn from the Second Mortgage Notes Proceeds Account; in each case at the same time as the corresponding funds giving rise to the investment income are transferred to the respective accounts.

2.3.4 Cash Management Accounts. On or prior to the Closing Date the Company shall establish the Soft Costs Cash Management Account and the Hard Costs Cash Management Account. Each such account shall be a local deposit account established in Las Vegas, Nevada at a bank that is reasonably acceptable to the Disbursement Agent and that enters into control agreements in the form of Exhibits Z-1 and Z-2 hereto to grant the Bank Lenders and the Second Mortgage Note Holders a first and second priority perfected security interest therein, respectively. The Company shall take such further actions and execute such further documents in connection therewith as the Bank Agent, the Indenture Trustee or the Disbursement Agent may reasonably request in order to perfect or maintain the perfection or priority, to the greatest extent reasonably practicable, of the Liens of the Bank Lenders and the Second Mortgage Note Holders in the Soft Cost Cash Management Account and Hard Cost Cash Management Account. On the Closing Date, Two Million Five Hundred Thousand Dollars (\$2,500,000) shall be withdrawn by the Disbursement Agent from the Disbursement Account and deposited in the Soft Costs Cash Management Account and Three Million Dollars (\$3,000,000) shall be withdrawn by the Disbursement Agent from the Disbursement Account and deposited in the Hard Costs Cash Management Account. Subject to the provisions of Section 10.2 and the Company Collateral Account Agreements, the Company shall be permitted from time to time to draw checks on and otherwise withdraw amounts on deposit in the Soft Costs Cash Management Account to pay due and payable Soft Costs and to draw checks on and otherwise withdraw amounts on deposit in the Hard Costs Cash Management Account to pay due and payable Hard Costs. The Company shall be permitted from time to time to replace amounts drawn from, and/or to increase the funds on deposit in, the Soft Costs Cash Management Account and the Hard Costs Cash Management Account pursuant to the preceding sentence (i) by including a request to such effect in Advance Requests submitted in accordance with Sections 2.4 and 2.5 and satisfying the conditions precedent set forth in Sections 3.2 or 3.3, as the case may be (unless such conditions precedent are waived in accordance with the terms hereof) or (ii) by requesting a transfer of funds previously deposited in the Bank Proceeds Account and satisfying the conditions precedent set forth in Section 2.6.3. Any deposit of funds into the Soft Costs Cash Management Account which would cause the balance thereof to exceed \$2,500,000 and any deposit of funds into the Hard Costs Cash Management Account which would cause the balance thereof to exceed \$3,000,000 shall be subject to the Disbursement Agent's approval, which approval shall be given if the Disbursement Agent, in consultation with the Construction Consultant, is reasonably satisfied that such amounts are necessary to pay Soft Costs or Hard Costs, as the case may be, anticipated to become due and payable through the end of the ensuing calendar month; *provided, however*, that amounts intended to cover Company payroll that have been transferred from the Bank Proceeds Account to the Soft Costs Cash Management Account pursuant to Section 2.6.3 shall be excluded for purposes of determining whether the foregoing thresholds have been exceeded. The Disbursement Agent shall be entitled to rely on certifications to such effect from the Company or the Construction Consultant in approving any request to deposit amounts in excess of the foregoing thresholds in the Soft Costs Cash Management Account or the Hard Costs Cash Management Account. On the Final Completion Date, funds remaining in the Soft Costs Cash Management Account and the Hard Costs Cash Management Account shall be applied by the Disbursement Agent as provided in Section 2.11. The Disbursement Agent shall cause investment income from Permitted Investments

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on amounts on deposit in the Soft Costs Cash Management Account and the Hard Costs Cash Management Account to be deposited therein until applied to the payment of Soft Costs or Hard Costs, as the case may be, as described above.

2.3.5 Interest Payment Account. On or prior to the Closing Date, there shall be established at Deutsche Bank Trust Company Americas, as the Securities Intermediary, the Interest Payment Account pursuant to the Company Collateral Account Agreements. On each Advance Date until the Completion Date, funds shall be withdrawn from the Disbursement Account and deposited in the Interest Payment Account to the extent necessary to pay interest and fees under the Bank Credit Agreement, the Second Mortgage Notes (except as provided in Section 2.5.6) and the FF&E Facility Agreement, as set forth in Advance Requests delivered to the Disbursement Agent and in accordance with Section 2.7. Amounts on deposit in the Interest Payment Account shall be applied by the Disbursement Agent to pay interest and fees under the Bank Credit Agreement, the Second Mortgage Notes (except as provided in Section 2.5.6) and the FF&E Facility Agreement, in each case, on the dates that such amounts become due and payable. The Disbursement Agent shall cause investment income from Permitted Investments on amounts on deposit in the Interest Payment Account to be transferred to and deposited in the Company's Funds Account within two (2) Banking Days following the end of each calendar month.

2.3.6 *Bank Proceeds Account.* On or prior to the Closing Date, there shall be established at Deutsche Bank Trust Company Americas, as the Securities Intermediary, the Bank Proceeds Account pursuant to the Bank Company Collateral Account Agreement. There shall be deposited in the Bank Proceeds Account (a) as provided in *Section 2.3.3*, all amounts deposited by the Bank Lenders in the Disbursement Account (or transferred to the Disbursement Account from the Bank Proceeds Account) which are not withdrawn therefrom pursuant to *Section 2.6* on or before the next Banking Day after the day on which they were deposited, (b) amounts intended to cover Company payroll in accordance with *Section 2.6.3*, (c) investment income from Permitted Investments on amounts on deposit in the Disbursement Account to the extent arising from funds withdrawn from the Bank Proceeds Account, and (d) the amounts set forth in *Section 2.9(d)*. Subject to the provisions of *Section 10.2* and the Bank Company Collateral Account Agreement, amounts on deposit in the Bank Proceeds Account shall, from time to time be transferred by the Disbursement Agent (i) to the Disbursement Account in accordance with *Section 2.3.3* for application to pay Project Costs in accordance with *Sections 2.4.4(a)* and *2.5.3*, (ii) to the Soft Costs Cash Management Account to pay Company payroll anticipated to become due and payable during the next seven (7) days in accordance with *Section 2.6.3*, and (iii) on the earlier to occur of (A) the Final Completion Date and (B) the expiration the six-month period commencing on the Completion Date, be applied by the Disbursement Agent as provided in *Sections 2.9(e)* or *2.11*, as applicable. The Disbursement Agent shall cause investment income from Permitted Investments in amounts on deposit in the Bank Proceeds Account to be deposited at all times therein until applied to the payment of Project Costs or in accordance with *Sections 2.9(e)* or *2.11*, as applicable.

2.3.7 *FF&E Proceeds Account.* On or prior to the Closing Date, there shall be established at Deutsche Bank Trust Company Americas, as the Securities Intermediary, the FF&E Proceeds Account pursuant to the FF&E Collateral Account Agreement. There shall be deposited in the FF&E Proceeds Account (a) all funds advanced from time to time by the FF&E Lenders other than the Advance to refinance the purchase of the Aircraft described in the first sentence of *Section 2.5.5* and the amounts to be deposited in the Company's Funds Account pursuant to such Section, (b) the amounts set forth in *Section 2.9(d)*. Subject to the provisions of *Section 10.2* and the FF&E Collateral Account Agreement, amounts on deposit in the FF&E Proceeds Account shall, from time to time be transferred by the Disbursement Agent to the Company's FF&E Payment Account, the Hard Costs Cash Management Account, the Soft Costs Cash Management

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Account and/or applied by the Disbursement Agent to pay Project Costs in accordance with *Sections 2.5.5* and *2.6* and, on the earlier to occur of (i) the Final Completion Date and (ii) the expiration of the six-month period commencing on the Completion Date, be applied by the Disbursement Agent as provided in *Sections 2.9(e)* or *2.11*, as applicable. The deposit of funds into the FF&E Proceeds Account shall not create, vest in, or give the Company any rights to such funds, and the Company shall have no right to draw, obtain the release or otherwise use such funds until (x) the requirements of *Section 2.4* have been satisfied and (y) the conditions set forth in *Sections 3.1*, *3.2* or *3.3*, as the case may be, have been satisfied or waived in accordance with the terms hereof. The Disbursement Agent shall cause investment income from Permitted Investments on amounts on deposit in the FF&E Proceeds Account to be deposited at all times therein until applied to the payment of Project Costs or applied in accordance with *Sections 2.9(e)* or *2.11*, as applicable.

2.3.8 *Operating Account.* On or prior to the Closing Date, the Company shall establish a local deposit account (the "*Operating Account*") in Las Vegas, Nevada at a bank that is reasonably acceptable to the Disbursement Agent and that enters into control agreements in the form of *Exhibits Z-1 and Z-2* hereto to grant the Bank Lenders and the Second Mortgage Note Holders a first and second priority security interest therein, respectively. The Company shall take such further actions and execute such further documents in connection therewith as the Bank Agent, the Indenture Trustee or the Disbursement Agent may reasonably request in order to perfect or maintain the perfection or priority, to the greatest extent reasonably practicable, of the Liens of the Bank Lenders and the Second Mortgage Note Holders in the Operating Account. There shall be deposited in the Operating Account all revenues received by the Company as a consequence of sales of goods or rendering of services (including, without limitation, revenues from the operations of the art gallery and the gift shop) in the ordinary course of business (including Pre-Opening Deposits) prior to the Completion Date, it being understood that the foregoing shall not apply to On-Site Cash. In addition, there shall be deposited in the Operating Account funds transferred from the Company's Funds Account in accordance with *Section 2.3.1*. Subject to the Disbursement Agent's rights upon the occurrence of an Event of Default, the Company shall be permitted from time to time to draw checks on and otherwise withdraw amounts on deposit in the Operating Account to pay due and payable Operating Costs and, to the extent provided under *Section 2.5.4*, Project Costs. Until the Opening Date, the Company shall at such times as the amounts on deposit in the Operating Account exceed \$100,000 promptly withdraw such excess and deposit the same in the Company's Funds Account; provided, however, that Pre-Opening Deposits shall be excluded for purposes of determining whether the foregoing \$100,000 threshold has been exceeded. From and after the Opening Date no amounts will be transferred from the Operating Account to the Company's Funds Account. The Disbursement Agent shall cause investment income from Permitted Investments on amounts on deposit in the Operating Account to be deposited at all times therein until applied to the payment of Operating Costs or transferred to the Company's Funds Account in accordance with the preceding sentence. On the Completion Date, the Disbursement Agent shall cause all amounts on deposit in the Operating Account to be transferred to the appropriate "Funding Account" identified by the Bank Agent and established pursuant to *Section 6.11(b)* of the Bank Credit Agreement.

2.3.9 *Company's Payment Account.* On or prior to the Closing Date, the Company shall establish a local deposit account (the "*Company's Payment Account*") in Las Vegas, Nevada at a bank that is reasonably acceptable to the Disbursement Agent and that enters into control agreements in the form of *Exhibits Z-1 and Z-2* hereto to grant the Bank Lenders and the Second Mortgage Note Holders a first and second priority security interest therein, respectively. The Company shall take such further actions and execute such further documents in connection therewith as the Bank Agent, the Indenture Trustee or the Disbursement Agent may reasonably request in order to perfect or maintain the perfection or priority, to the greatest extent reasonably

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practicable, of the Liens of the Bank Lenders and the Second Mortgage Note Holders in the Company's Payment Account. Subject to the provisions of *Section 10.2* and the Company Collateral Account Agreements, on each Advance Date, the Disbursement Agent shall withdraw all funds remaining on deposit in the Disbursement Account after giving effect to the transfers to the Soft Costs Cash Management Account, the Hard Costs Cash Management Account, the Interest Payment Account and the payments to the Prime Contractor and certain other Contractors and/or Subcontractors and/or financial institutions pursuant to *Sections 2.6.1(a) through (c)* and shall transfer such remaining funds to the Company's Payment Account pursuant to *Section 2.6.1(d)*. Subject to the provisions of *Section 10.2* and the Company Collateral Account Agreements, the Company shall be permitted from time to time to draw checks on and otherwise withdraw amounts on deposit in the Company's Payment Account to pay Project Costs in the amounts and to the Contractors and/or Subcontractors listed in the most recent Advance Request (other than the Prime Contractor and any other Contractor or Subcontractor to whom the Disbursement Agent wired funds pursuant to *Section 2.6.1(c)*); provided, that the amount paid during any calendar month to any one

Contractor or Subcontractor shall not to exceed \$7,000,000. On the Final Completion Date, funds remaining in the Company's Payment Account shall be applied by the Disbursement Agent as provided in *Section 2.11*. The Disbursement Agent shall cause investment income from Permitted Investments on amounts on deposit in the Company's Payment Account to be transferred to and deposited in the Company's Funds Account within two (2) Banking Days following the end of each calendar month.

2.3.10 Company's FF&E Payment Account. On or prior to the Closing Date, the Company shall establish a local deposit account (the "*Company's FF&E Payment Account*") in Las Vegas, Nevada at a bank that is reasonably acceptable to the Disbursement Agent and that enters into a control agreement in the form of *Exhibit Z-3* hereto to grant the FF&E Lenders a first priority security interest therein. The Company shall take such further actions and execute such further documents in connection therewith as the FF&E Agent or the Disbursement Agent may reasonably request in order to perfect or maintain the perfection or priority, to the greatest extent reasonably practicable, of the Liens of the FF&E Lenders in the Company's FF&E Payment Account. Subject to the provisions of *Section 10.2* and the FF&E Local Company Collateral Account Agreement, on each Advance Date, the Disbursement Agent shall withdraw all funds remaining on deposit in the FF&E Proceeds Account after giving effect to the transfers to the Soft Costs Cash Management Account, the Hard Costs Cash Management Account and the payments to the Contractors and/or Subcontractors and/or financial institutions pursuant to *Sections 2.6.1(e)* and shall transfer such remaining funds to the Company's FF&E Payment Account pursuant to *Section 2.6.1(f)*. Subject to the provisions of *Section 10.2* and the FF&E Local Company Collateral Account Agreement, the Company shall be permitted from time to time to draw checks on and otherwise withdraw amounts on deposit in the Company's FF&E Payment Account to pay Project Costs relating to the FF&E Component in the amounts and to the Contractors and/or Subcontractors listed in the most recent Advance Request (other than those Contractors or Subcontractors to whom the Disbursement Agent wired funds pursuant to *Section 2.6.1(e)*); *provided, that* the amount paid during any calendar month to any one Contractor or Subcontractor shall not to exceed \$7,000,000. On the Final Completion Date, funds remaining in the Company's FF&E Payment Account shall be applied by the Disbursement Agent as provided in *Section 2.11*. The Disbursement Agent shall cause investment income from Permitted Investments on amounts on deposit in the Company's FF&E Payment Account to be transferred to and deposited in the Company's Funds Account within two (2) Banking Days following the end of each calendar month.

2.3.11 Completion Guaranty Deposit Account. On or prior to the Closing Date, there shall be established at Deutsche Bank Trust Company Americas, as the Securities Intermediary, the Completion Guaranty Deposit Account pursuant to the Completion Guaranty Collateral Account Agreements. There shall be deposited into the Completion Guaranty Deposit Account all cash

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amounts described in *Section 3.1.25(c)*. Subject to the provisions of *Section 10.2* and the Completion Guaranty Collateral Account Agreements, amounts on deposit in the Completion Guaranty Deposit Account shall, from time to time, be transferred or applied by the Disbursement Agent (a) to the Company's Funds Account in accordance with *Section 5.8.3(b)* and thereafter transferred to the Disbursement Account or (b) to the Disbursement Account in accordance with *Section 5.8.3(c)*, in each case, for application to pay Project Costs in accordance with *Sections 2.4.4(a)* and *2.5.4* or (c) applied to prepayment of the Obligations in accordance with *Section 5.21*. The Disbursement Agent shall cause investment income from Permitted Investments on amounts on deposit in the Completion Guaranty Deposit Account to be transferred to and deposited in the Company's Funds Account within two (2) Banking Days following the end of each calendar month. The Disbursement Agent shall release all amounts remaining on deposit in the Completion Guaranty Account, other than the Reserved Amounts, to the Completion Guarantor on the Completion Guaranty Release Date. The Disbursement Agent shall release all amounts remaining on deposit in the Completion Guaranty Deposit Account to the Completion Guarantor on the Final Completion Date in accordance with *Section 2.11*.

2.3.12 Project Liquidity Reserve Account. On or prior to the Closing Date, there shall be established at Deutsche Bank Trust Company Americas, as the Securities Intermediary, the Project Liquidity Reserve Account pursuant to the Company Collateral Account Agreements. There shall be deposited into the Project Liquidity Reserve Account all cash amounts described in *Section 3.1.25(d)*. Subject to the provisions of *Section 10.2* and the Company Collateral Account Agreements, amounts on deposit in the Project Liquidity Reserve Account shall, from time to time, be transferred by the Disbursement Agent to the Company's Funds Account in accordance with *Section 5.8.3(b)* and thereafter transferred by the Disbursement Agent to the Disbursement Account for application to pay Project Costs in accordance with *Section 2.4.4(a)* or applied by the Disbursement Agent to prepayment of the Obligations in accordance with *Section 5.21*. From and after the Completion Date, amounts on deposit in the Project Liquidity Reserve Account shall be applied by the Bank Agent as provided in *Section 7.27* of the Bank Credit Agreement and *Section 10.03* of the Second Mortgage Notes Indenture. The Disbursement Agent shall cause investment income from Permitted Investments on amounts on deposit in the Project Liquidity Reserve Account to be transferred to and deposited in the Company's Funds Account within two (2) Banking Days following the end of each calendar month.

2.4 Mechanics for Obtaining Advances.

2.4.1 Preliminary Notices From the Company.

(a) Subject to *Section 2.2.2*, the Company shall have the right, from time to time, to deliver to the Disbursement Agent and the Construction Consultant a preliminary Advance Request requesting that an Advance be made on or after the seventeenth (17th) day after delivery of such preliminary Advance Request appropriately completed and duly executed including all necessary exhibits, attachments and certificates (other than the Construction Consultant's Advance Certificate); *provided, however,* that the Company shall not be required to have completed its internal audit of the Project Costs described in such preliminary Advance Request.

(b) The Company's preliminary Advance Request shall include, among other things, the Prime Contractor's Advance Certificate, the Golf Course Contractor's Advance Certificate, the Golf Course Designer's Advance Certificate and the Aqua Theater Designer's Advance Certificate, in each case, to the extent that such Advance Request requests that payment be made to such Person or to any Contractor or Subcontractor implementing the work designed by such Person. The Company's preliminary Advance Request shall also include, among other things, a certificate with respect to such Advance Request, in the form of *Exhibit C-3*

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confirming, among other things, the substantial conformity of construction undertaken to date with the Final Plans and Specifications for the Project (the "*Project Architect's Advance Certificate*").

(c) Concurrently with the delivery by the Company of each preliminary Advance Request pursuant to subsection (a) above, the Company shall deliver (i) to the FF&E Agent, a copy of *Appendix XI* to the preliminary Advance Request and (ii) to the Funding Agents and the Disbursement Agent a preliminary Notice of Advance Request in the form of *Exhibit D* hereto. Such preliminary Notice of Advance Request shall reference the requested Advance Date set forth in the preliminary Advance Request and shall contain the other information required thereby.

(d) Each preliminary Advance Request delivered by the Company pursuant to subsection (a) above shall request Advances in order to (i) until the Completion Date, pay interest and fees under the Bank Credit Agreement, the Second Mortgage Notes, and the FF&E Facility which will become due and payable on or after the requested Advance Date and prior to the next succeeding Advance Date, and/or (ii) pay other Project Costs estimated to become due and payable on or prior to the requested Advance Date (with respect to the initial Advance Request to be delivered hereunder, the Company shall request \$38,000,000 be advanced under the FF&E Facility to refinance the purchase of the Aircraft described in the first sentence of *Section 2.5.5*), and/or (iii) issue a Letter of Credit under the Bank Credit Facility, and/or (iv) replenish funds, or increase funds on deposit, in the Soft Costs Cash Management Account or the Hard Costs Cash Management Account (or, with respect to the initial Advance Request to be delivered hereunder, the Company shall request that \$2,500,000 be deposited in the Soft Costs Cash Management Account and \$3,000,000 be deposited in the Hard Costs Cash Management Account) or the Operating Account to the extent necessary to pay Operating Costs set forth in the Project Budget anticipated to become due and payable through the end of the ensuing calendar month. The Company shall not be permitted to obtain Advances for the purpose of paying Debt Service at any time after the Completion Date. Each such preliminary Advance Request shall include an estimated cash flow for the requested Advance broken down by Contractor and Line Item and shall certify as to various matters including, without limitation, (1) funding sequence, (2) accuracy of the Project Budget, (3) Line Item allocations, (4) application of proceeds, (5) with respect to the Advance that will leave an amount equal to but not more than the Second Mortgage Notes Interest Reserve Amount in the Second Mortgage Notes Proceeds Account, *Appendix XI* to the Advance Request indicating the items of Eligible FF&E Equipment in respect of which any Advances will have been made from the Company's Funds Account or the Second Mortgage Notes Proceeds Account and which the Company would like to designate as FF&E Component and cover with the FF&E Reimbursement Advance and also indicating value thereof (segregated between amounts associated with "Gaming Equipment," "Non-Gaming Equipment" and "Transaction Costs," each as defined in the FF&E Facility Agreement) and (6) with respect to each Advance thereafter, *Appendix XI* to the Advance Request indicating the items of Eligible FF&E Equipment that the Company would like to designate as FF&E Component and for which an Advance is requested under the FF&E Facility in such Advance Request. Promptly after delivery of each preliminary Advance Request, the Disbursement Agent and the Construction Consultant shall review such Advance Request and attachments thereto to determine whether all required documentation has been provided, and shall use commercially reasonable efforts to notify the Company of any deficiency within three (3) Banking Days after delivery thereof by the Company, it being acknowledged that any failure to notify the Company of any deficiency in the Advance Request so delivered within the aforesaid time period shall in no event be deemed an approval thereof. The Construction Consultant also shall review the work referenced in such preliminary Advance Request, including work

estimated to be completed through the applicable Advance Date as such work is being performed.

(e) The FF&E Agent shall have the right to disapprove any items of Eligible FF&E Collateral listed by the Company in *Appendix XI* to the Company's preliminary Advance Request as items to be funded in part by the FF&E Facility pursuant to the FF&E Reimbursement Advance or *Section 2.5.1(a)(iii)*; provided, however, that the FF&E Agent's failure to so disapprove any items of Eligible FF&E Equipment identified by the Company on such *Appendix XI* on or before the date the Company delivers the final Advance Request pursuant to *Section 2.4.2* below shall be deemed to constitute the FF&E Agent's and the FF&E Lenders' approval thereof and the items of Eligible FF&E Equipment identified on such *Appendix XI* shall be funded in part by the FF&E Facility pursuant to the FF&E Reimbursement Advance or *Section 2.5.1(a)(iii)*, as the case may be, and thereafter comprise a portion of the FF&E Component financed under the FF&E Facility. In the event that the FF&E Agent timely disapproves any items of Eligible FF&E Collateral listed on such *Appendix XI*, the Company shall have the option of either removing such items from the final Advance Request or requesting in the final Advance Request that such items be financed by Resort Component Funding Sources pursuant to *Section 2.5.2*. Notwithstanding anything to the contrary in this *Section 2.4.1(e)*, the FF&E Agent shall have no right (1) to disapprove any items of Eligible FF&E Collateral consisting of "Gaming Equipment" or "Transaction Costs" associated with Gaming Equipment (each as defined in the FF&E Facility Agreement) listed by the Company in *Appendix XI* to the Company's preliminary Advance Request from and after the time that (A) the aggregate of the unutilized "Gaming Equipment Commitments" specified in the FF&E Facility and amounts on deposit in the FF&E Proceeds Account is greater than or equal to (B) the aggregate Remaining Costs for Line Items allocated to Eligible FF&E Equipment consisting of "Gaming Equipment" and "Transaction Costs" associated with Gaming Equipment (each as defined in the FF&E Facility Agreement) which has not yet been purchased; and (2) to disapprove any items of Eligible FF&E Collateral consisting of "Non-Gaming Equipment" or "Transaction Costs" associated with Non-Gaming Equipment (each as defined in the FF&E Facility Agreement) listed by the Company in *Appendix XI* to the Company's preliminary Advance Request from and after the time that (A) the aggregate of the unutilized "Non-Gaming Equipment Commitments" under the FF&E Facility and amounts on deposit in the FF&E Proceeds Account (excluding amounts on deposit in the FF&E Proceeds Account counted in clause (1)(A) above) is greater than or equal to (B) the aggregate Remaining Costs for Line Items allocated to Eligible FF&E Equipment consisting of "Non-Gaming Equipment" and "Transaction Costs" associated with Non-Gaming Equipment (each as defined in the FF&E Facility Agreement) which has not yet been purchased.

2.4.2 Final Notices From the Company.

(a) The Company shall have the right, with respect to each preliminary Advance Request delivered in accordance with *Section 2.4.1(a)* above, to deliver to the Disbursement Agent and the Construction Consultant a final Advance Request containing all exhibits, attachments and certificates required thereby, to the extent that such exhibits, attachments and certificates were not previously delivered with the preliminary Advance Request or have been modified subsequent to such delivery (other than the Construction Consultant's Advance Certificate), all appropriately completed and duly executed by a Responsible Officer of the Company. Each final Advance Request shall be accompanied by a letter identifying and reconciling any corrections made between the preliminary Advance Request and the final Advance Request. Each final Advance Request shall be delivered no later than eight (8) Banking Days prior to the requested Advance Date (it being understood that the Company may request an Advance Date that is later than the date originally requested pursuant to the preliminary Advance Request).

(b) Concurrently with the delivery by the Company of each final Advance Request pursuant to subsection (a) above, the Company shall deliver to each Funding Agent and the Disbursement Agent a final Notice of Advance Request appropriately completed and duly executed by a Responsible Officer of the Company, which final Notice of Advance request shall include *Appendix XI* to the Advance Request as approved, deemed approved and/or revised pursuant to *Section 2.4.1(e)* above. Each final Notice of Advance Request shall state that pursuant to an Advance Request being concurrently delivered to the Disbursement Agent, the Company is requesting that an Advance be made on the Advance Date set forth in such final Advance Request. Each Funding Agent shall, as soon as practicable (but no later than two (2) Banking Days) after receiving each final Notice of Advance Request, deliver a notice confirming such receipt to the Disbursement Agent and, in the case of the Bank Agent and the FF&E Agent, confirming that the Company's calculation of interest and fees to become due and payable under their respective Facilities on and after the requested Advance Date and through the scheduled next succeeding Advance Date is accurate (or, if not accurate, shall provide the appropriate revisions to the Disbursement Agent).

(c) Within five (5) days (but in no event later than four (4) Banking Days prior to the requested Advance Date) after its receipt of each final Advance Request pursuant to subsection (a) above, the Construction Consultant shall deliver directly to the Disbursement Agent (with a copy to the Company) its certificate with respect to such Advance Request, in the form of *Exhibit C-2* either approving or disapproving the Advance Request (the "*Construction Consultant's Advance Certificate*"); provided that if the Construction Consultant disapproves one or more particular payments or disbursements to any Contractor or Subcontractor requested by the Advance Request, but the Advance Request otherwise complies with the requirements hereof, then the Construction Consultant shall approve the Advance Request and all payments and disbursements requested therein other than the particular payments or disbursements so disapproved. If the Construction Consultant disapproves the Advance Request or any one or more particular payments requested therein, the Construction Consultant shall provide the Company, in reasonable detail, its reason(s) for such disapproval.

(d) Promptly after receipt of a request therefor, the Disbursement Agent shall deliver copies of any Advance Request to the Funding Agents.

2.4.3 *Funding Notices from Disbursement Agent.*

(a) (i) Promptly after delivery of each final Advance Request and related final Notice of Advance Request by the Company pursuant to *Section 2.4.2(a)* and (b) above, the Disbursement Agent shall review the same in order to reconcile the information set forth in the Advance Request with the information set forth in the related Notice of Advance Request and determine whether all required documentation has been provided and whether all applicable conditions precedent pursuant to this Agreement have been satisfied. In particular, and without limiting the generality of the foregoing, the Disbursement Agent shall verify, to the extent contemplated herein, based on information provided to it by the Funding Agents, the Company and the Construction Consultant, (A) the Company's calculation of Available Funds, including Anticipated Earnings, set forth in the Advance Request, (B) that the Project is In Balance, (C) that the allocation of the requested Advance among the various funding sources complies with the provisions of *Section 2.5*, and (D) that the Company's calculation of interest and fees to become due and payable under the Bank Credit Agreement, the Second Mortgage Notes and the FF&E Facility, in each case, from and after the requested Advance Date and prior to the immediately succeeding Advance Date, is accurate. Subject to the other subsections of this *Section 2.4*, at such time as the Disbursement Agent has received the Construction Consultant's Advance Certificate as required by *Section 2.4.2(c)*, and otherwise

determines that the applicable conditions precedent set forth in *Article 3* with respect to a requested Advance have been satisfied, but no less than three (3) Banking Days prior to the requested Advance Date, the Disbursement Agent shall countersign the Notice of Advance Request and deliver the same to the Company and each of the Funding Agents (as so countersigned, an "*Advance Confirmation Notice*").

(ii) In the event that, pursuant to *Section 2.4.2(c)*, the Construction Consultant approves only a portion of the payments or disbursements requested by the Advance Request or, if based on its review of the Advance Request and accompanying Notice of Advance Request, the Disbursement Agent finds any minor or purely mathematical errors or inaccuracies in the Advance Request or the Notice of Advance Request (including any inaccuracy in the allocations made pursuant to *Section 2.5* hereof), but the Advance Request and Notice of Advance Request otherwise conform to the requirements of this Agreement, the Disbursement Agent shall (A) notify the Company thereof, (B) revise (to the extent it is able to do so) or request that the Company revise such certificates to remove the request for the disapproved payment and/or rectify any errors or inaccuracies, (C) deliver or request that the Company execute and deliver to the Funding Agents the revised Notice of Advance Request and (D) approve the requested Advance and issue the Advance Confirmation Notice after making the required revisions (or receiving from the Company the revised certificates) on the basis of the certificates as so revised. In the event that the Disbursement Agent revises the Advance Request and Notice of Advance Request so as to increase the amounts to be advanced under the Bank Credit Facility or the FF&E Facility, the amounts of such increase shall constitute the same type of Loans as requested in such Advance Request (unless otherwise prohibited under the Bank Credit Agreement or the FF&E Facility Agreement, as applicable). In the event that the Disbursement Agent revises the Advance Request and Notice of Advance Request so as to decrease the amounts to be advanced under the Bank Credit Facility or the FF&E Facility, the amounts of such decrease shall (unless otherwise requested by the Company and permitted under the Bank Credit Agreement or the FF&E Facility Agreement, as applicable) first reduce the amount of Base Rate Loans requested under such Facility and then reduce the amount of Eurodollar Loans requested under such Facility. All references to a particular requested Advance, Advance Request or Notice of Advance Request in the ensuing provisions of this *Article 2* shall, to the extent the context so requires, refer to the same as revised or modified pursuant to the preceding sentence.

(b) In the event that the Disbursement Agent (i) on or prior to the requested Advance Date determines pursuant to *Section 2.4.3(a)* that the conditions precedent to an Advance have not been satisfied or (ii) prior to the requested Advance Date receives notice from any Funding Agent that a Potential Event of Default or an Event of Default has occurred and is continuing, then the Disbursement Agent shall notify the Company and each Funding Agent thereof as soon as reasonably possible but in no event later than one (1) Banking Day after such determination or receipt, as the case may be (a "*Stop Funding Notice*"). The Stop Funding Notice shall specify, in reasonable detail, the conditions precedent which the Disbursement Agent has determined have not been satisfied and/or shall attach a copy of any notice of default received by the Disbursement Agent. Upon such written notice from the Disbursement Agent, and subject to the provisions of *Section 3.5*, (i) neither the Bank Lenders nor the FF&E Lenders shall have any obligation to advance their respective Facilities' portion of the requested Advance, if any, (ii) the Disbursement Agent shall not withdraw any funds from the Second Mortgage Notes Proceeds Account for the purpose of transferring such funds to the

scheduled Debt Service on the Second Mortgage Notes), (iii) subject to *Section 3.2* the Disbursement Agent shall not withdraw any funds from the Company's Funds Account to satisfy such requested Advance, (iv) the Disbursement Agent shall not withdraw, transfer or release any funds on deposit in the Interest Payment Account, (v) the Disbursement Agent shall not withdraw, transfer or release to the Company any funds then on deposit in the Disbursement Account or the FF&E Proceeds Account (other than in respect of wires previously issued under *Sections 2.6.1(c) or (e)*) and (vi) any Advance Confirmation Notice issued prior to the issuance of a Stop Funding Notice (if the Advance to which such Advance Confirmation Notice relates has not been made) shall become null and void and of no force or effect; provided that such nullification of any such Advance Confirmation Notice shall not affect the obligations of the Company for break funding costs under the Bank Credit Facility and the FF&E Facility.

(c) Prior to the earliest of (i) termination of the "*Term Loan Commitments*" (as defined in the Bank Credit Agreement) other than due to the funding in full thereof, (ii) termination of the "*Revolving Credit Commitments*" (as defined in the Bank Credit Agreement), (iii) termination of the "*Commitments*" (as defined in the FF&E Facility Agreement) and (iv) the exercise of remedies by any Funding Agent in respect of any Project Security, unless any such action has been rescinded, at such time, if ever, as the Disbursement Agent (x) determines that the condition precedent to the requested Advance which had not been satisfied has become satisfied or (y) receives notice from the Funding Agent who issued the notice of default described in the preceding paragraph that such Potential Event of Default or Event of Default no longer exists, as the case may be, the Disbursement Agent shall deliver an Advance Confirmation Notice to the Company and each of the Funding Agents.

(d) In the event that a Funding Agent entitled to waive conditions precedent to funding pursuant to *Section 3.5* informs the Disbursement Agent in writing that it has waived the event or events giving rise to the Stop Funding Notice, the Disbursement Agent shall deliver an Advance Confirmation Notice (modified, if required, to apply only to amounts to be advanced under such Funding Agent's Facility unless all Funding Agents entitled to waive conditions with respect to such Advance Request have waived the conditions, in which case the Disbursement Agent shall deliver an Advance Confirmation Notice with respect to all Advances requested by the Company) to the Company and each of the Funding Agents.

2.4.4 Provision of Funds by the Funding Agents.

(a) (i) (A) In the case of an Advance Confirmation Notice issued pursuant to *Section 2.4.3(a)* above, on the requested Advance Date, and (B) in the case of an Advance Confirmation Notice issued pursuant to *Section 2.4.3(c) or (d)* above, on the third (3rd) Banking Day after such issuance, before 12:00 p.m. New York, New York time, (x) the Bank Lenders (subject to *Section 2.5.3*) shall deposit or cause to be deposited in the Disbursement Account, in immediately available funds, their Facility's portion of the requested Advance, if any, as determined pursuant to *Sections 2.5.1, 2.5.2 and 2.5.4* and set forth in the related Advance Confirmation Notice and (y) the FF&E Lenders (subject to *Section 2.5.5*) shall deposit or cause to be deposited in the FF&E Proceeds Account, in immediately available funds, their Facility's portion of the requested Advance, if any, as determined pursuant to *Section 2.5.1* and set forth in the related Advance Confirmation Notice and, if the final Notice of Advance Request includes a request for the issuance of one or more Letters of Credit under the Bank Revolving Facility, the Bank Agent shall also send written notice to the Disbursement Agent that the "Issuing Lenders" (as defined in the Bank Credit Agreement) under the Bank Revolving Facility are committed to issue each such Letter of Credit. Amounts deposited by or on behalf of ULLICO, as Bank Lender, shall be deemed to have been applied to fund Project Costs due and owing to the Prime Contractor; it being

understood that, notwithstanding such application, ULLICO shall enjoy the same rights and privileges over the Project Security as any other Project Secured Party.

(ii) Upon confirming that all funds required to be deposited in the Disbursement Account and the FF&E Proceeds Account pursuant to clause (i) above have been deposited and, if applicable, upon receipt of the Bank Agent's confirmation that the "Issuing Lenders" (as defined in the Bank Credit Agreement) under the Bank Revolving Facility are committed to issue each requested Letter of Credit, the Disbursement Agent shall (subject to *Section 2.4.3(b)*) promptly, considering the requirements of this Agreement, withdraw from the Company's Funds Account, the Second Mortgage Notes Proceeds Account and the Bank Proceeds Account the portion of the Advance to be funded from each such account as determined pursuant to *Sections 2.5 and 2.9(d)* and set forth in the related Advance Confirmation Notice and deposit such funds in the Disbursement Account and shall notify the Bank Agent that such transfer to the Disbursement Account has been made. Upon receipt of such notice, if applicable, the Bank Agent shall instruct the "Issuing Lenders" (as defined in the Bank Credit Agreement) under the Bank Revolving Facility to issue the requested Letters of Credit. All funds so deposited in the Disbursement Account shall thereafter be applied by the Disbursement Agent as provided in *Section 2.6*.

(b) None of the Disbursement Agent, the Bank Agent or the FF&E Agent shall be responsible for any Bank Lender's or FF&E Lender's failure to make any required Advance (including, if applicable, the failure of any "Issuing Lender" under the Bank Revolving Facility to issue any Letter of Credit). The Disbursement Agent shall not release to the Company any amounts properly advanced until all Advances requested by the relevant Advance Request have been deposited in the Disbursement Account and the FF&E Proceeds Account and, if applicable, the Bank Agent has confirmed that the "Issuing Lenders" (as defined in the Bank Credit Agreement) under the Bank Revolving Facility are committed to issue each requested Letter of Credit, unless the Lenders who have made the Advances request such release (the Disbursement Agent shall promptly notify all Funding Agents upon receiving any such request). However, the withholding of such Advances by the Disbursement Agent shall not release the Lender who failed to make the Advance under its Facility (including, if applicable, any Issuing Lender under the Bank Revolving Facility who failed to issue a Letter of Credit) from liability to the other Lenders and the Company. The Disbursement Agent shall have no liability to the Company arising from any Stop Funding Notice issued pursuant to *Section 2.4.3(b)* at the request of any Funding Agent (a "*Stop Funding Request*"), whether or not such Funding Agent was entitled to make any such Stop Funding Request. None of the Funding Agents shall have any liability to the Company, the Disbursement Agent, any other Funding Agent or any Lender arising from any Stop Funding Notice issued by the Disbursement Agent in response to a Stop Funding Request by such Funding Agent; *provided, however*, that nothing herein shall release from liability the Funding Agent who issued the Stop Funding Request if such issuance resulted from, or constituted an act of gross negligence or willful misconduct on the part of such Funding Agent, as finally judicially determined by a court of competent jurisdiction.

2.4.5 *Change in Facts Certified.* The Company shall promptly notify the Disbursement Agent prior to the making of any Advances in the event that any of the matters to which the Company certified in the corresponding Advance Request are no longer true and correct in all material respects (provided that the foregoing materiality qualifier shall not apply to any certification contained in such Advance Request which by its own terms already includes a standard of materiality), as of the applicable Advance Date (except that any certification that relates expressly to an earlier date shall be deemed made only as of such earlier date). The acceptance by the

Company of the proceeds of any Advance shall constitute a re-certification by the Company, as of the applicable Advance Date, of all matters certified to in the related Advance Request.

2.4.6 *References to Dates.* In the event that any day or date referred to in the foregoing provisions of this *Section 2.4* occurs on a day that is not a Banking Day, the reference shall be deemed to be to the next succeeding Banking Day.

2.5 *Allocation of Advances.*

2.5.1 *Advances for FF&E Component.*

(a) All Project Costs allocated pursuant to the Project Budget to the FF&E Component shall be made from the following sources and in the following order of priority:

(i) first, from the Closing Date and until the final Advance from the Second Mortgage Notes Proceeds Account pursuant to clause (ii) below, from funds from time to time on deposit in the Company's Funds Account, until Exhausted;

(ii) then, from funds from time to time on deposit in the Second Mortgage Notes Proceeds Account, until the amount remaining in the Second Mortgage Notes Proceeds Account equals but does not exceed the Second Mortgage Notes Interest Reserve Amount; and

(iii) then, from funds available to be drawn under the FF&E Facility and the Resort Component Funding Sources, until Exhausted, in such amounts so that after giving effect to the requested Advance, the aggregate amount of all Project Costs allocated pursuant to the Project Budget to the FF&E Component (other than the amounts advanced in connection with the Aircraft under clause (b) below) shall have been Advanced in the following percentages: (A) seventy-five percent (75%) shall have been Advanced from the FF&E Facility, and (B) twenty-five percent (25%) shall have been Advanced from the Resort Component Funding Sources. For purposes of the foregoing calculation it shall be deemed that the amount represented by the FF&E Reimbursement Advance was Advanced by the FF&E Facility and not by the Resort Component Funding Sources.

(b) All Project Costs allocated pursuant to the Project Budget to the purchase (or indebtedness incurred to fund the purchase) or refinancing of the Aircraft (including any replacement Aircraft) shall be made from funds available to be drawn under the FF&E Facility (to the extent provided therein).

2.5.2 *Advances For Resort Component.* The (i) full amount of all Project Costs allocated pursuant to the Project Budget to the Resort Component and (ii) portion of the Project Costs allocated pursuant to the Project Budget to the FF&E Component which are to be funded from Resort Component Funding Sources pursuant to *Section 2.5.1(a)(iii)* above shall be made from the following sources and in the following order of priority:

(a) first, from funds from time to time on deposit in the Company's Funds Account, until Exhausted;

(b) then, from funds from time to time on deposit in the Second Mortgage Notes Proceeds Account, until the amount remaining in the Second Mortgage Notes Proceeds Account equals but does not exceed the Second Mortgage Notes Interest Reserve Amount; and

(c) then, subject to *Section 2.5.6*, from funds available to be drawn under the Bank Credit Facility, until Exhausted.

2.5.3 *Advances Under the Bank Credit Facility.* All issuances of Letters of Credit under the Bank Credit Facility shall be satisfied through the Bank Revolving Facility pursuant to the procedures set forth in *Article 3* of the Bank Credit Agreement. All other amounts required to be obtained from the Bank Credit Facility for deposit in the Disbursement Account shall be satisfied as follows:

(a) first, from amounts on deposit in the Bank Proceeds Account on the relevant date, to the extent thereof (excluding amounts previously advanced to the Bank Proceeds Account pursuant to *Section 2.6.1(a)* which are intended to be used for Company payroll); and

(b) then, through Advances by the Bank Lenders.

2.5.4 *Advances After Completion Date.* Notwithstanding the foregoing, after Exhaustion of the Required Completion Amount on deposit in the Bank Proceeds Account and the FF&E Proceeds Account, other amounts required to be obtained to pay Project Costs incurred to achieve Final Completion shall be satisfied as follows:

(a) first, by borrowing funds under the Bank Revolving Facility until the aggregate amount borrowed thereunder (excluding any borrowings of the Bank Debt Service Commitment Portion) shall equal \$718,490,525;

(b) then, by withdrawing funds on deposit in the Completion Guaranty Deposit Account and transferring such funds to the Disbursement Account; and

(c) then, by using other amounts available to the Company (other than funds available under the Bank Revolving Facility).

2.5.5 *Advances Under the FF&E Facility.* The amount of \$38,000,000 required to be obtained from the FF&E Facility to refinance the purchase of the Aircraft shall be satisfied through Advances of funds by the FF&E Lenders to the FF&E Agent and (i) Advances of funds by the FF&E Agent in the amount of \$28,523,995.42 directly to the Original Aircraft Lender and (ii) Advances of funds by the Agent in the amount of \$9,476,004.58 which shall be deposited into the Company's Funds Account. All other amounts required to be obtained from the FF&E Facility for deposit in the FF&E Proceeds Account shall be satisfied as follows:

- (a) first, from amounts on deposit in the FF&E Proceeds Account on the relevant date, to the extent thereof; and
- (b) then, through Advances by the FF&E Lenders.

2.5.6 *Advances of Second Mortgage Notes Interest Reserve Amount.* Notwithstanding the foregoing, from and after the initial Advance under the Bank Credit Agreement, Debt Service on the Second Mortgage Notes shall, until funds in the Second Mortgage Notes Proceeds Account have been Exhausted, be paid exclusively from amounts on deposit in the Second Mortgage Notes Proceeds Account.

2.5.7 *Post-Funding Reallocations.* In the event that at any time the Disbursement Agent determines that the allocations made in any previous Advance Requests pursuant to the foregoing provisions of this Section 2.5 were erroneous or inaccurate, the parties shall cooperate to rectify such misallocations by allocating future Advances in a manner that accounts for the previous misallocation or by using such other methods reasonably determined by the Disbursement Agent.

2.6 *Disbursements.*

2.6.1 *Disbursement Procedures.* No later than 2:00 p.m. New York, New York time on the requested Advance Date, or such later date as may occur pursuant to Section 2.4.4(a), if the Disbursement Agent has (i) received funds from each Bank Lender and each FF&E Lender

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required to make an Advance pursuant to the relevant Advance Request (other than (x) \$28,523,995.42 to refinance indebtedness incurred to fund the original purchase of an Aircraft, which shall be paid by the FF&E Agent directly to the Original Aircraft Lender, (y) \$9,476,004.58 to be advanced by the FF&E Agent and deposited in the Company's Funds Account and (z) any portion of such Advance for which a Letter of Credit is to be issued under the Bank Credit Facility) (or if the applicable Lenders make the request described in the second sentence of Section 2.4.4(b)), (ii) if applicable, received confirmation from the Bank Agent that the "Issuing Lenders" (as defined in the Bank Credit Agreement) under the Bank Revolving Facility are committed to issue each requested Letter of Credit, and (iii) transferred funds from the Company's Funds Account, the Second Mortgage Note Proceeds Account, the Bank Proceeds Account and/or the Completion Guaranty Deposit Account to the Disbursement Account as required pursuant to the terms hereof, the Disbursement Agent shall transfer all such funds (or, where applicable, the funds as to which the request described in the second sentence of Section 2.4.4(b) has been made) as follows:

- (a) to the extent set forth in the Advance Request, by disbursement to the Interest Payment Account and/or the Bank Proceeds Account;
- (b) to the extent set forth in the Advance Request, by disbursement to the Soft Costs Cash Management Account and/or the Hard Costs Cash Management Account;
- (c) with respect to amounts requested by the Advance Request to be paid from the Disbursement Account to (i) the Prime Contractor, (ii) each other Contractor and Subcontractor owed Project Costs to be paid pursuant to Sections 2.5.2 or 2.5.4 in excess of \$7,000,000, and (iii) any financial institution that will be issuing a commercial letter of credit for the account of the Company that will be cash-collateralized in accordance with clause (g) of the definition of "Project Costs," by wiring funds directly to the account of such Person set forth in the Company's Advance Request;
- (d) by transferring any remaining funds in the Disbursement Account to the Company's Payment Account for further distribution by the Company to each Contractor and Subcontractor owed Project Costs to be paid pursuant to Sections 2.5.2 or 2.5.4 in an amount less than or equal to \$7,000,000 (excluding the Prime Contractor);
- (e) with respect to amounts requested by the Advance Request to be paid from the FF&E Proceeds Account to (i) each Contractor and Subcontractor owed Project Costs allocated to the FF&E Component in excess of \$7,000,000, and (ii) any financial institution that will be issuing a commercial letter of credit allocated to the FF&E Component for the account of the Company that will be cash-collateralized in accordance with clause (g) of the definition of "Project Costs," by wiring funds directly to the account of such Person set forth in the Company's Advance Request; and
- (f) by transferring any remaining funds in the FF&E Proceeds Account to the Company's FF&E Payment Account for further distribution by the Company to each Contractor and Subcontractor owed Project Costs allocated to the FF&E Component in an amount less than or equal to \$7,000,000.

2.6.2 *Special Procedures for Unpaid Contractors.* Notwithstanding Section 2.6.1 above, the Company agrees that the Disbursement Agent may make Advances and transfer any or all sums in the Disbursement Account (and in the case of amounts owing to Contractors allocable to the FF&E Component, in the FF&E Proceeds Account) directly into the account of any Contractor for amounts due and owing to such Contractor under the relevant Contract, or any other Subcontractors in payment of amounts due and owing to such parties from the Company without further authorization from the Company and the Company hereby constitutes and appoints the

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Disbursement Agent its true and lawful attorney-in-fact to make such direct payments and this power of attorney shall be deemed to be a power coupled with an interest and shall be irrevocable; *provided that*, except upon the occurrence and continuation of an Event of Default, the Disbursement Agent shall not exercise its rights under this power of attorney except to make payments (a) as directed by the Company pursuant to an Advance Request and otherwise as permitted by Section 2.6.1 or (b) which the Disbursement Agent reasonably believes, if not promptly made, are reasonably likely to have a Material Adverse Effect. No further direction or authorization from the Company shall be necessary to warrant or permit the Disbursement Agent to make

such Advances in accordance with the foregoing sentence and, to the extent funds in the Disbursement Account (and in the case of amounts owing to Contractors allocable to the FF&E Component, in the FF&E Proceeds Account) are not sufficient to make such Advances, the Disbursement Agent shall withdraw the shortfall from the Company's Funds Account, the Second Mortgage Notes Proceeds Account and/or the Bank Proceeds Account in accordance with *Sections 2.5.1 and/or 2.5.2* and transfer sufficient funds to the Disbursement Account as needed to make such Advances.

2.6.3 Special Procedures for Payroll. From time to time (but no more frequently than once every two weeks) upon satisfaction of the following conditions precedent, the Disbursement Agent shall transfer amounts previously advanced to the Bank Proceeds Account pursuant to *Section 2.6.1(a)* to the Soft Costs Cash Management Account:

(a) The Company shall have certified to the Disbursement Agent that the amount requested to be transferred is necessary to pay Soft Costs consisting of Company payroll in accordance with the Project Budget during the ensuing seven (7) days; and

(b) The Company shall have substantiated to the Disbursement Agent's satisfaction, in the manner contemplated by the Advance Request, that amounts previously transferred by the Disbursement Agent from the Bank Proceeds Account to the Soft Costs Cash Management Account pursuant to this *Section 2.6.3* have been used to pay Soft Costs associated with Company payroll in accordance with the Project Budget.

2.6.4 Satisfaction of Funding Obligations. All disbursements made pursuant to *Sections 2.6.1, 2.6.2 and 2.6.3* above shall satisfy, in and of themselves, the obligations of the Disbursement Agent, the Funding Agents and each Lender hereunder and under the relevant Facility Agreements with respect to the Advance so made and (except for amounts which were obtained from the Company's Funds Account) shall be secured by the Facilities' respective Security Documents, if any, to the same extent as if made directly to the Company, regardless of the disposition thereof by the payees of such disbursements.

2.7 Payments of Interest and Fees. Until the Completion Date, the Company shall include in each Advance Request delivered pursuant to *Sections 2.4.1(a) and 2.4.2(a)* a request that an Advance be made to pay the interest and fees that will become due and payable under each of the Bank Credit Agreement, the Second Mortgage Notes and the FF&E Facility on or after the requested Advance Date under such Advance Request and prior to the immediately succeeding Advance Date. Each such Advance Request shall specify the Facility, the amount and the date on which such interest or fees will become due and payable. If the Company fails to set forth such information in any Advance Request or fails to deliver timely any Advance Request, then the Bank Agent, the Indenture Trustee and the FF&E Agent as to their respective Facilities may deliver such information and a request for payment to the Disbursement Agent upon which request the Disbursement Agent shall revise the Advance Request and related Notice of Advance Request to provide for such payment. The Company acknowledges that failure of any notice referenced in this *Section 2.7* to be delivered to the Disbursement Agent shall not in any way exonerate or diminish the Company's obligation to make all payments under each of the Bank Credit Agreement, the Second Mortgage Notes and the FF&E Facility as and when due. Subject

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to the provisions of *Section 10.2* and the Company Collateral Account Agreements, the Disbursement Agent shall apply amounts on deposit in the Interest Payment Account and, to the extent set forth in *Section 2.5.6*, the Second Mortgage Notes Proceeds Account, to the payment of interest and fees under the Bank Credit Agreement, the Second Mortgage Notes and/or the FF&E Facility, in each case, on the date that the Disbursement Agent is advised such amounts will become due and payable. The Company shall not be permitted to obtain Advances for the purpose of paying interest, fees or other Debt Service at any time after the Completion Date, except for amounts payable from the Second Mortgage Notes Proceeds Account in accordance with *Section 2.5.6*.

2.8 FF&E Facility: Initial Advance, FF&E Reimbursement Amount Advance, and Cash Management Account Reimbursements.

On the Closing Date, the Company shall include in its initial Advance Request delivered pursuant to *Sections 2.4.1(a) and 2.4.2* a request to Advance, and each FF&E Lender shall Advance, to the extent of its "Aircraft Commitment Percentage" (as defined in the FF&E Facility), \$38,000,000 under the FF&E Facility of which \$28,523,995.42 shall be delivered directly to the FF&E Agent who will then distribute such amount to the Original Aircraft Lender in order to refinance the purchase of the Aircraft and \$9,476,004.58 shall be deposited into the Company's Funds Account. On the date the Company delivers a preliminary Advance Request pursuant to *Sections 2.4.1(a) and 2.4.2* requesting an Advance from the Second Mortgage Notes Proceeds Account that leaves only the Second Mortgage Notes Interest Reserve Amount on deposit in such Account, the Company shall include in such preliminary Advance Request, the FF&E Reimbursement Advance which, subject to any revisions thereto pursuant to *Section 2.4.1(e)*, the FF&E Lenders shall Advance and which shall be deposited in the Company's Funds Account to be applied to pay Project Costs in accordance with the terms hereof. Thereafter, as an additional reimbursement mechanism, on each date the Company delivers a preliminary Advance Request pursuant to *Sections 2.4.1(a) and 2.4.2* requesting a replenishment of the Soft Costs Cash Management Account and/or the Hard Costs Cash Management Account, the FF&E Lenders shall, pursuant to *Section 2.5.1(a)(iii)* advance 75% of the Project Costs previously paid for by the Company from the Soft Costs Cash Management Account and the Hard Costs Cash Management Account, as the case may be, in respect of items that have been or are then being designated as FF&E Component in accordance with *Section 2.4.1*, which amounts shall be transferred pursuant to *Section 2.6.1(b)* from the FF&E Proceeds Account to replenish such accounts. If the Company fails to set forth such information in any Advance Request or fails to deliver timely any Advance Request, then the Bank Agent or the Indenture Trustee shall deliver such information and a request for Advance to the Disbursement Agent upon which request the Disbursement Agent shall revise the Advance Request and related Notice of Advance Request to provide for such Advance.

2.9 Completion Date Procedures.

(a) No less than sixty (60) days prior to the anticipated Completion Date, the Company shall deliver notice of the anticipated Completion Date to the Disbursement Agent, the Construction Consultant, the Project Architect and the Funding Agents. Thereafter, in order to cause Completion to occur, the Company shall deliver to the Construction Consultant, the Disbursement Agent, the Bank Agent, the Indenture Trustee and the FF&E Agent the Company's Completion Certificate appropriately completed and duly executed by a Responsible Officer of the Company with all attachments thereto. The Company's Completion Certificate shall indicate the date the Company believes the conditions to Completion will be satisfied, shall include the Completion Certificates of the Project Architect, the Prime Contractor, the Golf Course Contractor, the Parking Structure Contractor, the Golf Course Designer and the Aqua Theater Designer, and shall set forth all other information required thereby, including the aggregate amount of Project Costs anticipated to become due and payable after the Completion Date in order to achieve Final Completion (the "*Required Completion Amount*"). The Required Completion Amount shall be based on the allocation rules set forth in *Section 2.5* after subtracting amounts then on deposit in

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the Hard Costs Cash Management Account and the Company's Funds Account. The Company's Completion Certificate further shall set forth each Resort Component Funding Source's and the FF&E Facility's portion of the Required Completion Amount calculated in accordance with the preceding sentence.

(b) The Disbursement Agent and the Construction Consultant shall review the Company's Completion Certificate. In the event that the Disbursement Agent or the Construction Consultant discovers any mathematical or other minor errors in the Company's Completion Certificate, they shall request that the Company revise and resubmit the certificate. Within ten (10) Banking Days after their receipt of the Company's Completion Certificate, the Construction Consultant shall deliver to the Disbursement Agent, the Bank Agent, the Indenture Trustee, the FF&E Agent and the Company, the Construction Consultant's Completion Certificate.

(c) Within five (5) Banking Days after receipt by the Disbursement Agent of the Construction Consultant's Completion Certificate approving the Company's Completion Certificate, the Disbursement Agent shall, subject to its determination (in accordance with the relevant provisions of *Section 3.3*) that each of the conditions set forth in *Section 3.3* (other than *Sections 3.3.4* through *3.3.6*) has been satisfied, countersign the Company's Completion Certificate and forward the same to the Bank Agent, the Indenture Trustee and the FF&E Agent. In determining whether to approve the Company's Completion Certificate, the Disbursement Agent may rely on the certifications of the Company, the Prime Contractor, the Golf Course Contractor, the Parking Structure Contractor, the Golf Course Designer, the Aqua Theater Designer, the Construction Consultant and the Project Architect set forth in their respective Completion Certificates. The Completion Date shall be deemed to occur on the date the Disbursement Agent countersigns the Company's Completion Certificate.

(d) On the Completion Date, before 12:00 p.m. New York, New York time, (i) the Bank Lenders shall deposit or cause to be deposited in the Bank Proceeds Account the Bank Credit Facility's portion of the Required Completion Amount calculated in accordance with *Section 2.5* and subsection (a) above and set forth in the Company's Completion Certificate, (ii) the FF&E Lenders shall deposit or cause to be deposited in the FF&E Proceeds Account the FF&E Facility's portion of the Required Completion Amount calculated in accordance with *Section 2.5* and subsection (a) above and set forth in the Company's Completion Certificate, and (iii) if the difference (in each case after giving effect to the Advance contemplated in clause (i) above) of (A) the unutilized "Revolving Credit Commitments" as defined in the Bank Credit Agreement (specifically including, however, the \$3,000,000 portion of the Bank Revolving Facility which will not be made available to the Company for the payment of Project Costs) minus (B) any revenues of the Project that have been used to prepay the Loans under the Bank Revolving Facility from and after the Opening Date, is less than the aggregate Remaining Costs for the "Working Capital Requirements at Opening" Line Item Category, then the Disbursement Agent shall transfer to the Bank Agent sufficient funds from the Completion Guaranty Deposit Account and the Project Liquidity Reserve Account (if the funds then on deposit in the Completion Guaranty Deposit Account are not sufficient to make such transfer) in an amount equal to the amount by which the aggregate Remaining Costs for the "Working Capital Requirements at Opening" Line Item Category exceeds such difference, and the Bank Agent shall apply such amounts to the prepayment of Loans under the Bank Revolving Facility pursuant to *Section 2.12(c)(iv)* of the Bank Credit Agreement.

(e) In the event that the Final Completion Date shall not have occurred within six (6) months from the Completion Date, then on the expiration of such six (6) month period, the Disbursement Agent shall withdraw any remaining funds on deposit (i) in the Bank Proceeds Account and deliver such funds to the Bank Agent and (ii) in the FF&E Proceeds Account and deliver such funds to the FF&E Agent.

2.10 Completion Guaranty Release Procedures.

(a) In order to cause the Completion Guaranty Release Date to occur, the Company shall deliver to the Construction Consultant, the Disbursement Agent, the Bank Agent, the Indenture Trustee and the FF&E Agent the Company's Completion Guaranty Release Certificate appropriately completed and duly executed by a Responsible Officer of the Company, with all attachments thereto. The Company's Completion Guaranty Release Certificate shall indicate that the Company believes the Completion Guaranty Release Conditions have been satisfied, shall specify the portion, if any, of the Completion Guaranty Deposit Account to be reserved to pay Project Punchlist Items and/or disputed amounts pursuant to clauses (d)(i) and (ii) of the definition of "Completion Guaranty Release Conditions" after giving effect to any amounts then on deposit in the Company's Funds Account, the Bank Proceeds Account and the FF&E Proceeds Account (collectively, the "Reserved Amounts") and shall set forth all other information required thereby.

(b) The Disbursement Agent and the Construction Consultant shall review the Company's Completion Guaranty Release Certificate. In the event that the Disbursement Agent or the Construction Consultant discovers any mathematical or other minor errors in the Company's Completion Guaranty Release Certificate, it shall so inform the Company, stating in reasonable detail the revisions required, and shall request the Company to revise and resubmit the certificate. Within ten (10) Banking Days after its receipt of the Company's Completion Certificate, the Construction Consultant shall deliver to the Disbursement Agent, the Bank Agent, the Indenture Trustee, the FF&E Agent and the Company, the Construction Consultant's Completion Guaranty Release Certificate.

(c) Within five (5) Banking Days after receipt by the Disbursement Agent of the Construction Consultant's Completion Guaranty Release Certificate approving the Company's Completion Guaranty Release Certificate, the Disbursement Agent shall, subject to its determination that each of the Completion Guaranty Release Conditions has been satisfied, countersign the Company's Completion Guaranty Release Certificate and forward the same to the Bank Agent, the Indenture Trustee and the FF&E Agent. The Disbursement Agent may rely on the certifications of the Company and the Construction Consultant set forth in their respective Completion Guaranty Release Certificates in determining whether the Completion Guaranty Release Conditions have been satisfied. The Completion Guaranty Release Date shall be deemed to occur on the date the Disbursement Agent countersigns the Company's Completion Guaranty Release Certificate.

(d) On the Completion Guaranty Release Date, the Disbursement Agent shall release to the Completion Guarantor all amounts on deposit in the Completion Guaranty Deposit Account, excluding the Reserved Amounts.

2.11 **Final Completion Procedures.** On the Final Completion Date, the Disbursement Agent shall (a) in the event that the Final Completion Date shall have occurred prior to the expiration of the six (6) month period commencing on the Completion Date, (i) withdraw all remaining funds from the Bank Proceeds Account and deliver such funds to the Bank Agent, and (ii) withdraw all remaining funds from the FF&E Proceeds Account and deliver such funds to the FF&E Agent, (b) release to the Completion Guarantor all other amounts on deposit in the Completion Guaranty Deposit Account and (c) release to the Company all other amounts on deposit in the Company Accounts, other than the Project Liquidity Reserve Account (unless at such time the Company has satisfied the release conditions set forth in *Section 7.27* of the Bank Credit Agreement (as confirmed by the Bank Agent) and *Section 10.03* of the Second Mortgage Notes Indenture, in which case the amounts on deposit in the Project Liquidity Reserve Account shall be applied as provided in the Bank Credit Agreement and the Second

2.12 **No Approval of Work.** The making of any Advance shall not be deemed an approval or acceptance by the Disbursement Agent, any Funding Agent, any Lender or the Construction Consultant (except to the extent set forth in the Construction Consultant Engagement Letter, and then only for the benefit of the Lenders) of any work, labor, supplies, materials or equipment furnished or supplied with respect to the Project.

2.13 **Security.** The Obligations shall be secured by the Project Security in accordance with the Security Documents. Further, all funds advanced by the Bank Lenders to complete the Project or to protect the rights and interests of the Secured Parties under the Financing Agreements are deemed to be obligatory advances and are to be added to the total indebtedness secured by each of the respective Facilities' Security Documents (including, with respect to the Bank Credit Facility and the Second Mortgage Notes, their respective Deeds of Trust). All sums so advanced shall be secured by each such Deed of Trust with the same priority of lien as the security for any other obligations secured thereunder.

ARTICLE 3.

—CONDITIONS PRECEDENT TO THE CLOSING DATE AND ADVANCES

3.1 **Conditions Precedent to the Closing Date.** The occurrence of the Closing Date is subject to the prior satisfaction of each of the conditions precedent hereinafter set forth in this Section 3.1 in form and substance satisfactory to each of the Bank Agent, the Representatives of the Underwriters and the FF&E Agent in its sole discretion. Subject to Section 3.4, by executing this Agreement (or, in the case of (a) the Representatives of the Underwriters, by purchasing the Second Mortgage Notes, (b) the Bank Lenders, by becoming a party to the Bank Credit Agreement and (c) the FF&E Lenders, by becoming a party to the FF&E Facility Agreement) each of the Bank Agent, the Representatives of the Underwriters and the FF&E Agent shall be deemed to have confirmed that it has become satisfied that each of the following conditions precedent applicable to its Facility in this Section 3.1 has been satisfied.

3.1.1 **Financing Agreements and Material Project Documents.** Delivery to each of the Bank Agent, the Representatives of the Underwriters, the FF&E Agent and the Disbursement Agent (with such number of originally executed copies as they may reasonably request) of (a) executed originals of each Financing Agreement (other than those Financing Agreements, including the DIIC Deed of Trust and the Golf Course Contractor Consent, that are not required to be executed and delivered on the Closing Date) (collectively, the "Closing Financing Agreements"), and true and correct copies of each Material Project Document then in effect and any supplements or amendments thereto then in effect, all of which shall be in form and substance satisfactory to each of the Bank Agent, the Representatives of the Underwriters and the FF&E Agent, shall have been duly authorized, executed and delivered by the parties thereto, and each such Material Project Document shall be certified by a Responsible Officer of the Company as of the Closing Date as being true, complete and correct and in full force and effect, and (b) evidence satisfactory to each of the Bank Agent, the Representatives of the Underwriters and the FF&E Agent that each such Material Project Document and each such Closing Financing Agreement is in full force and effect and that no party to any such Material Project Document or Closing Financing Agreement is or, but for the passage of time or giving of notice or both will be, in breach of any obligation thereunder.

3.1.2 **Corporate and/or LLC Authority of the Loan Parties.** Delivery to each of the Bank Agent, the Representatives of the Underwriters, the FF&E Agent and the Disbursement Agent of (a) a certified copy of the Articles of Incorporation, Certificates of Formation or other similar formation document(s) of each of the Loan Parties, (b) good standing certificates for each of the Loan Parties issued by the Secretary of State of Nevada or any other state of incorporation or

organization, (c) a certified copy of the bylaws or a copy of the Operating Agreement of each of the Loan Parties, certified by a Responsible Officer of each such Loan Party, and (e) a copy of one or more resolutions or other authorizations of the Loan Parties certified by a Responsible Officer of each such Loan Party, as being in full force and effect on the Closing Date, authorizing the Advances herein provided for and the execution, delivery and performance of this Agreement and the other Operative Documents and any instruments or agreements required hereunder or thereunder to which each such entity is a party.

3.1.3 **Incumbency of the Loan Parties.** Delivery to each of the Bank Agent, the Representatives of the Underwriters, the FF&E Agent and the Disbursement Agent of a certificate from each of the Loan Parties satisfactory in form and substance to each of the Bank Agent, and the Representatives of the Underwriters signed by a Responsible Officer of each such Loan Party, and dated as of the Closing Date, as to the incumbency of the Person or Persons authorized to execute and deliver this Agreement and the other Material Project Documents (not theretofore executed) and Closing Financing Agreements and any documents, instruments or agreements required hereunder or thereunder to which each such entity is a party.

3.1.4 **Other Parties.** With respect to each Major Project Participant (other than any Loan Party), delivery to each of the Bank Agent, the Representatives of the Underwriters, the FF&E Agent and the Disbursement Agent of (i) a certified copy of the Certificate of Formation or Articles of Incorporation, as applicable, of such entity (or the appropriate equivalent in the jurisdiction of formation of the relevant entity), (ii) a copy of the bylaws, if applicable, of such entity (or the equivalent) certified by the secretary of such entity, (iii) a certificate issued by the Secretary of State of Nevada and, if other than such state, the state (or country) of formation of such entity certifying that such entity is in good standing and is qualified to do business in, Nevada and (if applicable) its state (or country) of formation, (iv) a fully executed certificate as to the incumbency of the Persons authorized to execute and deliver the Operative Documents and any other instruments or agreements contemplated hereby to which such entity is a party, and (v) a copy of one or more resolutions for each of the foregoing entities (or their respective managing members or managers where applicable), certified by the appropriate officer of such entity as being in full force and effect as of the Closing Date, authorizing the transactions contemplated by such Operative Document(s) to which such entity is a party and the execution, delivery and performance thereof and any other documents, instruments and agreements required to be executed pursuant thereto.

3.1.5 **Insurance.**

(a) *Policies.* Insurance complying with the requirements of *Exhibit O* shall be in place and in full force and effect.

(b) *The Company's Insurance Certificates.* Delivery to each of the Bank Agent, the Representatives of the Underwriters, the FF&E Agent and the Disbursement Agent of (i) certificates, in the form of *Exhibit B-4* and *Exhibit B-5* attached hereto and otherwise in form and substance satisfactory to each of the Bank Agent, the Representatives of the Underwriters and the FF&E Agent from the Company's insurance broker(s), dated as of the Closing Date and identifying underwriters, type of insurance, insurance limits and policy terms, listing the special provisions required as set forth in *Exhibit O*, describing the insurance obtained and stating that such insurance is in full force and effect and that all premiums then due thereon have been paid and (ii) certified copies of all policies evidencing such insurance (or a binder, commitment or certificates signed by the insurer or a broker authorized to bind the insurer along with a commitment to deliver certified copies of the policies within forty-five (45) days after the Closing Date) meeting the requirements of *Exhibit O* and otherwise in

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form and substance satisfactory to each of the Bank Agent, the Representatives of the Underwriters and the FF&E Agent.

(c) *Insurance Certificates.* Delivery to each of the Bank Agent, the Representatives of the Underwriters, the FF&E Agent and the Disbursement Agent, to the extent not delivered pursuant to clause (b) above, of (i) a certificate of the Company, in form and substance satisfactory to each of the Bank Agent, the Representatives of the Underwriters and the FF&E Agent identifying underwriters, type of insurance, insurance limits and policy terms of any insurance then required to be obtained under the Material Project Documents then in effect and any other insurance required under *Exhibit O*, dated as of the Closing Date and stating that such insurance is in full force and effect if the same is required to be in effect and that if then required to be in effect, all premiums then due thereon have been paid, and that such insurance complies with the requirement of such Material Project Documents and *Exhibit O*, and (ii) certified copies of all policies evidencing such insurance (or a binder, commitment or certificates signed by the insurer or a broker authorized to bind the insurer along with a commitment to deliver certified copies of the policies within forty-five (45) days after the Closing Date) naming the Disbursement Agent, the Funding Agents and the Lenders as additional insureds and the Disbursement Agent as the loss payee under the insurance policies required under *Exhibit O* and the insurance policies under the "Owner Controlled Insurance Program" described and defined in the Prime Construction Contract and otherwise in form and substance satisfactory to each of the Bank Agent, the Representatives of the Underwriters and the FF&E Agent.

(d) *Insurance Advisor's Closing Certificate.* Delivery to each of the Bank Agent, the Representatives of the Underwriters, the FF&E Agent and the Disbursement Agent of the Insurance Advisor's Closing Certificate, in the form of *Exhibit B-3*, and otherwise in form and substance satisfactory to each of the Bank Agent, the Representatives of the Underwriters and the FF&E Agent.

3.1.6 *Project Security.* All of the Security Documents other than those not required to be delivered as of the Closing Date, in form and substance satisfactory to (a) in the case of the Bank Security Documents, the Bank Agent, (b) in the case of the Second Mortgage Notes Security Documents, the Representatives of the Underwriters and (c) in the case of the FF&E Security Documents, the FF&E Agent, shall have been executed and delivered to the secured parties thereunder and shall be in full force and effect and all actions necessary or desirable, including all filings, in the opinion of the Funding Agents party thereto to perfect the security interests granted therein as a valid security interest over the Project Security (or in the case of the FF&E Agent, the FF&E Component) having the priority contemplated therefor by this Agreement, the Intercreditor Agreements and the Security Documents shall have been taken or made.

3.1.7 *Opinions.* Each of the Bank Agent, the Representatives of the Underwriters, the FF&E Agent and the Disbursement Agent shall have received the opinions identified in *Exhibit Q*.

3.1.8 *Company's Closing Certificate.* Delivery to each of the Bank Agent, the Representatives of the Underwriters, the FF&E Agent and the Disbursement Agent of the Company's Closing Certificate (which shall include, among other things, a certification as to the solvency of the Company and each of the Loan Parties after giving pro forma effect to the transactions contemplated hereby) signed by a Responsible Officer of each Loan Party.

3.1.9 *Business Plan.* The Bank Lenders, the Representatives of the Underwriters and the FF&E Lenders shall have received a business plan for the five fiscal years of the Loan Parties following the Completion Date (the "*Business Plan*") and a satisfactory written analysis of the business and prospects of the Loan Parties for the period from the Completion Date through the

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fifth (5th) anniversary thereof, all in form and substance satisfactory to the Bank Lenders, the Representatives of the Underwriters and the FF&E Lenders.

3.1.10 *Advance Request.* Delivery to the Disbursement Agent and the Construction Consultant of a preliminary Advance Request in accordance with *Section 2.4.1(a)* and a final executed Advance Request in accordance with *Section 2.4.2(a)*, in each case, with the Required Contractor Advance Certificates and all other attachments, exhibits and certificates required by *Sections 2.4.1(a)*, *2.4.1(b)* or *2.4.2(a)*, as the case may be. Such Advance Request shall request an Advance in an amount sufficient to (a) pay all fees and expenses then due and payable to the Secured Parties and their respective advisors and consultants, (b) request a draw of \$38,000,000 under the FF&E Facility described in the first sentence of *Section 2.5.5* to refinance the purchase of the Aircraft, and (c) request a draw from the Company's Funds Account of \$2,500,000 for deposit in the Soft Costs Cash Management Account and of \$3,000,000 for deposit in the Hard Costs Cash Management Account.

3.1.11 *Consultant Certificates and Reports.* Delivery to each of the Bank Agent, the Representatives of the Underwriters, the FF&E Agent and the Disbursement Agent, of (a) the Construction Consultant's Closing Certificate with the Construction Consultant's Report in form and substance satisfactory to each of the Bank Agent, the Representatives of the Underwriters and the FF&E Agent attached thereto, (b) the Construction Consultant's Advance Certificate with respect to the requested Advance in the form of *Exhibit C-2* approving (subject to the proviso in *Section 2.4.2(c)*) the corresponding Advance Request, and (c) the Project Architect's Advance Certificate with respect to the Advance in the form of *Exhibit C-3*.

3.1.12 *Litigation.* No action, suit, proceeding or investigation of any kind shall have been instituted or, to the Company's knowledge, pending or threatened, including actions or proceedings of or before any Governmental Authority, to which any Loan Party, the Project or, to the knowledge of the Company, any Major Project Participant, is a party or is subject, or by which any of them or any of their properties or the Project are bound that could reasonably be expected to have a Material Adverse Effect, nor is the Company aware of any reasonable basis for any such action, suit, proceeding or investigation and no injunction or other restraining order shall have been issued and no hearing to cause an injunction or other restraining order to be issued shall be pending or noticed with respect to any action, suit or proceeding if the same reasonably could be expected to have a Material Adverse Effect.

3.1.13 *Fees.* All amounts required to be paid to or deposited with the Funding Agents, the Representatives of the Underwriters, the Disbursement Agent or the Independent Consultants and all taxes, fees and other costs payable in connection with the execution, delivery, recordation and filing of the documents and instruments referred to in this *Section 3.1*, shall have been paid or deposited, as the case may be, in full. The Company shall have paid or arranged for payment out of the requested Advance of all fees, expenses and other charges then due and payable by it under this Agreement or other Financing Agreements or under any agreements between the Company and any of the Independent Consultants.

3.1.14 *Project Budget.* Delivery to each of the Disbursement Agent, the Bank Agent, the Representatives of the Underwriters, the FF&E Agent and the Construction Consultant of a budget in the form of *Exhibit H-1* (as amended from time to time in accordance with the terms hereof, the "*Project Budget*") for all anticipated Project Costs (including, without limitation, Project Costs incurred prior to, as well as after, the Closing Date, including closing costs and Debt Service), which includes a drawdown schedule for Advances necessary to achieve Final Completion and such other information and supporting data as any of the Bank Agent, the Representatives of the Underwriters, the FF&E Agent, the Disbursement Agent or the Construction Consultant may reasonably require, together with a balanced statement of sources and uses of proceeds (and any

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other funds necessary to complete the Project), broken down by Facility and Line Item Category, which Project Budget, drawdown schedule and statement of sources and uses shall be satisfactory to the Construction Consultant, as and to the extent certified to in the Construction Consultant's Closing Certificate and the Bank Lenders, the Representatives of the Underwriters and the FF&E Agent, it being acknowledged by the Bank Lenders, the Representatives of the Underwriters and the FF&E Agent that the level of detail of the Project Budget shall be commensurate with the state of completion of the Plans and Specifications and that, without in any way affecting the Company's obligations under *Section 6.4* with respect to amendments to the Project Budget, upon completion of the Plans and Specifications, the part of the Project Budget referable thereto shall be broken down, to the Disbursement Agent's and the Construction Consultant's reasonable satisfaction, to the level of line item detail required for the parts of the Project with Final Plans and Specifications.

3.1.15 *Project Schedule and Schedule of Key Dates.* Delivery to the Disbursement Agent, the Bank Agent, the Representatives of the Underwriters, the FF&E Agent and the Construction Consultant of a schedule for construction and completion of the Project in the form of *Exhibit I* (as amended from time to time in accordance with the terms hereof, the "*Project Schedule*") and a schedule of key dates for construction and completion of the Project in the form of *Exhibit J*, each of which demonstrates that the Completion Date will occur on or before the Scheduled Completion Date and which is otherwise satisfactory to the Construction Consultant, as certified to in the Construction Consultant's Closing Certificate.

3.1.16 *Financial Statements.* Delivery to the Disbursement Agent, the Bank Agent, the Representatives of the Underwriters and the FF&E Agent of the most recent annual consolidated and consolidating financial statements of the type which must be provided under *Section 5.6.5* and most recent quarterly consolidated and consolidating financial statements from Valvino and its consolidated Subsidiaries (including Wynn Las Vegas and its consolidated Subsidiaries), together with certificates from a Responsible Officer of each such Person certifying such financial statements and stating that no material adverse change in the consolidated assets, liabilities, operations or financial condition of each such Person has occurred since the dates of the respective financial statements provided to the Disbursement Agent, the Bank Agent, the Representatives of the Underwriters and the FF&E Agent, except as otherwise provided in such certificate.

3.1.17 *Material Adverse Effect.* Since December 31, 2001, there shall not have occurred any material adverse condition or material adverse change in or affecting the Project Budget, the economics or feasibility of developing and/or constructing and/or operating the Project, or business, assets, liabilities, property, condition (financial or otherwise), results of operations, prospects, value or management of Wynn Las Vegas individually, or the Loan Parties taken as a whole, or any Project Credit Support Provider, or calls into question in any material respect the Projections or any of the material assumptions on which the Projections were prepared, or any other event, development or circumstance that has caused or resulted in or could reasonably be expected to cause or result in a Material Adverse Effect as certified by a Responsible Officer of the Company in the Company's Closing Certificate.

3.1.18 *Events of Default.* No Event of Default or Potential Event of Default shall have occurred and be continuing, as certified by a Responsible Officer of the Company in the Company's Closing Certificate.

3.1.19 *Permits.*

(a) All Permits described in *Exhibit M* as required to have been obtained by the Company or any other Person by the Closing Date shall have been issued and be in full force and effect and not subject to current legal proceedings or to any unsatisfied conditions (that are required to be satisfied by the Closing Date) that could reasonably be expected to

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materially adversely modify any Permit, to revoke any Permit, to restrain or prevent the construction or operation of the Project or otherwise impose adverse conditions on the Project or the financing contemplated under the Financing Agreements and all applicable appeal periods with respect thereto shall have expired;

(b) With respect to any of the Permits described in *Exhibit M* as not yet required to be obtained (other than the gaming license), (i) each such Permit is of a type that is routinely granted on application and compliance with the conditions for issuance and (ii) no facts or circumstances exist which indicate that any such Permit will not be timely obtainable without undue expense or delay by the Company or the applicable Person, respectively, prior to the time that it becomes required; and

3.1.20 *Gaming License.* The Buy-Sell Agreement is in full force and effect.

3.1.21 *Third Party Consents.* Delivery to the Disbursement Agent and each of the Bank Agent, the Representatives of the Underwriters and the FF&E Agent of Consents from (a) Prime Contractor, (b) Construction Guarantor, (c) Desert Inn Improvement as supplier under the Water Supply Contract, (d) Parking Structure Contractor, (e) Project Architect, and (f) the Aqua Theater Designer; each in form of *Exhibit S* or otherwise in form and substance satisfactory to the Bank Agent, the Representatives of the Underwriters and the FF&E Agent.

3.1.22 *Representations and Warranties.* Each representation and warranty of (a) each Loan Party set forth in *Article 4* hereof or in any of the other Operative Documents shall be true and correct in all material respects as if made on such date (except that any representation and warranty that relates expressly to an earlier date shall be deemed made only as of such earlier date), and (b) to the Company's knowledge, each Major Project Participant (other than any Loan Party) set forth in any of the Operative Documents shall be true and correct in all material respects as if made on such date (except that any representation and warranty that relates expressly to an earlier date shall be deemed made only as of such earlier date) unless the failure of any such representation and warranty referred to in this clause (b) to be true and correct could not reasonably be expected to have a Material Adverse Effect, in each case, as certified by the Company in the Company's Closing Certificate.

3.1.23 *Service of Process.* Delivery to the Funding Agents and the Disbursement Agent of a letter from Corporation Service Company or any other Person reasonably satisfactory to each of the Bank Agent, the Representatives of the Underwriters and the FF&E Agent consenting to its appointment by each Loan Party in each case in form and substance acceptable to each of the Bank Agent, the Representatives of the Underwriters and the FF&E Agent, as each such Person's agent to receive service of process in New York, New York.

3.1.24 *Utility Availability.* The Construction Consultant shall have become satisfied, as certified to in the Construction Consultant's Closing Certificate, that arrangements, which are reflected accurately in the Project Budget, shall have been or will be made under the Material Project Documents or otherwise on commercially reasonable terms for the provision of all utilities necessary for the construction, operation and maintenance of the Project as contemplated by the Operative Documents and the Final Plans and Specifications.

3.1.25 *Establishing of Company Accounts; Second Mortgage Notes Proceeds.* (a) Each of the Company Accounts shall have been established pursuant hereto and the Collateral Account Agreements; (b) the Second Mortgage Notes shall have been issued in an principal amount at maturity of Three Hundred Seventy Million Dollars (\$370,000,000), and net proceeds of Three Hundred Forty Three Million Three Hundred Thirty Four Thousand One Hundred Dollars (\$343,334,100) shall have been deposited in the Second Mortgage Notes Proceeds Account; (c) funds in an amount equal to Fifty Million Dollars (\$50,000,000) shall have been deposited in

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the Completion Guaranty Deposit Account, (d) funds in an amount equal to Thirty Million Dollars (\$30,000,000) shall have been deposited in the Project Liquidity Reserve Account, and (e) after giving effect to the payments and transfers described in that certain funds flow letter dated October 30, 2002 entered into by the Company, the Bank Agent, the FF&E Agent and the Disbursement Agent (the "*Closing Payments*"), funds in the amount of \$383,578,773.70 shall have been deposited in the Company's Funds Account.

3.1.26 *Funding of Equity.* The Company shall have certified in the Company's Closing Certificate (as confirmed by the Construction Consultant to the extent set forth in the Construction Consultant's Closing Certificate) that (a) the amounts on deposit in the Project Liquidity Reserve Account have been irrevocably and unconditionally contributed to the Company and (b) in addition thereto, cash or property in the amount of Four Hundred Forty One Million One Hundred Forty Nine Thousand Eight Hundred Twenty One Dollars (\$441,149,821) has been irrevocably and unconditionally contributed to Wynn Las Vegas and applied to the payment of Project Costs and (c) cash in the amount of One Hundred Thirty One Million Two Hundred Twenty-Seven Thousand Six Hundred Ten Dollars (\$131,227,610) has been irrevocably and unconditionally contributed to Wynn Las Vegas and deposited into the Company's Funds Account and (d) net proceeds of the initial public offering of Wynn Resorts, Limited in the amount of Three Hundred Ninety Million Four Hundred Sixty Five Thousand Three Hundred Fifty Dollars (\$390,465,350) has been irrevocably and unconditionally contributed to Wynn Las Vegas (which amount does not include \$40 million of the net proceeds of such initial public offering associated with the Macau project), \$383,578,773.70 of which, after giving effect to the Closing Payments, have been deposited in the Company's Funds Account.

3.1.27 *A.L.T.A. Surveys.* The Disbursement Agent and each of the Bank Agent, the Representatives of the Underwriters and the FF&E Agent shall have received A.L.T.A. surveys of the Site and the Site Easements, satisfactory in form and substance to the Title Insurer and each of the Bank Agent, the Representatives of the Underwriters and the FF&E Agent, dated no earlier than sixty (60) days prior to the Closing Date and certified to each such Person by a licensed surveyor satisfactory to each such Person, showing (a) as to the Site, the exact location and dimensions thereof, including the location of all means of access thereto and all easements relating thereto; (b) as to the Site Easements, the exact location and dimensions thereof to the extent capable of being described, including the location of all means of access thereto, and all improvements or other encroachments in or on the Site Easements; (c) the existing utility facilities servicing the Project (including water, electricity, gas, telephone, sanitary sewer and storm water distribution and detention facilities); (d) that such existing improvements do not encroach or interfere (in any manner that could reasonably be expected to have a Material Adverse Effect) with adjacent property or existing easements or other rights (whether on, above or below ground), and that there are no gaps, gores, projections, protrusions or other survey defects other than Permitted Encumbrances applicable to such real property; (e) whether the Site or any portion thereof is located in a special earthquake or flood hazard zone; and (f) that there are no other matters that could reasonably be expected to be disclosed by a survey constituting a defect in title other than the Permitted Encumbrances. The Disbursement Agent and each of the Bank Agent and Representatives of the Underwriters and the FF&E Agent shall have received an overlay to the A.L.T.A. Survey showing the proposed perimeters within which all of the foundations for the Project are to be located pursuant to the Plans and Specifications.

3.1.28 *Title Policies.* The Company shall have delivered to (a) the Bank Agent, a lender's A.L.T.A. policy of title insurance, or a commitment to issue such policy, in the amount of \$1,000,000,000 and (b) the Indenture Trustee on behalf of the Second Mortgage Note Holders, a lender's A.L.T.A. policy of title insurance, or a commitment to issue such policy, in the amount of \$370,000,000. Each such policy or commitment shall (i) include such endorsements as are required

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by the Bank Agent and the Representatives of the Underwriters, respectively, (ii) be reinsured by such reinsurance as is satisfactory to the Bank Agent and the Representatives of the Underwriters, respectively, (iii) be issued by Title Insurer in form and substance satisfactory to the Bank Agent and the Representatives of the Underwriters, respectively, and (iv) insure (or agree to insure) that:

(a) Wynn Las Vegas has fee simple title to the Site and the Site Easements (other than the Mortgaged Property encumbered or to be encumbered by Valvino, Wynn Resorts Holdings, Palo and Desert Inn Improvement) and a valid leasehold estate or easement interest, as the case may be, in the portions of the Site described in the Affiliate Real Estate Agreements, free and clear of liens, encumbrances and other exceptions to title except those exceptions specified on *Exhibit N-1* ("*Wynn Las Vegas Permitted Encumbrances*");

(b) Valvino has fee simple title to the Phase II Land and the Phase II Land Easements, free and clear of liens, encumbrances and other exceptions to title except those exceptions specified on *Exhibit N-2* ("*Valvino Permitted Encumbrances*");

(c) Wynn Resorts Holdings has fee simple title to the Golf Course Land (other than the Palo Home Site Land and the Water Utility Land encumbered or to be encumbered by Palo and Desert Inn Improvement, respectively) and Golf Course Land Easements, free and clear of liens, encumbrances and other exceptions to title except those exceptions specified on *Exhibit N-3* ("*Wynn Resorts Holdings Permitted Encumbrances*");

(d) Palo has fee simple title to the Palo Home Site Land free and clear of liens, encumbrances and other exceptions to title except those exceptions specified on *Exhibit N-4* (the "*Palo Permitted Encumbrances*");

(e) Desert Inn Improvement has fee simple title to the Water Utility Land, free and clear of liens, encumbrances and other exceptions to title except those exceptions specified on *Exhibit N-5*; and

(f) each Deed of Trust (other than the Bank DIIC Deed of Trust and the Second Mortgage Notes DIIC Deed of Trust which will be recorded after the Closing Date pursuant to *Section 3.3.22*) is (or will be when recorded) a valid lien on the "Trust Estate" and (as defined in each Deed of Trust) entitled to the priority described therein, free and clear of all liens, encumbrances and exceptions to title whatsoever, other than (i) Wynn Las Vegas Permitted Encumbrances in the case of the Deeds of Trust executed by Wynn Las Vegas, (ii) Valvino Permitted Encumbrances in the case of the Deeds of Trust executed by Valvino, and (iii) Wynn Resorts Holdings Permitted Encumbrances in the case of the Deeds of Trust executed by Wynn Resorts Holdings; and (iv) Palo Permitted Encumbrances in the case of the Deeds of Trust executed by Palo.

3.1.29 *Commitment and Fee Letters.* The letters regarding the fees of the Bank Agent, the Disbursement Agent and the FF&E Agent, respectively, shall have been executed and delivered. The Company shall have complied with all of its obligations under and agreements in the Commitment Letter, the Bank Fee Letter, the Bank Agent Fee Letter, the Disbursement Agent Fee Letter, the FF&E Arrangement Fee Letter and the FF&E Agent Fee Letter then required to be complied with.

3.1.30 *Plans and Specifications.* The Company shall have delivered to the Construction Consultant Plans and Specifications in form and substance satisfactory to the Construction Consultant, as certified to in the Construction Consultant's Closing Certificate. Subject to approval of the finalized Plans and Specifications by the proper Governmental Authorities, such Plans and Specifications shall constitute Final Plans and Specifications.

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3.1.31 *Corporation and Capital Structure; Management.* The corporate organization structure, capital structure and ownership of the Project Credit Support Providers, the Company and its Subsidiaries shall be satisfactory to each of the Bank Agent, the Representatives of the Underwriters and the FF&E Agent. The management structure of the Company and its Subsidiaries shall be satisfactory to each of the Bank Agent, the Representatives of the Underwriters, and the FF&E Agent, and each such Person shall have received copies of, and shall be satisfied with the form and substance of, any and all employment contracts with senior management of the Company.

3.1.32 *Real Estate Appraisals.* Each of the Bank Agent, the Representatives of the Underwriters, the FF&E Agent and the Disbursement Agent shall have received a FIRREA appraisal of the Site from an independent real estate appraiser reasonably satisfactory to the Bank Agent, the Representatives of the Underwriters and the FF&E Agent, in form, scope and substance satisfactory to each such Person, satisfying the requirements of any applicable laws and regulations and demonstrating a value of the Project of not less than \$2.5 billion upon Completion.

3.1.33 *Environmental Reports.* Each of the Bank Agent, the Representatives of the Underwriters, the FF&E Agent and the Disbursement Agent shall have received the Phase I environmental assessment for the Site and the Site Easements dated August 14, 2002 (the "*Phase I Report*"), the Phase II Environmental Site Assessment for the Golf Course Land and the Golf Course Land Easements (the "*Phase II Report*") conducted by Terracon and dated September 11, 2002 and that certain reliance letter from Terracon dated October 22, 2002.

3.1.34 *No Work at Site.* The Company shall not have commenced, and shall not have permitted any Contractor or Subcontractor or any other Person to commence, any "work of improvement" as defined in Nevada Revised Statutes *Section 108.221* on the Mortgaged Property.

3.1.35 *Proceeds.* The Company shall be in compliance with *Sections 5.1.1* and *5.8*, and no demands for funds shall be outstanding under *Sections 5.8.1*, *5.8.2* or *5.8.3*.

3.1.36 *In Balance Requirement.* The Project shall be In Balance.

3.1.37 *No Restrictions.* No order, judgment or decree of any court, arbitrator or governmental authority shall purport to enjoin or restrain any of the Bank Lenders from making the Advances to be made by them on the Closing Date.

3.1.38 *Violation of Certain Regulations.* The making of the requested Advance shall not violate any law including Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System.

3.1.39 *Due Diligence.* Each of the Bank Lenders and the FF&E Lenders shall have completed its due diligence review of each Loan Party and each Project Credit Support Provider and their respective affiliates and operations, and shall be satisfied with the results thereof.

3.1.40 *Acceptable Rating.* On or before the Closing Date, the Company shall have obtained and maintained a rating accorded the Company's long term, senior unsecured debt securities by a "nationally recognized statistical rating organization" (as such term is defined the Securities and Exchange Commission for purposes of Rule 436(g)(2) under the Securities Act of 1933, as amended) that is satisfactory to the Bank Lenders, the Representatives of the Underwriters and the FF&E Agent.

3.1.41 *Aircraft Refinancing.* The FF&E Agent shall have confirmed that the conditions precedent set forth in *Sections 4.1* of the FF&E Facility Agreement shall have been satisfied or waived.

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3.1.42 *Notices of Pledges of Water Permits.* Valvino shall have executed duplicate original notices of pledge in form and substance satisfactory to the Bank Agent and the Representatives of the Underwriters describing Nevada Permit to Appropriate Nos. 60164 (certificate no. 15447) and 60165 (certificate no. 15448) and such notices of pledge shall have been completed and delivered to the Disbursement Agent. The Company hereby authorizes the Disbursement Agent to complete the recording information from each Deed of Trust signed by Valvino and to file them with the Nevada State Engineer promptly after recordation of such Deeds of Trust, together with a Report of Conveyance and Abstract of Title for each permit.

3.1.43 *Other Documents.* The Disbursement Agent and each of the Bank Agent, the Representatives of the Underwriters and the FF&E Agent shall have received such other documents and evidence as are customary for transactions of this type as each such Person may reasonably request in connection with the transactions contemplated hereby.

3.2 Conditions Precedent to Advances from Company's Funds Account Prior to Initial Disbursement from Second Mortgage Notes Proceeds Account. Prior to the initial disbursement of funds from the Second Mortgage Notes Proceeds Account pursuant to *Section 2.5.2* and *Section 3.3*, the obligation of the Disbursement Agent to make Advances hereunder from the Company's Funds Account is subject to the prior satisfaction of each of the conditions precedent set forth in *Sections 3.3.1, 3.3.2, 3.3.3, 3.3.5, 3.3.6, 3.3.7, 3.3.9, 3.3.10, 3.3.11, 3.3.12, 3.3.14, 3.3.16* and *3.3.18*. The parties hereto, however, agree that the purpose of the foregoing conditions precedent is to enable the Secured Parties and the Construction Consultant to track the progress of the Project so as to be in a position to determine, at such time as the Company requests an Advance pursuant to *Section 3.3*, whether the conditions set forth therein have been satisfied. Accordingly, upon the request of the Company at any time prior to initial disbursement of funds from the Second Mortgage Notes Proceeds Account, the Disbursement Agent shall release funds from the Company's Funds Account notwithstanding the failure to satisfy any of the above-enumerated conditions precedent (other than *Sections 3.3.5* and *3.3.16* (provided that notwithstanding any other items required to be set forth in an Advance Request, the Advance Request submitted by the Company needs only to include the date of the requested Advance from the Company's Funds Account, the amount of such Advance, the payees and/or Accounts to which such Advance shall be paid and/or transferred and a certification to the effect that the conditions set forth in *Section 3.3.16* are satisfied (except for obtaining third party consents)). The Company acknowledges, however, that any inability on its part to satisfy the conditions set forth in this *Section 3.2* may be an early indication that, at such time as the Company requests an Advance in accordance with *Section 3.3*, it may not be able to satisfy the conditions set forth therein. Further, in the event funds are disbursed to the Company from the Company's Funds Account without satisfying the conditions set forth in this *Section 3.2*, any funds so released and expended may not be taken into consideration for purposes of *Sections 3.3.18* and/or *3.3.24*. The Company acknowledges and agrees that, regardless of the amounts of funds expended by the Company in furtherance of the Project, no funds shall be advanced by the Bank Lenders or the FF&E Lenders (other than the initial Advance of \$38,000,000) or disbursed from the Second Mortgage Notes Proceeds Account unless all of the conditions set forth in *Section 3.3* hereof have been satisfied or waived.

3.3 Conditions Precedent to Advances. The obligation (a) of the Bank Lenders to make Advances of Loans by depositing funds in the Disbursement Account, by transferring funds from the Bank Proceeds Account to the Disbursement Account or by issuing a Letter of Credit, (b) of the Indenture Trustee to make Advances by releasing funds from the Second Mortgage Notes Proceeds Account hereunder, (c) of the FF&E Lenders to make Advances of Loans (other than the initial Advance of \$38,000,000 under the FF&E Facility pursuant to *Section 2.5.1(b)*) by depositing funds in the FF&E Proceeds Account, by transferring funds from the FF&E Proceeds Account to the Company's FF&E Payment Account or by advancing funds towards the acquisition of any replacement Aircraft pursuant to the terms and conditions contained in the FF&E Facility Agreement and (d) of the Disbursement

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Agent to make Advances hereunder from the Company's Funds Account after the initial disbursement of funds from the Second Mortgage Notes Proceeds Account are subject to the prior satisfaction of each of the following conditions precedent in form and substance reasonably satisfactory to the Disbursement Agent in its reasonable discretion:

3.3.1 *Certain Operative Documents.* Each Material Project Document and each Financing Agreement shall be in full force and effect, without amendment since the respective date of its execution and delivery, and in a form which was provided to the Bank Agent, the Representatives of the Underwriters and the FF&E Agent prior to the Closing Date except, (a) for amendments to Material Project Documents not prohibited by *Section 6.1* hereof or the Bank Credit Agreement, the Second Mortgage Notes Indenture or the FF&E Facility Agreement, (b) to the extent the Company has entered into a replacement Material Project Document to the extent permitted by *Section 7.1.9* or if pursuant to such Section the Company is not required to enter into a replacement Material Project Document, and each certificate delivered by the Company with respect to any such document shall be true and correct in all material respects, as certified by the Company in the relevant Advance Request and (c) amendments to the Financing Agreements to the extent permitted under the Facility Agreements. Each of the Loan Parties shall have complied with all of its obligations under and agreements in each Financing Agreement (to the extent then due and required to be complied with). The Disbursement Agent shall be entitled to rely on the certification by the Company in the relevant Advance Request or, if applicable, in the Company's Opening Date Certificate or Completion Certificate, determining that this condition has been satisfied unless the Disbursement Agent shall have actual knowledge that the Company's certification is inaccurate.

3.3.2 *Representations and Warranties.* Each representation and warranty of (a) each Loan Party set forth in *Article 4* hereof or in any of the other Financing Agreements or each Material Project Document shall be true and correct in all material respects as if made on such date (except that any representation and warranty that relates expressly to an earlier date shall be deemed made only as of such earlier date), and (b) to the Company's knowledge, each Major Project Participant (other than any Loan Party) set forth in any of the Material Project Documents shall be true and correct in all material respects as if made on such date (except that any representation and warranty that relates expressly to an earlier date shall be deemed made only as of such earlier date) unless the failure of any such representation and warranty referred to in this clause (b) to be true and correct could not reasonably

be expected to have a Material Adverse Effect, in each case, as certified by the Company in the relevant Advance Request. The Disbursement Agent shall be entitled to rely on the certification by the Company in the relevant Advance Request or, if applicable, in the Company's Opening Date Certificate or Completion Certificate, in determining that this condition has been satisfied unless the Disbursement Agent shall have actual knowledge that the Company's certification is inaccurate.

3.3.3 *Events of Default.* No Event of Default or Potential Event of Default shall have occurred and be continuing or could reasonably be expected to result from such Advance, as certified by the Company in the relevant Advance Request. The Disbursement Agent shall be entitled to rely on the certification by the Company in the relevant Advance Request or, if applicable, in the Company's Opening Date Certificate or Completion Certificate, in determining that this condition has been satisfied unless the Disbursement Agent shall (a) have received notice from any Funding Agent that an Event of Default or Potential Event of Default has occurred or (b) otherwise shall have acquired actual knowledge that the Company's certification is inaccurate.

3.3.4 *Notice of Advance Request.* The Disbursement Agent shall have received and shall have been notified that the Funding Agents have received a preliminary Notice of Advance Request in accordance with *Section 2.4.1(c)* and a final Notice of Advance Request in accordance with *Section 2.4.2(b)* with respect to the requested Advance.

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3.3.5 *Advance Request and Certificate.* The Company shall have delivered to the Disbursement Agent and the Construction Consultant a preliminary Advance Request for the requested Advance in accordance with *Section 2.4.1(a)* and a final executed Advance Request for the requested Advance in accordance with *Section 2.4.2(a)*, in each case, with the Required Contractor Advance Certificates and all other attachments, exhibits and certificates required by *Sections 2.4.1(a)* or *2.4.1(b)*, as the case may be. Such Advance Request shall request an Advance in an amount sufficient to pay all amounts due and payable for work performed on the Project through the last day of the period covered by such Advance Request. The Disbursement Agent shall have reviewed and evaluated the same as provided in *Section 2.4.3(a)* and, subject to *Section 2.4.3(a)(ii)*, shall not have become aware of any material error, inaccuracy, misstatement or omission of fact in an Advance Request or an attachment, exhibit or certificate attached thereto or information provided by the Company upon the request of the Disbursement Agent.

3.3.6 *Consultant's Certificates.*

(a) Delivery to the Disbursement Agent of the Construction Consultant's certificate with respect to the requested Advance as and when required by *Section 2.4.2(c)*, in the form of *Exhibit C-2*, approving (subject to the proviso in *Section 2.4.2(c)*) the corresponding Advance Request.

(b) Delivery to the Disbursement Agent of the Project Architect's certificate with respect to the requested Advance as and when required by *Section 2.4.2(d)*, in the form of *Exhibit C-3*.

3.3.7 *Liens.* The Company shall have delivered or caused to be delivered to the Disbursement Agent an updated lien release summary chart in the form of *Appendix VIII* to the Company's Advance Request and the following releases:

(a) *Unconditional Releases.* Duly executed acknowledgments of payments and unconditional releases of mechanics' and materialmen's liens in the form of *Exhibit Y-1* from the Contractors and Subcontractors listed in clauses (i) and (ii) below for all work, services and materials, including equipment and fixtures of all kinds, done, performed or furnished for the construction of the Project through the last day covered by the immediately preceding Advance Request, except for such work, services and materials the payment for which does not exceed, in the aggregate \$10,000,000 and is being disputed in good faith, so long as (1) such proceedings shall not involve any substantial danger of the sale, forfeiture or loss of the Project, or any Mortgaged Property, as the case may be, title thereto or any interest therein and shall not interfere in any material respect with the Project or any Mortgaged Property and (2) adequate cash reserves have been provided therefor through an allocation in the Anticipated Cost Report. The Persons required to provide such lien releases are:

(i) The Prime Contractor and each of its first tier trade subcontractors and materialmen under the Prime Construction Contract, in each case performing work with a contract price (or expected aggregate amount to be paid in the case of "cost-plus" contracts) in excess of \$25,000; and

(ii) (A) Each Contractor party to a "fixed price" contract and (B) each other Contractor and each of its first tier trade subcontractors and materialmen, in each case performing work with a contract price (or expected aggregate amount to be paid in the case of "cost-plus" contracts) in excess of \$100,000 (or with respect to suppliers and vendors who are located outside the United States and do not provide labor at the Site, \$200,000).

(b) *Conditional Releases.* Duly executed acknowledgments of payments and releases of mechanics' and materialmen's liens in the form of *Exhibit Y-2* from the Contractors and Subcontractors listed in clauses (i) and (ii) below for all work, services and materials,

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including equipment and fixtures of all kinds, done, performed or furnished for the construction of the Project from the last day covered by the immediately preceding Advance Request through the last day covered by the current Advance Request except for such work, services and materials the payment for which does not exceed, in the aggregate \$10,000,000 and is being disputed in good faith, so long as (1) such proceedings shall not involve any substantial danger of the sale, forfeiture of loss or the Project or any Mortgaged Property, as the case may be, title thereto or any interest therein and shall not interfere in any material respect with the Project or any Mortgaged Property and (2) adequate cash reserves have been provided therefor through an allocation in the Anticipated Cost Report. The Persons required to provide such lien releases are:

(i) The Prime Contractor and each of its first tier trade subcontractors and materialmen under the Prime Construction Contract, in each case performing work with a contract price (or expected aggregate amount to be paid in the case of "cost-plus" contracts) in excess of \$25,000;

(ii) (A) Each Contractor party to a "fixed price" contract and (B) each other Contractor and each of its first tier trade subcontractors and materialmen, in each case performing work with a contract price (or expected aggregate amount to be paid in the case of "cost-plus" contracts) in excess of \$100,000 (or, with respect to suppliers and vendors who are located outside the United States and do not provide labor at the Site, \$200,000).

Notwithstanding the foregoing, if the Company or any Contractor does not obtain any of the foregoing waivers and releases of liens required under clauses (a) or (b) above (collectively, "*Outstanding Releases*"), then instead of delivering such Outstanding Releases and as a condition to any progress or other payment from the proceeds of the requested Advance, the Company may obtain and provide to the Disbursement Agent from the Title Insurer bonds or endorsements to the title insurance policies insuring the lien free status of the work and the Mortgaged Property; *provided, however*, that at no time shall the aggregate of all Outstanding Releases represent work with an aggregate value in excess of \$2,000,000.

The Disbursement Agent may rely on the certification by the Company and the Construction Consultant set forth in their respective certificates relating to the requested Advance in determining that all Contractors and Subcontractors required to deliver lien releases pursuant to clauses (a) and (b) above have delivered the same unless the Disbursement Agent shall have actual knowledge that the Company's certification is inaccurate.

3.3.8 Title Policy Endorsement. The Disbursement Agent shall have received a commitment from the Title Insurer, attached to the Advance Request, evidencing the Title Insurer's unconditional commitment to issue an endorsement to each of the Bank Agent's and the Indenture Trustee's Title Policy in the form of a 122 CLTA Endorsement insuring the continuing priority of the Lien of each Deed of Trust as security for the requested Advance and confirming and/or insuring that (i) since the previous disbursement from the Disbursement Account, there has been no change in the condition of title unless permitted by the Financing Agreements, and (ii) there are no intervening liens or encumbrances which may then or thereafter take priority over the respective Liens of the Deeds of Trust other than Permitted Encumbrances and such intervening liens or encumbrances securing amounts the payment of which is being disputed in good faith by the Company, so long as the Disbursement Agent has received confirmation from the applicable Funding Agents that the Title Insurer has delivered to such Funding Agents any endorsement to the respective Title Policies required or desirable to assure against loss to the Project Secured Parties due to the priority of such lien or encumbrance.

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3.3.9 Permits. The Company shall have certified (and, as set forth in the Construction Consultant's certificate related to the requested Advance, the Construction Consultant shall not have become aware of any inaccuracies in the Company's certification) that:

(a) Other than exceptions to any of the following that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (i) each of the Loan Parties has obtained and holds all Permits described in *Exhibit M* required to be obtained by such Loan Party as of the date this representation is deemed made, (ii) all such Permits are in full force and effect and each of the Loan Parties has performed and observed all requirements of such Permits to the extent required to be performed as of the date this representation is deemed made, (iii) no event has occurred which allows or results in, or after notice or lapse of time would allow or result in, revocation, modification, suspension or termination by the issuer thereof or in any other impairment of the rights of the holder of any such Permit, (iv) no such Permits contain any restrictions, either individually or in the aggregate, that could reasonably be expected to materially and adversely affect any of the Loan Parties, or the operation of the business of any such Loan Party or any property owned, leased or otherwise operated by such Person, (v) the Company has no knowledge that any Governmental Authority is considering limiting, modifying, suspending, revoking or renewing any such Permit on terms that could reasonably be expected to materially and adversely affect any of the Loan Parties or the operation of the business of any such Loan Party or any property owned, leased or otherwise operated by such Person, and (vi) each of the Loan Parties reasonably believes that each such Permit will be timely renewed and complied with, without undue expense or delay;

(b) with respect to any of the Permits described in *Exhibit M* as not yet required to be obtained (other than the gaming license), (i) each such Permit is of a type that is routinely granted on application and compliance with the conditions for issuance and (ii) no facts or circumstances exist which indicate that any such Permit will not be timely obtainable without undue expense or delay by the Company or the applicable Person, respectively, prior to the time that it becomes required; and

(c) the Buy-Sell Agreement is in full force and effect.

3.3.10 Additional Documents. With respect to any Material Project Documents entered into or obtained, transferred or required (whether because of the status of the construction or operation of the Project or otherwise) since the date of the most recent Advance, (a) if such Material Project Document constitutes a Contract, there shall be an Additional Contract Certificate delivered by the Company to the Disbursement Agent, the Funding Agents and the Construction Consultant in accordance with *Section 6.1* and redelivery of such matters as are described in *Section 3.1.1*, *Section 3.1.4* and, if requested by any Funding Agent or the Disbursement Agent, *Section 3.1.8*, in each case, to the extent not previously addressed and (b) if such Material Project Document does not constitute a Contract the Bank Agent shall have confirmed that the Company has complied with the requirements of *Section 7.23* of the Bank Credit Agreement. The Disbursement Agent may rely upon the certification of the Company set forth in the relevant Advance Request or, if applicable, the Company's Opening Date Certificate or Completion Certificate in determining whether an Additional Project Document has been entered into since the date of the most recent Advance unless the Disbursement Agent shall have actual knowledge that the Company's certification is inaccurate.

3.3.11 Plans and Specifications. The Disbursement Agent and the Construction Consultant shall have received copies of all Plans and Specifications which, as of the date of the requested Advance Date, constitute Final Plans and Specifications to the extent not theretofore delivered. The Disbursement Agent may rely upon the certification of the Company set forth in the relevant

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Advance Request or, if applicable, in the Company's Opening Date Certificate or Completion Certificate, in order to establish satisfaction of this condition unless the Disbursement Agent shall have actual knowledge that the Company's certification is inaccurate.

3.3.12 Proceeds. The Company shall be in compliance with *Sections 5.1.1* and *5.9*, and no demands for funds shall be outstanding under *Sections 5.9.1* or *5.9.2*.

3.3.13 *Fees and Expenses.* The Company shall have paid or arranged for payment out of the requested Advance of all fees, expenses and other charges then due and payable by it under this Agreement, the other Financing Agreements, the Bank Agent Fee Letter, the Disbursement Agent Fee Letter, the FF&E Agent Fee Letter or under any agreements between the Company and any of the Independent Consultants. The Disbursement Agent shall be entitled to rely upon the certification of the Company in the relevant Advance Request or, if applicable, in the Company's Opening Date Certificate or Completion Certificate, in determining that this condition has been satisfied unless the Disbursement Agent shall have actual knowledge that the Company's certification is inaccurate.

3.3.14 *Insurance.* Insurance complying in all material respects with the requirements of *Section 5.20* shall be in place and in full force and effect. The Disbursement Agent shall be entitled to rely upon the certification of the Company in the relevant Advance Request or, if applicable, in the Company's Opening Date Certificate or Completion Certificate, in determining that this condition has been satisfied unless the Disbursement Agent shall have actual knowledge that the Company's certification is inaccurate.

3.3.15 *As-Built Survey.* At the time of the first Advance Request occurring after completion of the foundation work for each phase of the Project, the Company shall cause an updated as-built survey to be delivered to the Construction Consultant and the Disbursement Agent satisfactory in form and substance to the Title Insurer and each Funding Agent and otherwise complying with the requirements of clauses (a) through (f) of *Section 3.1.27*. The Disbursement Agent shall be entitled to rely upon the certification of the Company in the relevant Advance Request or, if applicable, in the Company's Opening Date Certificate or Completion Certificate, in determining that this condition has been satisfied unless the Disbursement Agent shall have actual knowledge that the Company's certification is inaccurate.

3.3.16 *Project Security.* All of the Security Documents shall continue to be in full force and effect and all actions necessary or desirable (including all filings) in the reasonable opinion of the Funding Agents party thereto to perfect the security interests granted therein as a valid security interest over the Project Security thereunder having the priority contemplated therefor by this Agreement and the Security Documents shall have been taken or made. All property, rights and assets required for the Project shall be free and clear of all encumbrances except for Permitted Liens. The Disbursement Agent shall be entitled to rely upon the certification of the Company in the relevant Advance Request or, if applicable, in the Company's Opening Date Certificate or Completion Certificate, in determining that this condition has been satisfied unless the Disbursement Agent shall have actual knowledge that the Company's certification is inaccurate.

3.3.17 *Litigation.* No action, suit, proceeding or investigation of any kind shall have been instituted or, to the Company's knowledge, pending or threatened, including actions or proceedings of or before any Governmental Authority, to which any Loan Party, the Project or, to the knowledge of the Company, any Major Project Participant (other than any Loan Party), is a party or is subject, or by which any of them or any of their properties or the Project are bound that could reasonably be expected to have a Material Adverse Effect nor is the Company aware of any reasonable basis for any such action, suit, proceeding or investigation and no injunction or other restraining order shall have been issued and no hearing to cause an injunction or other restraining order to be issued shall be pending or noticed with respect to any action, suit or proceeding if the

same could reasonably be expected to have a Material Adverse Effect. The Disbursement Agent shall be entitled to rely upon the certification of the Company in the relevant Advance Request or, if applicable, in the Company's Completion Certificate, in determining that this condition has been satisfied unless the Disbursement Agent shall have actual knowledge that the Company's certification is inaccurate.

3.3.18 *In Balance Requirement.* The Project shall be In Balance.

3.3.19 *No Restriction.* No order, judgment or decree of any court, arbitrator or governmental authority shall purport to enjoin or restrain any of the Bank Lenders, the FF&E Lenders or the Indenture Trustee from making the Advances to be made by it on the requested Advance Date. The Disbursement Agent shall be entitled to rely upon a certification of the Company in the relevant Advance Request or, if applicable, in the Company's Opening Date Certificate or Completion Certificate, in determining that this condition has been satisfied unless the Disbursement Agent shall have actual knowledge that the Company's certification is inaccurate.

3.3.20 *Violation of Certain Regulations.* The making of the requested Advance shall not violate any law including Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System. The Disbursement Agent shall be entitled to rely upon the certification of the Company in the relevant Advance Request or, if applicable, in the Company's Opening Date Certificate or Completion Certificate, in determining that this condition has been satisfied unless the Disbursement Agent shall have actual knowledge that the Company's certification is inaccurate.

3.3.21 *Material Adverse Effect.* Since the Closing Date, there shall not have occurred any change in the Project Budget, in the economics or feasibility of constructing and/or operating the Project, or in the financial condition, business or property of the Loan Parties, any of which could reasonably be expected to have a Material Adverse Effect. Neither the Bank Lenders nor the FF&E Lenders shall have become aware after the date hereof of any information or other matter affecting any Loan Party, any Project Credit Support Provider, the Project or the transactions contemplated hereby that is inconsistent in a material and adverse manner with any such information or other matter disclosed to the Bank Lenders or the FF&E Lenders. The Disbursement Agent shall be entitled to rely on the certification by the Company in the relevant Advance Request or, if applicable, in the Company's Opening Date Certificate or Completion Certificate, in determining that this condition has been satisfied unless the Disbursement Agent shall have actual knowledge that the Company's certification is inaccurate.

3.3.22 *Water Rights.* There shall be in place arrangements reasonably satisfactory to the Bank Lenders and the FF&E Lenders ensuring that the Company will have the benefit of the necessary water rights to develop and operate the Project as contemplated in the Financing Agreements. Specifically, the following conditions shall have been satisfied:

(a) the Required Minimum Contingency shall have been increased by \$5,000,000 as provided in the proviso to clause (b) to the definition of "Required Minimum Contingency"; or

(b) the following conditions shall have been satisfied:

(i) The Company shall have delivered to the Bank Agent and the Indenture Trustee a copy of an order issued by the PUC approving the Bank DIIC Deed of Trust and the Second Mortgage Notes DIIC Deed of Trust;

Inn Improvement shall have executed the Bank DIIC Deed of Trust and the Second Mortgage Notes DIIC Deed of Trust;

(iii) (A) The Title Insurer shall have delivered to the Bank Agent evidence in form and substance reasonably satisfactory to the Bank Agent that the lender's A.L.T.A. policy of title insurance issued for the benefit of the Bank Lenders on the Closing Date also insures that Desert Inn Improvement has fee simple title to the Water Utility Land, free and clear of liens, encumbrances and other exceptions to title except DIIC Permitted Encumbrances, and the Bank DIIC Deed of Trust is (or will be when recorded) a valid lien on the "Trust Estate" (as defined in such Deed of Trust) entitled to the priority described therein, free and clear of all liens, encumbrances and exceptions to title whatsoever, other than DIIC Permitted Encumbrances and (B) the Title Insurer shall have delivered to the Indenture Trustee evidence in form and substance substantially similar to the evidence delivered to the Bank Agent under clause (A) above that the lender's A.L.T.A. policy of title insurance issued for the benefit of the Second Mortgage Note Holders on the Closing Date also insures that Desert Inn Improvement has fee simple title to the Water Utility Land, free and clear of liens, encumbrances and other exceptions to title except DIIC Permitted Encumbrances and the Second Mortgage Notes DIIC Deed of Trust is (or will be when recorded) a valid lien on the "Trust Estate" (as defined in such Deed of Trust) entitled to the priority described therein, free and clear of all liens, encumbrances and exceptions to title whatsoever, other than DIIC Permitted Encumbrances; and

(iv) Desert Inn Improvement shall have executed duplicate original notices of pledge substantially similar to the notice of pledge delivered by Valvino pursuant to *Section 3.1.42* or otherwise in form and substance reasonably satisfactory to the Bank Agent describing Nevada Permit to Appropriate Nos. 13393 (certificate no. 4731), 16938 (certificate no. 4765), 16939 (certificate no. 4766), 24558 (certificate no. 7828), 24560 (certificate no. 7827), 24561 (certificate no. 7829), and 25223 (certificate no. 7830), and such notices of pledge shall have been completed and delivered to the Disbursement Agent. The Company hereby authorizes the Disbursement Agent to complete the recording information from the Bank DIIC Deed of Trust and the Second Mortgage Notes DIIC Deed of Trust) and to file them with the Nevada State Engineer promptly after recordation of such Deeds of Trust, together with a Report of Conveyance and Abstract of Title for each permit.

The Disbursement Agent shall be entitled to rely on the certification by the Company in the relevant Advance Request or, if applicable, in the Company's Opening Date Certificate or Completion Certificate, in determining that the conditions set forth in this Section have been satisfied unless the Disbursement Agent shall have actual knowledge that the Company's certification is inaccurate.

3.3.23 *Subcontracts.*

(a) Solely with respect to the initial Advance of funds from the Second Mortgage Notes Proceeds Account, (i) the Prime Contractor shall have entered into Subcontracts in respect of seventy percent (70%) of the guaranteed maximum price under the Prime Construction Contract and (ii) the Company shall have executed guaranteed maximum price Contracts in respect of fifty percent (50%) of the total costs reflected in the Project Budget for the "Interior Furnishings/Signage/Electronic Systems," "Miscellaneous Capital Projects," "Golf Course Construction," and "Parking Garage" Line Item Categories and copies of all such Subcontracts and Contracts shall have been delivered to the Construction Consultant. The Company shall have certified in the Company's Advance Certificate that such Subcontracts

and Contracts are consistent with the Project Budget, the Project Schedule and the Plans and Specifications.

(b) Solely with respect to the initial Advance of funds from the Bank Credit Facility, (i) the Prime Contractor shall have entered into Subcontracts in respect of ninety percent (90%) of the guaranteed maximum price under the Prime Construction Contract and (ii) the Company shall have executed guaranteed maximum price Contracts in respect of seventy percent (70%) of the total costs reflected in the Project Budget for the "Interior Furnishings/Signage/Electronic Systems," "Miscellaneous Capital Projects," "Golf Course Construction," and "Parking Garage" Line Item Categories; and copies of all such Subcontracts and Contracts shall have been delivered to the Construction Consultant. The Company shall have certified in the Company's Advance Certificate that such Subcontracts and Contracts are consistent with the Project Budget, the Project Schedule and the Final Plans and Specifications.

(c) The Company shall have delivered a copy of (i) each Contract entered into between the Company and any Contractor with a contract price (or expected aggregate amount to be paid in the case of "cost plus" contracts) in excess of \$500,000, (ii) each first tier Subcontract entered into by the Prime Contractor with a contract price (or expected aggregate amount to be paid in the case of "cost plus" contracts) in excess of \$500,000, and (iii) each first tier Subcontract with a contract price (or expected aggregate amount to be paid in the case of "cost plus" contracts) in excess of \$500,000 entered into by any other Contractor who is party to a Contract entered into with the Company that is not subject to a fixed price, and (iv) a copy of any Payment and Performance Bond required pursuant to *Section 5.14* hereof to the Disbursement Agent, the Construction Consultant and Bank Agent promptly after mutual execution and delivery thereof.

3.3.24 *Funding of Equity.* Solely with respect to the initial Advance of funds from the Second Mortgage Notes Proceeds Account, the Company has certified (and the Construction Consultant has confirmed to the extent set forth in the Construction Consultant's Advance Certificate) that cash or property in the amount equal to Nine Hundred Two Million Three Hundred Seventy Seven Thousand Three Hundred Ninety (\$902,377,390).

3.3.25 *Updated Consultant Certificates and Reports.* Solely with respect to the initial Advance of funds from the Second Mortgage Notes Proceeds Account, each of the Bank Agent, the Representatives of the Underwriters, the FF&E Agent and the Disbursement Agent shall have received an updated Construction Consultant's Report in form and substance satisfactory to each such Person which will address (i) construction progress for the period from the Closing Date through the initial Advance from the Second Mortgage Notes Proceeds Account and (ii) the Final Plans and Specifications that have been completed through such period to the extent not theretofore delivered.

3.3.26 *Unincorporated Materials.* Delivery to the Disbursement Agent and the Construction Consultant of a written inventory in the form of *Appendix X* to the Company's Advance Request identifying all materials, machinery, fixtures, furniture, equipment or other items purchased or manufactured for incorporation into the Project but which, at the time of the Advance Request, (i) are not located at the Site and for which the Company has paid or intends to pay with the proceeds of the Advance Request all or a portion of the purchase price, or (ii) are located at the Site but are not expected to be incorporated into the Project within thirty (30) days after such Advance Request (such materials, the "*Unincorporated Materials*") and including the value thereof, together with evidence reasonably satisfactory to the Construction Consultant and the

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Disbursement Agent that the following conditions have been satisfied with respect to such Unincorporated Materials:

(a) all Unincorporated Materials for which full payment has previously been made or is being made with the proceeds of the Advance to be disbursed are, or will be upon full payment, owned by the Company, as evidenced by the bills of sale, certificates of title or other evidence reasonably satisfactory to the Construction Consultant, and all lien rights or claims of the supplier has been or will be released simultaneously with such full payment and all amounts, if any, required to be paid to the supplier thereof with respect to the installation of such Unincorporated Materials (including any Retainage Amounts);

(b) the Company believes that the Unincorporated Materials consist of fabricated or unfabricated components that conform to the Final Plans and Specifications and that will be ready for incorporation into the Project upon delivery thereof;

(c) all Unincorporated Materials are properly inventoried, securely stored, protected against theft and damage at the Site or at such other location which has been specifically identified by its complete address to the Construction Consultant and the Disbursement Agent (or if the Company cannot provide the complete address of the current storage location, the Company shall list the name and complete address of the applicable contracting party supplying or manufacturing such Unincorporated Materials);

(d) With respect to any Unincorporated Materials as to which deposit or other partial payments have been made or will be made out of the requested Advance (but which have not been and will not be fully paid after giving effect to the requested Advance), (i) the Project Secured Parties have, or will have upon payment with the proceeds of the requested Advance, a perfected security interest in the Unincorporated Materials comprising portions of either the Resort Component or the FF&E Component and/or Contract therefor, and (ii) the FF&E Secured Parties have, or will have upon payment with the proceeds of the requested Advance, a perfected security interest in the Unincorporated Materials comprising portions of the FF&E Component and/or any Contract therefor; in each case, with the priority therein contemplated by the Security Documents (and with respect to Unincorporated Materials not stored at the Site from a single or Affiliated suppliers (of which the Company is aware that such suppliers is an Affiliate) with a contract price (or expected aggregate amount to be paid in the case of "cost-plus" contracts) in excess of \$5,000,000 (excluding items located outside of the United States or in transit from jurisdictions outside of the United States) or any Contracts with a contract price (or expected aggregate amount to be paid in the case of "cost plus" contracts) in excess of \$5,000,000, the Company shall have executed and delivered to the Disbursement Agent such additional security documents (including, without limitation, financing statements, security agreements, collateral access agreements, consents of manufacturers, vendors, warehousemen and bailees) required by the laws of any jurisdiction necessary to grant the Secured Parties such security interest in such Unincorporated Materials or Contracts);

(e) are insured against casualty, loss and theft for an amount equal to their replacement costs in accordance with *Section 5.20*;

(f) the value of Unincorporated Materials located at the Site but not expected to be incorporated into the Project within the ensuing calendar month at any time is not more than \$10,000,000;

(g) the amounts paid by the Company in respect of Unincorporated Materials not at the Site at any one time is not more than \$20,000,000;

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(h) the amount of contract deposits paid by the Company in respect of Unincorporated Materials at any one time is not more than \$30,000,000;

(i) the Construction Consultant shall have confirmed the accuracy of the certification required in subparagraph (c) above, and in connection therewith the Construction Consultant may, but shall not be required to, visit the site of and inspect the Unincorporated Materials at the Company's expense; and

(j) The Disbursement Agent and the Construction Consultant, at the request of the Company, may from time to time mutually agree to increase the thresholds set forth in *Sections 3.3.26(f), (g) and (h)* above.

3.3.27 *Cash Management Accounts.* With respect to an Advance Request which requests that funds be deposited in the Soft Costs Cash Management Account or the Hard Costs Cash Management Account, the Company shall have substantiated (a) to the Construction Consultant's satisfaction (as set forth in the Construction Consultant's Advance Certificate), in the manner contemplated by the Advance Request, that the amounts previously drawn by the Company from the Hard Costs Cash Management Account have been used to pay Hard Costs in accordance with the Project Budget and (b) to the Disbursement Agent's satisfaction, in the manner contemplated by the Advance Request, that amounts previously drawn by the Company from the Soft Costs Cash Management Account have been used to pay Soft Costs in accordance with the Project Budget. After giving effect to the requested Advance, the balance in the Soft Costs Cash Management Account will not exceed \$2,500,000 and the Hard Costs Cash Management Account will not exceed \$3,000,000 in each case, unless approved by the Disbursement Agent in accordance with *Section 2.3.4*.

3.3.28 *Company's Payment and Company's FF&E Payment Accounts.* With respect to an Advance Request which requests that funds be deposited in the Company's Payment Account and/or the Company's FF&E Payment Account, the Company shall have substantiated to the Construction Consultant's satisfaction (as set forth in the Construction Consultant's Advance Certificate), in the manner contemplated by the Advance Request, that the

amounts previously withdrawn by the Company from each such Account have been used to pay Project Costs in the amounts specified in the previous Advance Requests.

3.3.29 *FF&E Component.* At the time of any Advance Request for payment of Project Costs with respect to the FF&E Component (including replacement of amounts previously withdrawn by the Company from the Soft Costs Cash Management Account and the Hard Costs Cash Management Account, to pay Project Costs allocated to the FF&E Component), the Company shall have specified in such Advance Request the items of Eligible FF&E Equipment that comprise the portion of the FF&E Component for which payment is requested in such Advance Request and the FF&E Lenders shall have approved (or deemed to have approved) such Eligible FF&E Equipment in accordance with *Section 2.4.1(e)*.

3.3.30 *Suspension of Performance.* Construction of the Project is proceeding in accordance with the Project Schedule and the Final Plans and Specifications and no Major Project Participant or first tier Subcontractor under the Prime Construction Contract has suspended performance or otherwise repudiated its obligation to perform any duty or obligation under its respective Material Project Document or Subcontract (unless such suspended or repudiated Material Project Document or Subcontract is permitted to be, and actually has been, replaced, or a replacement is determined not to be necessary, pursuant to *Section 7.1.6* (in the case of Contracts) or *Section 7.1.7* (in the case of any other Material Project Document)). The Disbursement Agent may rely upon the certification of the Company set forth in the relevant Advance Request, or if applicable, in the Company's Opening Date Certificate or Completion Certificate, in order to establish satisfaction of

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this condition unless the Disbursement Agent shall have actual knowledge that the Company's certification is inaccurate.

3.3.31 *Intellectual Property.* Prior to the initial Advance of funds from the Second Mortgage Notes Proceeds Account, all action as is necessary to establish and perfect the Secured Parties' rights in and to all patents, trademarks, permits, service marks, trade names, copyrights, franchises, formulas, licenses and other rights with respect thereto, that are material to the operation of the Company's business as contemplated in the Operative Documents shall have been taken, including any recording, filing, registration, giving of notice or other similar action, the Bank Agent shall have received an opinion confirming the same from legal counsel to the Company in form and substance satisfactory to the Bank Agent, and the Indenture Trustee shall have received an opinion confirming the same from legal counsel to the Company substantially similar to the opinion delivered to the Bank Agent.

3.3.32 *Amendments to Organizational Documents.* Prior to the initial Advance of funds from the Second Mortgage Notes Proceeds Account, the organizational documents for the Loan Parties shall each be amended to include Desert Inn Improvement and the Completion Guarantor as "Restricted Entities" for the purposes of separateness covenants and company restrictions set forth therein.

3.3.33 *Other Documents.* The Disbursement Agent and each of the Bank Agent, the Representatives of the Underwriters and the FF&E Agent shall have received such other documents and evidence as are customary for transactions of this type as each such Person may reasonably request in connection with the transactions contemplated hereby.

3.4 *No Waiver or Estoppel.*

3.4.1 The occurrence of Closing Date and making of any Advance hereunder shall not preclude any Funding Agent from later asserting that (and enforcing any remedies it may have if) any representation, warranty or certification made or deemed made by the Company in connection with such Advance was not true and accurate when made. No course of dealing or waiver by any Funding Agent or Secured Party in connection with any condition precedent to any Advance under this Agreement or any Facility Agreement shall impair any right, power or remedy of any such Funding Agent or Secured Party with respect to any other condition precedent, or be construed to be a waiver thereof; nor shall the action of any Funding Agent or Secured Party in respect of any Advance affect or impair any right, power or remedy of any Funding Agent or Secured Party in respect of any other Advance.

3.4.2 Unless otherwise notified to the Company by a Funding Agent or Secured Party and without prejudice to the generality of *Section 3.4.1*, the right of any Funding Agent or Secured Party to require compliance with any condition under this Agreement or its respective Facility Agreement which may be waived by such Funding Agent or Secured Party in respect of any Advance is expressly preserved for the purpose of any subsequent Advance.

3.5 *Waiver of Conditions.*

From the initial funding of the Second Mortgage Notes through and until the amount remaining in the Second Mortgage Notes Proceeds Account equals but does not exceed the Second Mortgage Notes Interest Reserve Amount, the Indenture Trustee (acting under the Second Mortgage Notes Indenture) shall be entitled to waive the conditions precedent under *Sections 3.2* and *3.3* of this Agreement with respect to Advances from the Second Mortgage Notes Proceeds Account and the Company's Funds Account without Bank Agent's or the FF&E Agent's consent. Thereafter, the Bank Agent (acting under the Bank Credit Agreement) shall be entitled to waive the conditions precedent under *Section 3.3* with respect to Advances under the Bank Credit Facility and from the Company's Funds Account without the Indenture Trustee's or the FF&E Agent's consent. The FF&E Agent (acting under the FF&E Facility Agreement) shall at all times be entitled to waive the conditions precedent under

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Section 3.3 with respect to Advances under the FF&E Facility without the Bank Agent's or the Indenture Trustee's consent.

ARTICLE 4.

—REPRESENTATIONS AND WARRANTIES

The Company makes all of the following representations and warranties to and in favor of the Funding Agents, the Lenders and the Disbursement Agent as of the Closing Date and the date of each Advance, except as such representations relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date). All of these representations and warranties shall survive the Closing Date and the Advances until, with respect to each Funding Agent and the Lenders, the Obligations under such Funding Agent's and Lenders' respective Facilities have been repaid in full

in immediately available funds and their respective Facility Agreements and the other respective Financing Agreements and the commitments thereunder have terminated.

4.1 **Organization.** Each of the Loan Parties is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite corporate or limited liability company power and authority to carry on its business as now conducted and (i) to own or hold under lease and operate the properties it purports to own or hold under lease, (ii) to carry on its business as now being conducted and as now proposed to be conducted in respect of the Project, (iii) to incur Indebtedness and create a Lien on its property, and (iv) to execute, deliver and perform under each of the Operative Documents to which it is a party.

4.2 **Authorization; No Conflict.** Each of the Loan Parties has taken all necessary corporate or limited liability company action, as the case may be, to authorize the execution, delivery and performance of the Financing Agreements and the other Operative Documents to which it is a party, and neither the execution, delivery or performance thereof nor the consummation of the transactions contemplated thereby by each such Loan Party, (a) does or will contravene the formation documents or any other Legal Requirement then applicable to or binding on each such Loan Party, (b) does or will contravene or result in any breach or constitute any default under, or result in or require the creation of any Lien upon any of such Loan Party's properties or under any security or agreement or instrument to which such Loan Party is a party or by which it or any of its respective properties may be bound, except for Permitted Liens or (c) does or will require the consent or approval of any Person other than as set forth on *Exhibit K* or *Exhibit M*.

4.3 **Legality, Validity and Enforceability.** Each of the Operative Documents to which the Loan Parties are a party is a legal, valid and binding obligation of each such Loan Party, as the case may be, enforceable against the Loan Parties, as the case may be, in accordance with its terms, subject only to bankruptcy and similar laws and principles of equity. None of the Operative Documents to which the Loan Parties are a party has been amended or modified except in accordance with this Agreement.

4.4 **Compliance with Law, Permits and Operative Documents.** Each Loan Party is in compliance with all Legal Requirements (including all Environmental Laws) and Permits and Operative Documents to which it is a party, and no notices of violation of any Permit or Operative Document relating to the Project have been issued, entered or received by any Loan Party, in each case, except for non-compliance or violations that could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.5 **Permits.** There are no Permits that are required or will become required under existing Legal Requirements for the ownership, development, construction, financing or operation of the Project, other than the Permits described in *Exhibit M*. *Exhibit M* accurately states the stage in construction by which each such Permit is required to be obtained. Each Permit described in *Exhibit M*

as required to be obtained by the date that this representation is deemed to be made is in full force and effect and is not at such time subject to any appeals or further proceedings or to any unsatisfied condition (that is required to be satisfied by the date that this representation is deemed to be made) that could reasonably be expected to materially and adversely modify any Permit, to revoke any Permit, to restrain or prevent the construction or operation of the Project or otherwise impose adverse conditions on the Project or the financing contemplated under the Financing Agreements. Each Permit described in *Exhibit M* as not required to have been obtained by the date that this representation is deemed to be made (other than the gaming license) is of a type that is routinely granted on application and compliance with the conditions for issuance. The Company has no reason to believe that any Permit so indicated will not be obtained before it becomes necessary for the ownership, development, construction, financing or operation of the Project or that obtaining such Permit will result in undue expense or delay. Neither the Company nor any of its Affiliates are in violation of any condition in any Permit the effect of which could reasonably be expected to have a Material Adverse Effect.

4.6 **Litigation.** There are no pending or, to the Company's knowledge, threatened actions, suits, proceedings or investigations of any kind, including actions or proceedings of or before any Governmental Authority, to which any Loan Party or Major Project Participant (other than any Loan Party) is a party or is subject, or by which any of them or any of their properties or the Project are bound that could reasonably be expected to have a Material Adverse Effect nor, is the Company aware of any reasonable basis for any such action, suit, proceeding or investigation.

4.7 **Financial Statements.**

4.7.1 The consolidated and consolidating financial statements of Valvino and its consolidated Subsidiaries (including Wynn Las Vegas and its consolidated Subsidiaries), delivered to the Lenders pursuant to *Section 3.1.16* on the Closing Date, were, and, in the case of financial statements to be delivered after the Closing Date pursuant to *Section 5.6.5*, will be, prepared in conformity with GAAP and fairly present in all material respects the financial position (on a consolidated and consolidating basis) of the entities described in such financial statements as of the respective dates thereof and the results of operations and cash flows (on a consolidated and consolidating basis) of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments. All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved (except as approved by the firm of accountants mentioned in the Bank Credit Agreement and disclosed in such financial statements). Valvino and its Subsidiaries do not have any material "Guarantee Obligations" (as defined in the Bank Credit Agreement), contingent liabilities and liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including, without limitation, any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are not reflected in the most recent financial statements referred to in this paragraph and that are required to be reflected in such financial statements. During the period from June 30, 2002 to and including the Closing Date there has been no "Disposition" (as defined in the Bank Credit Agreement), by Valvino or any of its Subsidiaries of any material part of its business or property except any Disposition in connection with the transactions contemplated by the initial public offering of the stock of Wynn Resorts, Limited or the Operative Documents.

4.7.2 Since December 31, 2001, there has been no development or event that has or could reasonably be expected to have a Material Adverse Effect.

4.8 **Security Interests.**

(a) The security interests granted to the Secured Parties pursuant to the Security Documents in the Project Security (i) constitute as to personal property included in the Project Security and, with respect to subsequently acquired personal property included in the Project Security, will

constitute, a perfected security interest under the UCC and/or other applicable law and (ii) have, and, with respect to such subsequently acquired property, will have been perfected under the UCC and/or other applicable law as aforesaid, and (A) as among the Secured Parties, with the priority contemplated by the Project Lenders Intercreditor Agreement and the FF&E Intercreditor Agreement and (B) as between the Secured Parties and any third Persons, grant the Secured Parties superior priority and rights over the rights of any such third Persons now existing or hereafter arising whether by way of mortgage, lien, security interests, encumbrance, assignment or otherwise, subject to the rights and priorities of Permitted Liens. All such action as is necessary has been taken to establish and perfect the Secured Parties' rights in and to the Project Security, including any recording, filing, registration, giving of notice or other similar action (other than perfection of the Project Secured Parties' lien in any motor vehicles, which shall be accomplished within fifteen (15) days after the Closing Date and perfection in foreign trademarks which shall be accomplished to the extent required under *Section 3.3.31* prior to the initial Advance of funds from the Second Mortgage Notes Proceeds Account). As of the Closing Date, no filing, recordation, re-filing or re-recording other than as listed on *Exhibit P* is necessary to perfect and maintain the perfection of the interest, title or Liens of the Security Documents, and on the Closing Date all such filings or recordings will have been made (other than perfection of the Project Secured Parties' lien in any motor vehicles, which shall be accomplished within fifteen (15) days after the Closing Date and perfection in foreign trademarks which shall be accomplished to the extent required under *Section 3.3.31* prior to the initial Advance of funds from the Second Mortgage Notes Proceeds Account) except for any filings or recordings for Liens as to which the Title Insurer has issued or committed to issue a title policy acceptable to the Funding Agents. The Loan Parties have properly delivered or caused to be delivered to the Disbursement Agent all Project Security that requires perfection of the Lien and security interest described above by possession.

(b) No authorization, approval or other action by, and no notice to or filing with, any Governmental Authority is required for either (i) the pledge or grant by the Loan Parties of the Liens purported to be created in favor of the Secured Parties pursuant to any of the Security Documents, or (ii) the exercise by the Disbursement Agent, or the other Secured Parties of any rights or remedies in respect of any Project Security (whether specifically granted or created pursuant to any of the Security Documents or created or provided for by applicable law), except for filings or recordings contemplated by *Section 4.8(a)* above or as set forth on *Exhibit P* (as the same may be updated from time to time by the Company and delivered to the Funding Agents).

(c) Except such as may have been filed in favor of the Funding Agents as contemplated by *Section 4.8(a)* above or as set forth on *Exhibit P*, no effective UCC financing statement, fixture filing or other instrument similar in effect covering all or any part of the Project Security is on file in any filing or recording office.

(d) All information supplied to the Disbursement Agent and the Funding Agents by or on behalf of the Loan Parties or any of their Affiliates with respect to any of the Project Security is accurate and complete in all material respects.

4.9 Existing Defaults. There is no default or event of default under any of the Financing Agreements or Material Project Documents and no Potential Event of Default or Event of Default hereunder.

4.10 Taxes.

4.10.1 The Company has filed, or caused to be filed, all tax and informational returns that are required to have been filed by it in any jurisdiction, and has paid all taxes shown to be due and payable on such returns and all other taxes and assessments payable by it, to the extent the same have become due and payable (other than (x) those taxes that it is contesting in good faith and by appropriate proceedings and (y) those taxes not yet due, provided that with respect to each of clause (x) and (y) the Company has established reserves therefor by allocating, in the Anticipated Cost Report amounts that are adequate for the payment thereof and are required by GAAP).

4.10.2 The Company has not incurred any material tax liability in connection with the Project or the other transactions contemplated by the Operative Documents which has not been disclosed in writing to the Funding Agents, including the financial statements delivered under *Section 5.6.5*.

4.11 Business, Debt, Etc. None of Wynn Las Vegas, Capital Corp. and Wynn Design has conducted any business other than a Permitted Business. The Company has no outstanding Indebtedness other than Indebtedness incurred under the Financing Agreements or permitted under the Financing Agreements.

4.12 Representations and Warranties. As of the Closing Date (in each case except to the extent related to a different date in which case such representations and warranties shall be true and correct in all material respects as of such earlier date), all representations and warranties of each Loan Party and, to the Company's knowledge, each Major Project Participant (other than any Loan Party) contained in the Financing Agreements and/or Material Project Documents, as applicable, are true and correct in all material respects and the Company hereby confirms each such representation and warranty of the Company with the same effect as if set forth in full herein.

4.13 Environmental Laws. The Loan Parties: (i) are, and within the period of all applicable statutes of limitation have been, in material compliance with all applicable Environmental Laws; and (ii) reasonably believe that material compliance with all applicable Environmental Law that is or is expected to become applicable to any of them will be timely attained and maintained.

(a) To the knowledge of the Company, Hazardous Substances are not present at, on, under, in, or about any real property now or formerly owned, leased or operated by any of the Loan Parties, or at any other location (including, without limitation, any location to which Hazardous Substances have been sent for re-use or recycling or for treatment, storage, or disposal) which could reasonably be expected to (i) give rise to liability of any of the Loan Parties under any applicable Environmental Law or otherwise result in costs to any of the Loan Parties that could reasonably be expected to have a Material Adverse Effect, or (ii) materially interfere with any of the Loan Parties' continued operations, or (iii) materially impair the fair saleable value of any real property owned or leased by any of the Loan Parties.

(b) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, there is no judicial, administrative, or arbitral proceeding (including any notice of violation or alleged violation) under or relating to any Environmental Law to which any of the Loan Parties is, or to the knowledge of the Company will be, named as a party that is pending or, to the knowledge of the Company, threatened.

(c) No Loan Party has received any written request for information, or been notified that it is a potentially responsible party, under or relating to the federal Comprehensive Environmental Response, Compensation, and Liability Act or any similar Environmental Law.

(d) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, no Loan Party has entered into or agreed to any consent decree, order, or settlement or other agreement, or is subject to any judgment, decree, or order or other

agreement, in any judicial, administrative, arbitral, or other forum for dispute resolution, relating to compliance with or liability under any Environmental Law or Environmental Claim.

(e) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect no Loan Party has assumed or retained, by contract or operation of law, any liabilities of any kind, fixed or contingent, known or unknown, under any Environmental Law or with respect to any Hazardous Substances.

(f) Except as could not, individually or in the aggregate reasonably be expected to have a Material Adverse Effect, (i) Hazardous Materials Activities are not presently occurring, and, to the Company's knowledge, have not previously occurred, at, on, under, in or about any real estate now or formerly owned, leased or operated by any of the Loan Parties, and (ii) none of the Loan Parties have ever engaged in any Hazardous Materials Activities at any location.

4.14 **Utilities.** All utility services necessary for the construction and the operation of the Project for its intended purposes are or will be available at the Site as and when required on commercially reasonable terms.

4.15 **In Balance Requirement.** As of each Advance Date the Project is In Balance.

4.16 **Sufficiency of Interests and Project Documents.**

4.16.1 Wynn Las Vegas owns the Site and the Site Easements (other than the Mortgaged Property encumbered or to be encumbered by Valvino, Palo, Wynn Resorts Holdings and Desert Inn Improvement) in fee simple. Wynn Las Vegas has a valid leasehold estate or easement interest, as the case may be, in the portions of the Site described in the Affiliate Real Estate Agreements. Wynn Resorts Holdings owns the Golf Course Land, Palo owns the Palo Home Site Land, Desert Inn Improvement owns the Water Utility Land and Valvino owns the Phase II Land, in each case, in fee simple. Other than those services to be performed and materials to be supplied that can be reasonably expected to be commercially available when and as required, the Company owns or holds under lease all of the property interests and has entered into all documents and agreements necessary to develop, construct, complete, own and operate the Project (including access to sufficient water rights) on the Mortgaged Property and in accordance with all Legal Requirements and the Project Schedule and as contemplated in the Operative Documents.

4.16.2 Each of the Funding Agents has received a true, complete and correct copy of each of the Material Project Documents in effect or required to be in effect as of the date this representation is made or deemed made (including all exhibits, schedules, side letters and disclosure letters referred to therein or delivered pursuant thereto, if any). A list of (a) all Project Documents that are Contracts and (b) all other Material Project Documents, in each case, that have been entered into as of the Closing Date and are necessary to the construction or operation of the Project (excluding Contracts entered into in the ordinary course of business for services or materials that are easily obtained from replacement contractors or vendors on similar terms) is attached hereto as *Exhibit U*. Each Material Project Document is in full force and effect, enforceable against the Persons party thereto in accordance with its terms, subject only to bankruptcy and similar laws and principles of equity.

4.16.3 All conditions precedent to the obligations of the respective parties (other than the Company) under the Material Project Documents have been satisfied, except for such conditions precedent which by their terms cannot be met until a later stage in the construction or operation of the Project, and the Company has no reason to believe that any such condition precedent which could reasonably be expected to have a Material Adverse Effect cannot be satisfied on or prior to the appropriate stage in the development, construction or operation of the Project.

4.17 **Intellectual Property.** The Company owns or has the right to use all patents, trademarks, permits, service marks, trade names, copyrights, franchises, formulas, licenses and other rights with respect thereto, that are necessary for the operation of its business as contemplated in the Operative Documents, except where failure to obtain such rights could not reasonably be expected to result in a Material Adverse Effect. Nothing has come to the attention of the Company to the effect that any product, process, method, substance, part or other material presently contemplated to be sold by or employed by the Company in connection with its business will infringe any license or other right owned by any other Person.

4.18 **Project Budget; Summary Anticipated Cost Report.**

4.18.1 The Project Budget (a) is, to the Company's knowledge as of the Closing Date, based on reasonable assumptions as to all legal and factual matters material to the estimates set forth therein, (b) as of the Closing Date is consistent with the provisions of the Operative Documents in all material respects, (c) has been and will be prepared in good faith and with due care, (d) as of the Closing Date sets forth, for each Line Item Category, the total costs anticipated to be incurred to achieve Completion on or before the Scheduled Completion Date and to achieve Final Completion promptly thereafter, (e) fairly represents the Company's expectation as to the matters covered thereby as of its date, and (f) as of the Closing Date sets forth a total amount of Project Costs, including contingencies, which is equal to the Available Funds.

4.18.2 The aggregate anticipated costs to complete the "Work" (as defined in the Prime Construction Contract) as set forth in the anticipated cost report to be provided (from time to time) by the Prime Contractor to the Company under *Section 7.5.4* of the Prime Construction Contract and as reasonably approved by the Construction Consultant, is not less than the amount set forth in the amount set forth in column I ("Anticipated Cost") of the "Marnell Corrao GMP Contract" Line Item Category in the Summary Anticipated Cost Report.

4.18.3 The Summary Anticipated Cost Report (as in effect from time to time) sets forth in column I ("Anticipated Cost") thereof:

(a) for the "Capitalized Interest and Commitment Fees" Line Item Category, the total amount of interest and commitment fees anticipated to be accrued on the Facilities through the Scheduled Completion Date;

(b) for each Line Item Category, an aggregate amount equal to the aggregate amount set forth for such Line Item Category in the Project Budget then in effect;

(c) for each Line Item Category other than the "Construction Contingency" Line Item Category, an amount no less than the total anticipated costs to be incurred by the Company from the commencement through the completion of the work contemplated by such Line Item Category, as determined by the Company and (i) with respect to Hard Costs, approved by the Construction Consultant in the Construction Consultant's certificate dated the date on which this representation is made or deemed made and (ii) with respect to Soft Costs, approved by the Disbursement Agent. The Disbursement Agent shall be entitled to rely on certifications to such effect from the Company or the Construction Consultant in approving any determination made by the Company; and

(d) is true and correct in all material respects.

4.18.4 The Anticipated Cost Report (as in effect from time to time):

(a) sets forth in column I ("Anticipated Cost") thereof, for each Line Item other than the "Hard Cost Construction Contingency" and the "Soft Cost Construction Contingency" Line Items, an amount no less than the total anticipated costs to be incurred by the Company from the commencement through the completion of the work contemplated by such Line

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Item, as determined by the Company and (i) with respect to Hard Costs, approved by the Construction Consultant in the Construction Consultant's certificate dated the date on which this representation is made or deemed made and (ii) with respect to Soft Costs, approved by the Disbursement Agent. The Disbursement Agent shall be entitled to rely on certifications to such effect from the Company or the Construction Consultant in approving any determination made by the Company; and

(b) is true and correct in all material respects.

4.18.5 Each Line Item Category Detailed Anticipated Cost Report (as in effect from time to time) for each Line Item Category of the Project Budget accurately reflects the detail underlying the Summary Anticipated Cost Report with respect to each Line Item of such Line Item Category described therein.

4.18.6 The Monthly Requisition Report (as in effect from time to time):

(a) sets forth in column D ("Revised Project Budget") thereof the amount allocated to each Line Item Category pursuant to the Project Budget then in effect;

(b) is true and correct in all material respects.

4.19 **Fees and Enforcement.** Other than amounts that have been paid in full or will have been paid in full by the Closing Date, no fees or taxes, including without limitation stamp, transaction, registration or similar taxes, are required to be paid by the Loan Parties for the legality, validity, or enforceability of this Agreement or any of the other Operative Documents.

4.20 **ERISA.** Either (a) there are no ERISA Plans or Multiemployer Plans for the Company or any member of the Controlled Group or (b) (i) the Company and each member of the Controlled Group have fulfilled their obligations (if any) under the minimum funding standards of ERISA and the Code for each ERISA Plan and for contributions to any Multiemployer Plan; (ii) each Plan is in compliance in all material respects with the currently applicable provisions of ERISA and the Code; (iii) neither the Company nor any member of the Controlled Group has incurred any liability to the PBGC or an ERISA Plan under Title IV of ERISA (other than liability or contributions for premiums due in the ordinary course). Assuming that the credit extended hereunder does not involve the assets of any Plans for the Company or any member of the Controlled Group, neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will involve a "prohibited transaction" with respect to any Plans within the meaning of 406 of ERISA or Section 4975 of the Code which is not exempt under Section 408 of ERISA or under Section 4975(d) of the Code.

4.21 **Subsidiaries and Beneficial Interest.** As of the Closing Date, Wynn Resorts, Limited is the sole member of Valvino. As of the Closing Date, the direct Subsidiaries of Valvino and each other Loan Party are shown on Exhibit AA and neither Valvino nor any other Loan Party has any direct Subsidiaries or owns the whole or any part of the issued share capital or other direct ownership interest of any company or corporation or other Person except as shown on Exhibit AA. As of the Closing Date (i) Valvino is the sole member of Wynn Resorts Holdings, and as such, Valvino has the power and authority to execute documents on behalf of Wynn Resorts Holdings; and (ii) Wynn Resorts, Limited, a Nevada corporation, is the managing member of Valvino, and as such, Wynn Resorts, Limited has the power and authority to execute documents on behalf of both Valvino and Wynn Resorts Holdings.

4.22 **Labor Disputes and Acts of God.** Neither the business nor the properties of any Loan Party, nor, to the knowledge of the Company, any Major Project Participant is affected by any fire, explosion, accident, strike, lockout or other labor dispute (except as set forth in Exhibit R-2 as in effect on the Closing Date), drought, storm, hail, earthquake, embargo, act of God or of the public enemy, or other casualty or event of force majeure, that could reasonably be expected to have a Material Adverse Effect.

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4.23 **Liens.** Except for Permitted Liens, the Loan Parties have not secured or agreed to secure any Indebtedness by any Lien upon any of their present or future revenues or assets or Capital Stock. The Loan Parties do not have outstanding any Lien or obligation to create Liens on or with respect to any of their properties or revenues, other than Permitted Liens and as provided in the Security Documents.

4.24 **Title.** Each of the Loan Parties owns and has good, legal and beneficial title to the property, assets and revenues of the Project which it purports to grant Liens pursuant to the Security Documents free and clear of all Liens, except Permitted Liens.

4.25 **Investment Company Act.** None of Wynn Las Vegas, Capital Corp., Wynn Design and any of their respective Affiliates is an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940.

4.26 **Project Schedule.** To the Company's knowledge, the Project Schedule accurately specifies in summary form the work that the Company proposes to complete in each calendar quarter from the Closing Date through the Final Completion of the Project, all of which is expected to be achieved.

4.27 **Proper Subdivision.** Each of the Phase II Land, the Golf Course Land, the Water Utility Land and the Casino Land has been properly subdivided or entitled to exception therefrom, and constitutes a separate legal lot or parcel.

4.28 **Location of Accounts and Records.** The Company's books of accounts and records are located at 3145 Las Vegas Boulevard South, Las Vegas, Nevada. Wynn Las Vegas' federal employer identification number is 88-0494875. Capital Corp.'s federal employer identification number is 46-0484992. Wynn Design's federal employer identification number is 88-0462235.

4.29 **Regulation U, Etc.** None of the Loan Parties are engaged principally, or as one of its principal activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (as defined in Regulations T, U or X of the Federal Reserve Board), and no part of the proceeds of the Advances or the revenues from the Project will be used by the Company or any other Loan Party to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or otherwise in violation of Regulations T, U or X.

4.30 **Governmental Regulation.** No Loan Party other than Desert Inn Improvement is subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, or the Interstate Commerce Act or registration under the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit or condition its ability to incur Indebtedness other than the Nevada Gaming Laws which may otherwise render all or any portion of the Obligations unenforceable. Desert Inn Improvement is a public utility subject to regulation by the Public Utilities Commission of Nevada. Incurrence of the Obligations under the Financing Agreements complies with all applicable provisions of the Nevada Gaming Laws subject to any informational filings or reports required by Nevada Gaming Commission Regulation Section 8.130, which filings and reports shall be made within the time period required under Nevada Gaming Commission Regulation Section 8.130 and subject to the receipt of requisite approvals from the Nevada Gaming Authorities relating to the pledges of Capital Stock of the Loan Parties that are licensed or registered, which approvals shall be sought by the Company prior to the Opening Date, when the gaming license is applied for.

4.31 **Solvency.** Each Loan Party is, and after giving effect to the incurrence of all Indebtedness and obligations being incurred in connection with the Operative Documents will be and will continue to be, Solvent.

4.32 **Plans and Specifications.** The Plans and Specifications (a) are, to the Company's knowledge as of the Closing Date, based on reasonable assumptions as to all legal and factual matters material thereto, (b) are, and except to the extent permitted under Sections 6.1 and 6.2 will be from time to

time, consistent with the provisions of the Operative Documents in all material respects and with the "Premises and Assumptions" (as defined in the Prime Construction Contract), (c) have been prepared in good faith with due care, and (d) fairly represent the Company's expectation as to the matters covered thereby. The Final Plans and Specifications (i) have been prepared in good faith with due care, and (ii) are accurate in all material respects and fairly represent the Company's expectation as to the matters covered thereby.

ARTICLE 5.

—AFFIRMATIVE COVENANTS

The Company covenants and agrees, with and for the benefit of the Funding Agents, the Lenders and the Disbursement Agent that until this Agreement is terminated pursuant to Section 11.20 hereof, it will:

5.1 Use of Proceeds; Repayment of Indebtedness.

5.1.1 **Proceeds.** Deposit or cause to be deposited all funds received by or on behalf of the Company prior to the Final Completion Date into the applicable Company Account specified in Article 2 of this Agreement; *provided, however* that, as contemplated by Section 2.3.8, all revenues received by the Company after the Completion Date shall be deposited by the Company in the applicable "Funding Account" as provided in Section 6.11(b) of the Bank Credit Agreement. The Company shall not, until the Final Completion Date, open or establish any bank, deposit or any other accounts at any financial institution other than the accounts provided for herein or in Section 6.11(b) of the Bank Credit Agreement.

5.1.2 **Project Costs.** Apply all proceeds described in Section 5.1.1 above and all other amounts received by the Company and/or deposited in the Company Accounts only to pay Project Costs in accordance with the terms of this Agreement. Without limiting the generality of the foregoing, the Company shall:

- (a) not apply any funds or proceeds to the payment of Project Costs in respect of the FF&E Component other than in accordance with Section 2.5 and the other terms and conditions hereof;
- (b) apply amounts in the Soft Costs Cash Management Account only to pay Soft Costs as set forth in the Project Budget;
- (c) apply amounts in the Hard Costs Cash Management Account only to pay Hard Costs as set forth in the Project Budget;
- (d) apply amounts in the Company's Payment Account only to pay Project Costs as set forth in the Project Budget and in the Advance Request pursuant to which such amounts were deposited in the Company's Payment Account; and

(e) apply amounts in the Company's FF&E Payment Account only to pay Project Costs allocated to the FF&E Component as set forth in the Project Budget and in the Advance Request pursuant to which such amounts were deposited in the Company's FF&E Payment Account.

5.1.3 **Repayment of Indebtedness.** Repay in accordance with its terms, all Indebtedness, including without limitation, all sums due under this Agreement and the other Financing Agreements but, in the case of any such Indebtedness the repayment of which is limited by any term of any Financing Agreement, repay subject to such limitation.

5.2 **Existence, Conduct of Business, Properties, Etc.** Except as otherwise expressly permitted (a) under this Agreement or (b) under Section 6.4 of the Bank Credit Agreement, (i) maintain and

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preserve, and cause each other Loan Party to maintain and preserve, their existence and all rights, privileges and franchises necessary in the normal conduct of their business, and (ii) engage only in the businesses contemplated or permitted by the Financing Agreements and the Operative Documents.

5.3 **Diligent Construction of the Project.** Take or cause to be taken all action, make or cause to be made all contracts and do or cause to be done all things necessary to construct the Project diligently in accordance with the Prime Construction Contract, the Final Plans and Specifications and the other Operative Documents.

5.4 **Compliance with Legal Requirements.** Promptly and diligently (a) own (or, to the extent contemplated hereunder or under the other Financing Agreements, lease), construct, maintain and operate the Project in compliance in all material respects with all applicable Legal Requirements, including, but not limited to Environmental Laws and (b) procure, maintain and comply, or cause to be procured, maintained and complied with, in all material respects, all Permits required for any ownership, development, construction, financing, maintenance or operation of the Project or any part thereof at or before the time each such Permit becomes necessary for the ownership, development, construction, financing, maintenance or operation of the Project, as the case may be, as contemplated by the Operative Documents, except that the Company may, at its expense, contest by appropriate proceedings conducted in good faith the validity or application of any such Legal Requirements, provided that, (i) none of the Funding Agents, the Disbursement Agent, any of the Lenders or the Company would be subject to any criminal liability for failure to comply therewith and (ii) all proceedings to enforce such Legal Requirements against the Funding Agents, the Disbursement Agent, any of the Lenders, the Company, or the Project or any part of any of them, shall have been duly and effectively stayed during the entire pendency of such contest, except, unless any such proceedings are brought against any of the Lenders or the Disbursement Agent, where failure to procure such stay could not reasonably be expected to result in a Material Adverse Effect.

5.5 **Books, Records, Access.** Maintain adequate books, accounts and records with respect to the Company and each other Loan Party and the Project in compliance with the regulations of any Governmental Authority having jurisdiction thereof and, with respect to financial statements, in accordance with GAAP consistently applied. Subject to reasonable safety requirements and the rights of other Persons, the Company shall, at its cost and expense, permit employees or agents of the Funding Agents, the Lenders and the Construction Consultant at any reasonable times and upon reasonable prior notice to inspect the Project, to examine or audit all of the Company's books, accounts and records pertaining or related to the Project, to make copies and memoranda thereof. For all expenditures with respect to which Advances are made, the Company shall retain, until at least three (3) years after each Funding Agent has received the report specified in Section 5.7.1 for the financial year in which the last Advance was made by such Funding Agent, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures.

5.6 **Reports; Cooperation; Financial Statements.**

5.6.1 Prior to the Final Completion Date, deliver to the Funding Agents, the Construction Consultant and the Disbursement Agent together with each month's preliminary Advance Request (or if no Advance Request is submitted during any calendar month, within twenty (20) days following the end of such calendar month), a monthly status report describing in reasonable detail the progress of the construction of the Project since the immediately preceding report hereunder, including without limitation, the cost incurred to the end of such month, an estimate of the time and cost required to complete the Project and such other information which any Funding Agent or the Disbursement Agent may reasonably request including information and reports reasonably requested by the Construction Consultant.

5.6.2 Deliver to the Funding Agents and the Disbursement Agent together with each month's final Advance Request (or if no Advance Request is submitted during any calendar month, within

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twenty (20) days after the end of such calendar month), a monthly status report describing in reasonable detail the progress of the leasing activities with respect to the Project, if any, and all leases, if any, that have been entered into since the immediately preceding report hereunder.

5.6.3 Deliver to the Funding Agents, the Construction Consultant and the Disbursement Agent together with each month's preliminary Advance Request (or if no Advance Request is submitted during any calendar month, within twenty (20) days after the end of such calendar month), all progress reports provided by each Contractor pursuant to the Material Project Documents and such additional information as the Funding Agents or the Disbursement Agent may reasonably request.

5.6.4 Deliver to the Funding Agent, the Construction Consultant and the Disbursement Agent together with each month's preliminary Advance Request (or if no Advance Request is submitted during any calendar month, within twenty (20) days after the end of such calendar month), copies of any applicable bailee or Lien waivers delivered pursuant to Section 5.13.1.3 of the Prime Construction Contract.

5.6.5 Deliver to the Funding Agents copies of all financial statements and certifications delivered under Section 6.1 of the Bank Credit Agreement.

5.7 **Notices.** Promptly, upon acquiring notice or giving notice, or obtaining knowledge thereof, as the case may be, provide to the Disbursement Agent, and the Construction Consultant and the Funding Agents written notice of:

5.7.1 Any Event of Default or Potential Event of Default of which it has knowledge, specifically stating that an Event of Default or Potential Event of Default has occurred and describing such Event of Default or Potential Event of Default and any action being taken or proposed to be taken with respect to such Event of Default or Potential Event of Default.

5.7.2 Any event, occurrence or circumstance which reasonably could be expected to cause Project to not be In Balance or render the Company incapable of, or prevent the Company from (a) achieving the Completion Date on or before the Scheduled Completion Date or (b) meeting any material obligation of the Company under the Prime Construction Contract or the other Material Project Documents as and when required thereunder.

5.7.3 Any termination or event of default or notice thereof under any Material Project Document or any notice under Nevada Revised Statutes Section 624.610 issued by any Contractor.

5.7.4 Any (a) fact, circumstance, condition or occurrence at, on, or arising from, the Mortgaged Property that results in noncompliance with any Environmental Law that has resulted or could reasonably be expected to result in a Material Adverse Effect, and (b) pending or, to the Company's knowledge, threatened, Environmental Claim against the Company, any Contractor or any Subcontractor arising in connection with its occupying or conducting operations on or at the Project, or the Mortgaged Property, which could reasonably be expected to have a Material Adverse Effect.

5.7.5 Any change in the Responsible Officers of the Company, and such notice shall include a certified specimen signature of any new officer so appointed and, if requested by any Funding Agent or the Disbursement Agent, satisfactory evidence of the authority of such new Responsible Officer.

5.7.6 Any proposed material change in the nature or scope of the Project or the business or operations of the Company.

5.7.7 Any notice of any schedule delay delivered under the Prime Construction Contract and all remedial plans and updates thereof.

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5.7.8 Any other event or development which could reasonably be expected to have a Material Adverse Effect.

5.7.9 Promptly upon any Person becoming a Subsidiary of any of the entities comprising the Company, a written notice setting forth with respect to such Person the date on which such Person became a Subsidiary of any of the entities comprising the Company.

5.7.10 "Substantial Completion" or "Final Completion" certificates or notices thereof delivered under any Material Project Document.

5.8 Company Equity.

5.8.1 *Event of Default; Bankruptcy.* Upon (a) the occurrence of an Event of Default, (b) the dissolution, liquidation or Bankruptcy of the Completion Guarantor or (c) the breach by the Completion Guarantor of any of its covenants and agreements under the Completion Guaranty, deposit or cause to be deposited in the Company's Funds Account, in cash, an amount equal to the amount of funds then on deposit in the Completion Guaranty Deposit Account. In the event that the Company fails to so deposit or cause to be deposited such funds, the Disbursement Agent shall be entitled to draw such funds from the Completion Guaranty Deposit Account and deposit such funds in the Company's Funds Account. In the event that after the transfer of such funds such Event of Default or breach by the Completion Guarantor is cured, and the Company obtains additional Advances hereunder, such funds shall be returned to the Completion Guaranty Deposit Account (minus any portion of such funds that has been expended prior to the date such Event of Default or breach is cured).

5.8.2 *Contingencies.* At such times, if ever, as the Project is not In Balance, the Company shall deposit or cause to be deposited in the Company's Funds Account in cash, funds (other than from the Completion Guaranty Deposit Account or the Project Liquidity Reserve Account) in an amount that would cause the Project to be In Balance.

5.8.3 Completion Guaranty Deposit Account; Liquidity Reserve Account.

(a) At such times, if ever, as no other source of funds is available to the Company for the timely payment of Project Costs, the Company shall, to the extent permitted to do so pursuant to Section 5.8.3(b) below (or, if after Completion, Section 5.8.3(c) below) transfer or cause to be transferred from the Completion Guaranty Deposit Account and/or the Project Liquidity Reserve Account to the Company's Funds Account (or, if after Completion, to the Disbursement Account), funds in the amount required to timely pay all Project Costs then due and payable.

(b) The Company shall not apply any funds on deposit in the Completion Guaranty Deposit Account or the Project Liquidity Reserve Account except as permitted in this Section 5.8.3(b) and Section 5.8.3(c) below. From and after the Fifty Percent Completion Date, the Company may withdraw any such funds for the sole purpose of transferring such funds to the Company's Funds Account *first*, from the Completion Guaranty Deposit Account, and *second*, when no funds remain in the Completion Guaranty Deposit Account, from the Project Liquidity Reserve Account, but only if the following conditions shall have been satisfied:

(i) the amount of funds withdrawn shall not exceed \$80,000,000 amortized from and after the Fifty Percent Completion Date at a rate such that, from time to time, (A) the ratio of (x) the amortized portion of the \$80,000,000 to (y) \$80,000,000 shall equal (B) the ratio of (x) Hard Costs incurred from and after the Fifty Percent Completion Date in accordance with the Project Budget and allocated to the following Line Item Categories: "Marnell Corrao GMP Contract," "Interior Furnishings/Signage/Electronic Systems," "Miscellaneous Capital Projects," "Golf Course" and "Parking Garage" to

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(y) fifty percent (50%) of the total amount of Hard Costs set forth in the Project Budget (as then in effect) under the following Line Item Categories: "Marnell Corrao GMP Contract," "Interior Furnishings/Signage/Electronic Systems," "Miscellaneous Capital Projects," "Golf Course" and "Parking Garage"; and

(ii) the Company shall have certified, and the Construction Consultant shall have confirmed, that such funds are necessary to pay cost-overruns (other than in respect of a Scope Change) and are not as a result of any Scope Change (or cost overrun with respect to a Scope Change).

(c) From and after the Completion Date, the Company may apply any funds then on deposit in the Completion Guaranty Deposit Account towards the payment of Project Costs as provided in *Section 2.5.4*.

5.9 Indemnification; Costs and Expenses. Pay all amounts required to be paid by the Company pursuant to *Section 11.15*.

5.10 Material Project Documents and Permits. Deliver to the Disbursement Agent, the Funding Agents and the Construction Consultant promptly, but in no event later than twenty (20) days after the receipt thereof by the Company, copies of (a) all Material Project Documents and Permits described on *Exhibit M* that are obtained or entered into by the Company or any other Loan Party after the Closing Date, (b) any amendment, supplement or other modification to any Permit received by the Company or any other Loan Party after the Closing Date.

5.11 Storage Requirements for Off-Site Materials and Deposits. Cause all Unincorporated Materials to be stored and identified in accordance with the requirements of *Section 3.3.26*.

5.12 Security Interest in Newly Acquired Property. If the Company or any Loan Party shall at any time acquire any interest in property not covered by the Security Documents (other than property in which, pursuant to the Financing Agreements, the Company or such Loan Party is not required to grant a security interest in favor of any Secured Party) or enter into a Material Project Document, and if the same is not automatically perfected by virtue of the after-acquired property clause of the Security Document, promptly upon such acquisition or execution, execute, deliver and record or cause such Loan Party to execute, deliver and record a supplement to the Security Documents reasonably satisfactory in form and substance to each Funding Agent, if any, who, pursuant to the Financing Agreements, is entitled to have a security interest in such property, subjecting such interests to the Lien and security interests created by the applicable Security Documents (with the priority contemplated thereby in favor of each Secured Party).

5.13 Plans and Specifications. Provide to the Disbursement Agent and the Construction Consultant copies of, and maintain at the Site, a complete set of Final Plans and Specifications, as in effect from time to time.

5.14 Payment and Performance Bonds. Cause the Prime Contractor to cause each Subcontractor (working under a Subcontract with a value or contract price of more than \$25,000,000), within fifteen (15) calendar days after execution of its Subcontract, to provide a Payment and Performance Bond to secure its obligations under its respective Subcontract. Cause the Prime Contractor to within five (5) days after the Closing Date, provide the Prime Contractor Payment and Performance Bond to secure its obligations under the Prime Construction Contract. Each such Payment and Performance Bond shall name the Bank Agent and the Indenture Trustee as additional obligees and shall otherwise be in substantially the form of *Exhibit R* hereto. Promptly after receipt thereof, deliver the originals of such Payment and Performance Bonds to the Disbursement Agent with a copy to the Construction Consultant.

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5.15 Retainage Amounts. Withhold from each Contractor providing labor at the Site (excluding the Parking Structure Contractor), and cause each such Contractor to withhold from its first tier Subcontractors performing labor at the Site, a retainage equal to ten (10%) of each payment made to such Contractor or Subcontractor pursuant to its respective Contract or Subcontract; *provided, however*, that at such time as (i) the applicable Contractor or Subcontractor shall have completed fifty percent (50%) of the work under its respective Contract or Subcontract and (ii) if a Payment and Performance Bond is required under *Section 5.14* with respect to such Contract or Subcontract, the Company shall have obtained a "Consent of Surety to Reduction in or Partial Release of Retainage" (AIA form G707A) from the surety that issued such Payment and Performance Bond and delivered such consent to the Disbursement Agent with a copy to the Construction Consultant, then the retainage withheld may be reduced from ten (10%) percent to five (5%) percent of the contract value as adjusted by change orders, if any.

5.16 Construction Consultant.

(a) Cooperate and cause the Project Architect, the Prime Contractor, the Golf Course Designer, the Aqua Theater Designer and the Golf Course Contractor to cooperate with the Construction Consultant in the performance of the Construction Consultant's duties hereunder and under the Construction Consultant Engagement Agreement. Without limiting the generality of the foregoing, the Company shall and shall cause the Project Architect, the Prime Contractor, the Golf Course Designer, the Aqua Theater Designer and the Golf Course Contractor to: (i) communicate with and promptly provide all invoices, documents, plans and other information reasonably requested by the Construction Consultant relating to the work, (ii) authorize any subcontractors or subconsultants of any tier to communicate directly with the Construction Consultant regarding the progress of the work, (iii) provide the Construction Consultant with access to the Site and, subject to required safety precautions, the construction areas, (iv) solely in the case of the Prime Contractor, provide the Construction Consultant with reasonable working space and access to telephone, copying and telecopying equipment and (v) otherwise facilitate the Construction Consultant's review of the construction of the Project and preparation of the certificates required hereby.

(b) Pay or cause to be paid to the Construction Consultant out of the Advances made hereunder all amounts required hereunder and under the Construction Consultant Engagement Agreement.

(c) In addition to any other consultation required hereunder, following the end of each quarter, upon the request of any Funding Agent, consult with any such Person regarding any adverse event or condition identified in any report prepared by the Construction Consultant.

(d) Deliver to the Construction Consultant, no less frequently than every thirty (30) days, an Anticipated Cost Report as in effect from time to time.

5.17 Preserving the Project Security.

Undertake and cause the other Loan Parties to undertake, all actions which are necessary or appropriate in the reasonable judgment of the Funding Agents to (i) maintain the Secured Parties' respective security interests under the Security Documents in the Project Security in full force and effect at all times (including the priority thereof), and (ii) preserve and protect the Project Security and protect and enforce the Company's rights and title and the respective rights of the Secured Parties to the Project Security, including, without limitation, the making or delivery of all filings and recordings, the payments of fees and other charges, the issuance of supplemental documentation, the discharge of all claims or other liens other than Permitted Liens adversely affecting the respective rights of the Secured Parties to and under the Project Security and the publication or other delivery of notice to third parties.

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5.18 **Management Letters.** Deliver to the Funding Agents and the Disbursement Agent a copy of any "management letter" or other similar communication received by the Company from the Reviewing Accountant in relation to the Company's financial, accounting and other systems, management or accounts.

5.19 **Governmental and Environmental Reports.** Deliver to the Funding Agents, the Disbursement Agent and the Construction Consultant copies of all material reports required to be filed by the Company with any Governmental Authority and any reports with respect to Environmental Matters.

5.20 **Insurance.** The Company shall, and shall cause each Loan Party, to at all times maintain in full force and effect the insurance policies and programs listed on *Exhibit O*.

5.21 **Application of Insurance and Condemnation Proceeds.** If any Event of Loss shall occur with respect to the Project or any other asset of any Loan Party, the Company shall and shall cause each other Loan Party (a) promptly upon discovery or receipt of notice thereof to provide written notice thereof to the Disbursement Agent, and (b) diligently to pursue all its rights to compensation against all relevant insurers, reinsurers and/or Governmental Authorities, as applicable, in respect of such event to the extent that the Company or such Loan Party has a reasonable basis for a claim for compensation or reimbursement, including, without limitation, under any insurance policy required to be maintained hereunder. All amounts and proceeds (including instruments) in respect of any Event of Loss, including the proceeds of any insurance policy required to be maintained by the Company hereunder (collectively, "*Loss Proceeds*") shall be applied as provided in this Section. All Loss Proceeds (other than those in respect of the Aircraft Collateral which shall be governed by the FF&E Facility Agreement) shall be paid by the insurers, reinsurers, Governmental Authorities or other payors directly to the Disbursement Agent for deposit in the Company's Funds Account. If any Loss Proceeds are paid directly to the Company, any affiliate of the Company or any Funding Agent or Lender by any insurer, reinsurer, Governmental Authority, any landlord or grantor under the Affiliate Real Estate Agreements or such other payor, (i) such Loss Proceeds shall be received in trust for the Disbursement Agent, (ii) such Loss Proceeds shall be segregated from other funds of the Company or such other Person, and (iii) the Company or such other Person shall pay (or, if applicable, the Company shall cause such of its affiliates to pay) such Loss Proceeds over to the Disbursement Agent in the same form as received (with any necessary endorsement) for deposit in the Company's Funds Account. In the event that for a period of ninety (90) days after any Loss Proceeds are deposited in the Company's Funds Account, the Company is not permitted pursuant to the terms hereof to obtain Advances of such Loss Proceeds, then the Company shall use all other such proceeds and funds on deposit in the Completion Guaranty Deposit Account and the Project Liquidity Reserve Account to prepay the Bank Loans, the Second Mortgage Notes and the FF&E Facility in accordance with the Bank Credit Agreement, the Second Mortgage Notes Indenture and the FF&E Facility Agreement, respectively, in each case, subject to the Project Lenders Intercreditor Agreement and the FF&E Intercreditor Agreement.

5.22 **Compliance with Material Project Documents.** The Company shall comply duly and promptly, in all material respects, with its obligations, and enforce all of its respective rights under all Material Project Documents, except where the failure to comply or enforce such rights, as the case may be, could not reasonably be expected to have a Material Adverse Effect.

5.23 **Utility Easement Modifications.** The Company shall diligently cause all utility or other easements that would interfere with the construction or maintenance of the improvements within the Project to be removed as expeditiously as possible. In any event, the Company shall remove such easements before they interfere in any material respect with the prosecution in accordance with the Project Schedule of the work involved with the Project, and in any event, prior to the Opening Date. In the event such easements are not removed prior to such time as is reasonably determined by the Construction Consultant and the Company fails to provide title insurance to the Project Secured Parties in a form reasonably satisfactory to them insuring over any loss the Project Secured Parties may suffer

as a result of Company's failure to so remove such easements, then the Company (a) agrees that the Disbursement Agent shall have the right to authorize such advances as it deems appropriate in order to remove or insure over the utility easements as exceptions to the title insurance policies in favor of the Project Secured Parties, and (b) hereby grants to the Disbursement Agent an irrevocable power of attorney to take such further steps in the name of the Company as the Construction Consultant determines are appropriate in order to remove or insure over such easements.

5.24 **Construction on Site.** The Company shall construct (a) the Golf Course only on the Golf Course Land pursuant to the Golf Course Lease, (b) the golf driving range only on the Phase II Land pursuant to the Driving Range Lease and (c) the remainder of the Project (excluding the Golf Course and the golf driving range) only on the portions of the Site owned by Wynn Las Vegas (excluding the Golf Course Land and the Phase II Land) provided that a portion of the "Entertainment Facility" (as defined in the Bank Credit Agreement) may encroach upon the Phase II Land.

5.25 **FF&E Component.** The Company shall as contemplated in the definition of the term "FF&E Component" from time to time update *Exhibit T-3* as necessary so that such Exhibit shall reflect an accurate description of the FF&E Component.

ARTICLE 6.

—NEGATIVE COVENANTS

The Company covenants and agrees, with and for the benefit of the Funding Agents, the Lenders and the Disbursement Agent that until this Agreement is terminated pursuant to *Section 11.18* hereof, it shall not:

6.1 **Waiver, Modification and Amendment.**

6.1.1 directly or indirectly enter into, amend, modify, terminate (except in accordance with its terms), supplement or waive a right or permit or consent to the amendment, modification, termination (except in accordance with its terms), supplement or waiver of any of the provisions of, or give any consent under (a) any Permit, the effect of which could reasonably be expected to have a Material Adverse Effect, (b) the Bylaws, Articles of Incorporation, Certificates of Formation or Operating Agreements of any Loan Parties (except as contemplated by *Section 3.3.32* hereof), (c) the Construction Guaranty or any Payment and Performance Bond (i) without obtaining the Bank Agent's prior written consent, (ii) without obtaining the FF&E Lender's prior written consent and (iii) if such amendment, modification, termination, supplement or waiver is not permitted under *Sections 4.28* and *4.29* of the Second Mortgage Notes Indenture, without obtaining (A) the consent of a majority in principal amount of the holders of the Second

Mortgage Notes or (B) if the Second Mortgage Notes are then rated CCC+ or higher by S&P, a confirmation from the Rating Agencies that such amendment, waiver or other modification will not result in a Rating Downgrade (provided that the Loan Parties may amend, modify, terminate, supplement or waive any provision under (or provide a consent under) any document described in clauses (b) or (c) above if such amendment, modification, termination, supplement, waiver or consent (x) has no adverse effect on the Loan Parties or any Lender and (y) does not relate to any of the substantive non-consolidation related provisions in the organizational documents of the Loan Parties), or (d) any other Contract unless it could not reasonably be expected to have a Material Adverse Effect, and then only in accordance with the procedures set forth in *Section 6.1.2* or *Section 6.1.3*, as applicable, below (provided that the same shall not relieve the Company of the requirements of *Section 6.2*). Notwithstanding any of the foregoing, the Company may:

6.1.2 enter into Contracts consistent with the Final Plans and Specifications, the Project Schedule and the Project Budget, as each is in effect from time to time. Each such Contract shall be in writing and shall become effective when and only when: (i) the Company and the Contractor have executed and delivered the Contract (or, in the case of any purchase orders, such purchase

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order shall have otherwise become enforceable against the Company and the Contractor thereunder) (with the effectiveness thereof subject only to satisfaction of the conditions in clauses (ii), (iii), (iv), (v) and (vi) below); (ii) for Contracts constituting Material Project Documents, the Company has submitted to the Disbursement Agent an Additional Contract Certificate together with all exhibits, attachments and certificates required thereby (including the Construction Consultant's Certificate), each duly completed and executed; (iii) if entering into such Contract will result in an amendment to the Project Budget, the Company has complied with the requirements of *Section 6.4*; (iv) if entering into such Contract will have the effect of a Scope Change, the Company has complied with the provisions of *Section 6.2*; (v) if entering into such Contract will cause the Project to fail to be In Balance, the Company has complied with the requirements of *Section 5.8.3*; (vi) if a Payment and Performance Bond is required under *Section 5.14* with respect to such Contract, the Company shall have obtained and delivered such Payment and Performance Bond to the Disbursement Agent within the time period required under *Section 5.14* and (vii) for contracts constituting Material Project Documents, the Disbursement Agent has acknowledged receipt of the materials referenced in clause (ii) above, as contemplated in the Additional Contract Certificate (which the Disbursement Agent agrees to promptly do upon receipt of said material);

6.1.3 from time to time, amend any Contracts. Any such amendment shall be in writing and shall identify with particularity all changes being made. Each such amendment shall be effective when and only when: (i) the Company and other Contractor have executed and delivered the contract amendment (or, in the case of any amendment to a purchase order, such amendment shall have otherwise become enforceable against the Company and the Contractor thereunder) (with the effectiveness thereof subject only to satisfaction of the conditions in clauses (ii), (iii), (iv), (v) and (vi) below); (ii) for Contracts constituting Material Project Documents, the Company has submitted to the Disbursement Agent a Contract Amendment Certificate together with all exhibits, attachments and certificates required thereby each duly completed and executed; (iii) if such amendment will result in an amendment to the Project Budget, the Company has complied with the requirements of *Section 6.4*; (iv) if such amendment will have the effect of a Scope Change, the Company has complied with the provisions of *Section 6.2*; (v) if such amendment will cause the Project to fail to be In Balance, the Company has complied with the requirements of *Section 5.8.3*; (vi) if a Payment and Performance Bond is required under *Section 5.14* with respect to such Contract after giving effect to the amendment, the Company shall have obtained the written consent of the surety that issued such Payment and Performance Bond to such amendment and delivered such consent to the Disbursement Agent with a copy to the Construction Consultant; and (vii) for Contracts constituting Material Project Documents, the Disbursement Agent has acknowledged its receipt of the materials referenced in clause (ii) and (vi) above, as contemplated in the Contract Amendment Certificate (which the Disbursement Agent agrees to promptly do upon receipt of said materials).

6.2 *Scope Changes; Completion; Drawings.*

6.2.1 *Scope Changes.* Without obtaining the Required Scope Change Approval, direct, consent to or enter into any Scope Change if such Scope Change:

(a) will increase the amount of Project Costs unless the following clauses (i) and (ii) have been satisfied:

(i) (A) the Company causes common equity contributions in the amount of such increase to be made to the Company (other than from funds in the Completion Guaranty Deposit Account or the Project Liquidity Reserve Account) and deposited in the Company's Funds Account; or

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(B) the Company allocates Realized Savings obtained with respect to a Line Item Category in the amount of such increase to pay for such Scope Change, which may occur if and only if the following conditions have been satisfied:

(1) the Company reasonably anticipates (and the Construction Consultant confirms) that the Opening Date shall occur:

(x) within 15 months from the date of such allocation, if such Scope Change will increase the amount of Project Costs allocated to the aqua theater,

(y) within 14 months from the date of such allocation, if such Scope Change will increase the amount of Project Costs allocated to the lake or mountain feature; or

(z) within 12 months from the date of such allocation, for all other Scope Changes;

(2) the Prime Contractor shall have entered into Subcontracts in respect of ninety percent (90%) of the guaranteed maximum price under the Prime Construction Contract; and

(3) the Company shall have executed guaranteed maximum price Contracts in respect of seventy percent (70%) of the total costs reflected in the Project Budget for the "Interior Furnishings/Signage/Electronic Systems," "Miscellaneous Capital Projects," "Golf Course Construction," and "Parking Garage" Line Item Categories; and

(ii) the Company amends the Project Budget to the extent required under *Section 6.4.1* so as to reflect to the proposed Scope Change;

(b) is not, in the reasonable judgment of (i) the Company (in the case of any De Minimis Scope Change) and (ii) the Construction Consultant (in the case of any Scope Change that is not a De Minimis Scope Change), consistent with the requirements of *Exhibit X-1*;

(c) in the reasonable judgment of the (i) the Company (in the case of any De Minimis Scope Change) and (ii) the Construction Consultant (in the case of any Scope Change that is not a De Minimis Scope Change) (based on its experience, familiarity and review of the Project and representations provided by the Company, the Contractors and Subcontractors), could reasonably delay the Completion Date beyond the Scheduled Completion Date;

(d) in the reasonable judgment of (i) the Company (in the case of any De Minimis Scope Change) and (ii) the Construction Consultant (in the case of any Scope Change that is not a De Minimis Scope Change), could reasonably permit or result in any materially adverse modification or materially impair the enforceability of any material warranty under the Prime Construction Contract or any other Contract;

(e) in the reasonable judgment of the Company (in the case of any De Minimis Scope Change) and (ii) the Construction Consultant or the Project Architect (in the case of any Scope Change that is not a De Minimis Scope Change), is not permitted by a Project Document and could adversely impact the Project;

(f) in the reasonable judgment of (i) the Company (in the case of any De Minimis Scope Change) and (ii) the Construction Consultant (in the case of any Scope Change that is not a De Minimis Scope Change), could reasonably present a significant risk of the revocation or material adverse modification of any Permit;

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(g) in the reasonable judgment of (i) the Company (in the case of any De Minimis Scope Change) and (ii) the Construction Consultant or the Project Architect (in the case of any Scope Change that is not a De Minimis Scope Change), could reasonably cause the Project or any portion thereof not to comply with Legal Requirements (provided that the Construction Consultant shall be entitled to determine that no violation of any Legal Requirement will occur on the basis of a certification by the Company to such effect unless the Construction Consultant is aware of any inaccuracies in such certification); or

(h) in the reasonable judgment of the Company could reasonably result in a material adverse modification, cancellation or termination of any insurance policy required to be maintained by the Company pursuant to *Section 5.20*.

Prior to implementing any Scope Change (other than a De Minimis Scope Change or the acceptance of non-conforming work), the Company shall submit an Additional Contract Certificate or Contract Amendment Certificate and otherwise comply with the provisions of *Sections 6.1.2* or *6.1.3*, as applicable. Prior to implementing any Scope Change (including a DeMinimis Scope Change but excluding the acceptance of non-conforming work) (x) under the Prime Construction Contract, the Company shall comply with *Section 18.10.1* of the Prime Construction Contract (including obtaining the written consent of the surety under the Prime Contractor Payment and Performance Bond to such Scope Change) and (y) under any other Contract, as to which the Company is required to obtain a Payment and Performance Bond pursuant to *Section 5.14*, the Company shall obtain the written consent of the surety under the relevant Payment and Performance Bond to such Scope Change.

6.2.2 Substantial and Final Completion. Accept (or be deemed to have confirmed) any notice of "*Substantial Completion*" or "*Final Completion*" of all or any portion of the Project issued by any Contractor under any Material Project Document (including, without limitation, *Sections 12.1* and *12.2* of the Prime Construction Contract) without the written approval of the Construction Consultant and the Project Architect (provided that the Construction Consultant and Project Architect shall act with due diligence and as promptly as possible in making their determination to approve or disapprove).

6.2.3 Reduction of Retainage Amounts. Reduce the level of Retainage Amounts withheld pursuant to *Section 5.6* of the Prime Construction Contract or *Section 5.15* hereof.

6.2.4 Failure to Withhold Retainage Amounts. Fail to withhold a sum equal to one hundred and fifty percent (150%) of the costs reasonably estimated by the Company (and confirmed by the Construction Consultant) as necessary to complete "*Punch List Items*" (as defined in the Prime Construction Contract) as Retainage Amounts pursuant to *Section 5.7* of the Prime Construction Contract unless such retention is not permitted under applicable laws.

6.2.5 Acceptance of Non-Conforming Work. Accept any non-conforming "*Work*" (as defined in the Prime Construction Contract) pursuant to *Section 10.9* of the Prime Construction Contract unless the Company shall have complied with the requirements of *Section 6.2.1* above.

6.2.6 Approval of the Schedule of Values. (a) Approve the initial "*Schedule of Values*" (as defined in the Prime Construction Contract) or any change, modification or supplement thereto pursuant to *Section 5.1* of the Prime Construction Contract, without, in each case, the consent of the Construction Consultant or (b) fail to direct the Prime Contractor to adjust the Schedule of Values as contemplated in the last sentence of *Section 5.1* of the Prime Construction Contract as and when required by the Construction Consultant.

6.2.7 Increase in Contractor's Fee. Accept or agree to any increase in the Contractor's Fee (as defined in the Prime Construction Contract) for any reason, except to the extent required pursuant to *Section 18.5.2* of the Prime Construction Contract.

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6.3 Amendment to Operative Documents. Enter into any agreement (other than this Agreement and the other Financing Agreements) restricting its ability to amend any of the Financing Agreements or other Operative Documents.

6.4 Project Budget and Project Schedule Amendment. Directly or indirectly, amend, modify, allocate, re-allocate or supplement or permit or consent to the amendment, modification, allocation, re-allocation or supplementation of, any of the Line Item Categories or other provisions of the Project Budget or modify or extend the Scheduled Completion Date, except as follows:

6.4.1 Permitted Budget Amendments.

(a) Concurrently with the implementation of any Scope Change, the Company shall submit a Project Budget/Schedule Amendment Certificate and amend the Project Budget in accordance with the provisions of *Section 6.4.1(c)* below to the extent necessary so that the amount set forth therein for each Line Item Category shall reflect all Scope Changes that have been made to such Line Item Category.

(b) The Company may from time to time amend the Project Budget in accordance with the provisions of *Section 6.4.1(c)* in order to increase, decrease or otherwise reallocate amounts allocated to specific Line Item Categories.

(c) (i) The Company shall implement any amendment to the Project Budget by delivering to the Disbursement Agent a Project Budget/Schedule Amendment Certificate together with all exhibits, attachments and certificates required thereby, each duly completed and executed. Such Project Budget/Schedule Amendment Certificate shall describe with particularity the Line Item Category increases, decreases, contingency allocations, and other proposed amendments to the Project Budget.

(ii) Increases to the aggregate amount budgeted for any Line Item Category will only be permitted to the extent of (A) allocation of Realized Savings obtained in a different Line Item Category to the extent permitted under *Section 6.2.1*, (B) allocation of the previously unallocated amounts under the "Construction Contingency" Line Item Category (so long as after giving effect to such allocation the Unallocated Contingency Balance will equal or exceed the Required Minimum Contingency), or (C) allocation of an increase in Available Funds including additional funds deposited in the Company's Funds Account.

(iii) Decreases to any Line Item Category will only be permitted upon obtaining Realized Savings in such Line Item Category.

(d) Increases and decreases to particular Line Items set forth in column C ("Current Budget") of the Anticipated Cost Report or Column D ("Revised Project Budget") of the Monthly Requisition Report shall be permitted to the extent not inconsistent with the foregoing provisions of *Sections 6.4.1(a) and (c)* (except that the Company is not required to submit a Project Budget/Schedule Amendment Certificate in connection therewith); provided that increases to the "Hard Cost Construction Contingency" Line Item and the "Soft Cost Construction Contingency" Line Item shall only be permitted to the extent of (x) allocation of Realized Savings obtained in any Line Item Category or (y) an increase in Available Funds including additional funds deposited in the Company's Funds Account.

6.4.2 Permitted Schedule Amendments. The Company may, from time to time, amend the Project Schedule to extend the Scheduled Completion Date, but (except as permitted in the following sentence) not beyond Outside Completion Deadline, by delivering to the Disbursement Agent a Project Budget/Schedule Amendment Certificate (a) containing a revised Project Schedule reflecting the new Scheduled Completion Date and (b) complying with the provisions of

Section 6.4.1(c) above with respect to the changes in the Project Budget that will result from the extension of the Scheduled Completion Date. If an Event of Loss or an Event of Force Majeure occurs, then the Company shall be permitted to extend the Scheduled Completion Date beyond the Outside Completion Deadline to the extent that the Company certifies in writing, and the Construction Consultant confirms, to the Disbursement Agent that such extension is reasonably necessary to overcome any delays caused by the Event of Loss or Event of Force Majeure, provided that no such extension may extend beyond March 31, 2006.

6.4.3 Amendment Certificates. Upon submission of the Project Budget/Schedule Amendment Certificate to the Disbursement Agent, together with all exhibits, attachments and certificates required pursuant thereto, each duly completed and executed, such amendment shall become effective hereunder, and the Project Budget for the Project and, if applicable, the Project Schedule and the Scheduled Completion Date, shall thereafter be as so amended.

6.5 No Other Powers of Attorney. Execute or deliver any agreement creating any lien (other than Permitted Liens), powers of attorney (other than powers of attorney for signatories of documents permitted or contemplated by the Operative Documents), or similar documents, instruments or agreements, except to the extent such documents, instruments or agreements comprise part of the Security Documents.

6.6 Opening. Cause or permit the Opening Date to occur unless each of the Opening Conditions has been satisfied and the Company has delivered to the Disbursement Agent a certificate in the form of *Exhibit W-9* and has caused the Prime Contractor to deliver to the Disbursement Agent a certificate in the form of *Exhibit W-10*, the Construction Consultant has delivered to the Disbursement Agent a certificate in the form of *Exhibit W-11* to this Agreement and the Project Architect has delivered to the Disbursement Agent a certificate in the form of *Exhibit W-12* to this Agreement.

6.7 Zoning and Contract Changes and Compliance. (a) Initiate or consent to or acquiesce to any zoning downgrade of the Mortgaged Property or seek any material variance under any existing zoning ordinance except, in each case, to the extent such downgrade or variance could not reasonably be expected to materially and adversely affect the occupancy, use or operation of the Golf Course Land, the Phase II Land or the Casino Land, (b) use or permit the use of the Mortgaged Property in any manner that could result in such use becoming a non-conforming use (other than a non-conforming use otherwise in compliance with applicable land use laws, rules and regulations by virtue of a variance) under any zoning ordinance or any other applicable land use law, rule or regulation or (c) initiate or consent to or acquiesce to any change in any laws, requirements of Governmental Authorities or obligations created by private contracts which now or hereafter could reasonably be likely to materially and adversely affect the occupancy, use or operation of the Golf Course Land, the Phase II Land or the Casino Land.

6.8 No Joint Assessment; Separate Lots. Suffer, permit or initiate the joint assessment of any Mortgaged Property (i) with any other real property constituting a separate tax lot and (ii) with any portion of such Mortgaged Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against any such personal property shall be assessed or levied or charged to such Mortgaged Property as a single lien.

6.9 **Additional Project Documents.** Enter into or become a party to any Additional Project Document that is a Contract except (a) with the prior written consent of the Bank Agent or as permitted under *Section 6.1.2* and (b) if such Additional Project Document is a Material Project Document, upon delivery to the Bank Agent of (x) a Consent from each third party to such Additional Project Document and (y) each Delivery Requirement with respect to such Additional Project Document; *provided* that the consent of the Bank Agent shall not be required for a Loan Party to enter into Additional Project Documents (i) with Persons other than Affiliates of Loan Parties and (ii) pursuant to which the Loan Parties as a whole will incur obligations or liabilities with a value of not

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more than \$5,000,000 with respect to any Additional Project Document, per year. Enter into or become a party to any Additional Project Document that does not constitute a Contract except in compliance with the requirements of *Section 7.23* of the Bank Credit Agreement.

6.10 **Unincorporated Materials.** Cause or permit (a) the value of Unincorporated Materials located at the Site but not expected to be incorporated into the Project within the ensuing calendar month to exceed \$10,000,000 at any time, (b) the amounts paid by the Company in respect of Unincorporated Materials not located at the Site to exceed a value of \$20,000,000 at any time or (c) the amount of contract deposits paid by the Company in respect of Unincorporated Materials to exceed a value of \$30,000,000 at any time. The foregoing limits on Unincorporated Materials may be increased from time to time to an amount mutually agreed upon among the Company, the Construction Consultant and the Disbursement Agent.

ARTICLE 7.

—EVENTS OF DEFAULT

7.1 **Events of Default.** The occurrence of any of the following events shall constitute an event of default ("*Event of Default*") hereunder:

7.1.1 **Other Financing Documents.** The occurrence of an "*Event of Default*" under and as defined (a) in the Bank Credit Agreement, (b) in the FF&E Facility Agreement or (c) in the Second Mortgage Notes Indenture.

7.1.2 **Failure to Demonstrate Balancing.** The failure, from time to time from and after the initial Advance of funds from the Second Mortgage Notes Proceeds Account, of the Project to be In Balance and such failure shall continue for thirty (30) days without being cured.

7.1.3 **Inability to Deliver Certificates.** The failure, for sixty (60) consecutive days, of the Company to submit an Advance Request which is approved.

7.1.4 **Misstatements; Omissions.** Any representation, warranty or certification confirmed or made in any Financing Agreement or any Material Project Document (including any Advance Request or other certificate submitted with respect to any Financing Agreement or Material Project Document) by any Loan Party or in any writing provided by any Loan Party in connection with the transactions contemplated by this Agreement shall be found to have been incorrect in any material respect when made or deemed to be made.

7.1.5 **Covenants.**

(a) The Company shall fail to perform or observe any of its obligations under *Sections 5.1.1, 5.1.2, 5.1.3, 5.2(i), 5.8.1, 5.8.3, 5.14, 5.21, 6.1, 6.2, 6.3, 6.4, 6.6 or 6.7* hereof; or

(b) The Company shall fail, or shall fail to cause each Loan Party, to at all times maintain in full force and effect the insurance policies and programs listed on *Exhibit O* (except for automobile, workers compensation, pollution liability and design errors and omissions insurance); or

(c) The Company shall fail, or shall fail to cause each Loan Party, to at all times maintain in full force and effect the insurance policies and programs with respect to automobile, workers compensation, pollution liability and design errors and omissions insurance listed on *Exhibit O* where such default shall not have been remedied within thirty (30) days after the earlier of (i) the Company or any other Loan Party becoming aware of such breach or default or (ii) notice of such failure from the Disbursement Agent or any Funding Agent to the Company; or

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(d) The Company shall fail to perform or observe any of its obligations under *Articles 5 or 6* hereof (other than those listed in *Sections 7.1.5(a), (b) or (c)* above) where such default shall not have been remedied within thirty (30) days after the earlier of (i) the Company or any other Loan Party becoming aware of such breach or default or (ii) notice of such failure from the Disbursement Agent or any Funding Agent to the Company.

7.1.6 **Breach of Contracts.**

(a) Any Loan Party shall breach or default under any term, condition, provision, covenant, representation or warranty contained in any Contract with a contract price of value in excess of \$5,000,000 and such breach or default shall continue unremedied for ten (10) days after the earlier of (i) the Company or any other Loan Party becoming aware of such breach or default or (ii) receipt by the Company or any other Loan Party of notice from the Disbursement Agent or any Funding Agent of such breach or default; or

(b) Any party (other than a Loan Party) shall breach or default under any term, condition, provision, covenant, representation or warranty contained in any Contract with a contract value in excess of \$5,000,000 and such breach or default shall continue unremedied for thirty (30) days after the earlier of (i) the Company or any other Loan Party becoming aware of such breach or default or (ii) receipt by the Company or any other Loan Party of notice from the Bank Agent or any Lender of such breach or default; *provided, however*, that (A) if the breach or default is reasonably susceptible to cure within sixty (60) days but cannot be cured within such thirty (30) days despite such other party's good faith and diligent efforts to do so, the cure period shall be extended as is reasonably necessary beyond such thirty (30) day period (but in no event longer

than sixty (60) days) if remedial action reasonably likely to result in cure is promptly instituted within such thirty (30) day period and is thereafter diligently pursued until the breach or default is corrected and (B) no Event of Default shall be deemed to have occurred as a result of such breach if the Company provides written notice to the Funding Agents immediately upon (but in no event more than two (2) Banking Days after) the Company or any Loan Party becoming aware of such breach that the Company intends to replace such Contract (or that replacement is not necessary) and (1) the Company obtains a replacement obligor or obligors reasonably acceptable to the Disbursement Agent (in consultation with the Construction Consultant) for the affected party (if in the judgment of the Disbursement Agent (in consultation with the Construction Consultant) a replacement is necessary), (2) the Company enters into a replacement Contract in accordance with *Section 6.1* on terms no less beneficial to the Company and the Secured Parties in any material respect than the Contract so breached within sixty (60) days of such breach (if in the reasonable judgment of the Disbursement Agent (in consultation with the Construction Consultant) a replacement is necessary); *provided, however* that the replacement Contract may require the Company to pay amounts to the replacement obligor in excess of those that would have been payable under the breached Contract if such additional payments in the reasonable judgment of the Disbursement Agent, in consultation with the Construction Consultant, do not cause the Project to fail to be In Balance and (3) such breach or default, after considering any replacement obligor and replacement Contract and the time required to implement such replacement, has not had and could not reasonably be expected to have a Material Adverse Effect; or

(c) The Company shall have received a "stop work" notice under Nevada Revised Statutes *Section 624.610* with respect to any Contract with a contract price or value in excess of \$5,000,000.

7.1.7 Breach of Material Project Documents. Any Loan Party or any other party thereto shall breach, or default under any term, condition, provision, covenant, representation or warranty

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contained in any Material Project Document (other than any Contract) or any other agreement (other than the Facility Agreements or other Financing Agreements) to which any Loan Party is a party if the effect of such breach or default could reasonably be expected to have a Material Adverse Effect and such breach or default shall continue unremedied for thirty (30) days after the earlier of (i) the Company or any other Loan Party becoming aware of such default or (ii) receipt by the Company or any other Loan Party of notice from the Disbursement Agent or any Funding Agent of such default; *provided, however*, that in the case of any Material Project Document (other than the Contracts), if the breach is by a party other than any Loan Party, then no Event of Default shall be deemed to have occurred as a result of such breach if the Company provides written notice to the Disbursement Agent, the Indenture Trustee and the FF&E Agent immediately upon (but in no event more than two (2) Banking Days after) the Company or any Loan Party becoming aware of such breach that the Company intends to replace such Material Project Document (or that replacement is not necessary) and (i) the Company obtains a replacement obligor or obligors reasonably acceptable to the Disbursement Agent (in consultation with the Construction Consultant) for the affected party (if in the judgment of the Disbursement Agent (in consultation with the Construction Consultant) a replacement is necessary), (ii) the Company enters into a replacement Material Project Document in accordance with *Section 6.1* on terms no less beneficial to the Company and the Secured Parties in any material respect than the Material Project Document so breached within sixty (60) days of such breach (if in the reasonable judgment of the Disbursement Agent (in consultation with the Construction Consultant) a replacement is necessary); *provided, however* that the replacement Project Document may require the Company to pay amounts to the replacement obligor in excess of those that would have been payable under the breached Project Document if such additional payments in the reasonable judgment of the Disbursement Agent, in consultation with the Construction Consultant, do not cause the Project to fail to be In Balance and (iii) such breach or default, after considering any replacement obligor and replacement Material Project Document and the time required to implement such replacement, has not had and could not reasonably be expected to have a Material Adverse Effect.

7.1.8 Financing Agreements.

(a) Any of the Financing Agreements, once executed and delivered, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared null and void by any Governmental Authority of competent jurisdiction, or (b) any of the Security Documents, once executed and delivered, shall fail to provide the secured parties thereunder all of the Liens, security interest, rights, titles, interest, priorities, remedies, powers or privileges intended to be created thereby or cease to be in full force and effect, or (c) the validity or the applicability of the Security Documents to the Loans or the Second Mortgage Notes, or any other obligations purported to be secured or guaranteed thereby or any part thereof shall be disaffirmed or contested by or on behalf of the Company or any other party thereto or (d) the Company or any other party to the Financing Agreements shall deny in writing that it has any further liability thereunder prior to the payment in full in immediately available funds of all the Obligations thereunder, including, with respect to the Bank Credit Agreement, the cancellation of all outstanding "*Letters of Credit*" (as defined in the Bank Credit Agreement) and termination of the Commitments thereunder.

7.1.9 Termination or Invalidity of Material Project Documents; Abandonment of Project.

(a) Any of the Material Project Documents shall have terminated, become invalid or illegal, or otherwise ceased to be in full force and effect, provided that with respect to any Material Project Document other than the Prime Construction Contract, the Construction Guaranty or the Affiliate Real Estate Agreements, no Event of Default shall be deemed to have occurred as a result of such termination if the Company provides written notice to the

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Funding Agents immediately upon (but in no event more than two (2) Banking Days after) the Company, the Construction Guarantor or any Loan Party becoming aware of such Project Document ceasing to be in full force or effect that the Company intends to replace such Project Document (or that replacement is not necessary) and (i) the Company obtains a replacement obligor or obligors reasonably acceptable to the Disbursement Agent (in consultation with the Construction Consultant), for the affected party (if in the judgment of the Disbursement Agent (in consultation with the Construction Consultant) a replacement is necessary), (ii) the Company enters into a replacement Project Document in accordance with *Section 6.1*, on terms no less beneficial to the Company and the Secured Parties in any material respect than the Project Document so terminated, within sixty (60) days of such termination (if in the reasonable judgment of the Disbursement Agent (in consultation with the Construction Consultant) a replacement is necessary); *provided, however* that the replacement Project Document may require the Company to pay additional amounts to the replacement obligor that would have otherwise been payable under the terminated Project Document if such additional payments in the reasonable judgment of the Disbursement Agent, in consultation with the Construction Consultant, do not cause the Company to fail to be In Balance, and (iii) such termination, after considering any replacement obligor and replacement Project Document and the time required to implement such replacement, has not had and could not reasonably be expected to have a Material Adverse Effect; *provided, further*, that the

termination of the Driving Range Lease, the Parking Facility Lease or the Building Lease in connection with any release of the Phase II Land in accordance with the Bank Credit Agreement and the Second Mortgage Notes Indenture shall not be deemed to be an Event of Default hereunder;

(b)(i) The Loan Parties shall cease to own the portion(s) of the Site or the Site Easements owned by them as of the Closing Date (other than Wynn Home Site to the extent permitted by the Bank Credit Agreement and the Second Mortgage Notes Indenture) or any parcels and subdivisions thereof or Improvements located thereon; and (ii) the Loan Parties shall cease to own 985 acre feet of water per year appurtenant to the Site; and

(c) The Company shall abandon the Project or otherwise cease to pursue the operations of the Project.

7.1.10 *Government Authorizations.* The Company or any other Loan Party shall fail to observe, satisfy or perform, or there shall be a violation or breach of, any of the terms, provisions, agreements, covenants or conditions attaching to or under the issuance to such Person of any Permit or any such Permit or any provision thereof shall be suspended, revoked, cancelled, terminated or materially and adversely modified or fail to be in full force and effect or any Governmental Authority shall challenge or seek to revoke any such Permit if such failure to perform, violation, breach, suspension, revocation, cancellation, termination or modification could reasonably be expected to have a Material Adverse Effect;

7.1.11 *Schedule; Completion.*

(a) The Construction Consultant shall reasonably determine (based on its experience, familiarity and review of the Project and information and schedule provided by the Company and the Contractors) that the Completion Date is likely to occur no earlier than seventy-five (75) days after the Scheduled Completion Date; or

(b) Failure to achieve the Completion Date on or before the Scheduled Completion Date.

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7.1.12 *Future Advances.* With respect to any of the Deeds of Trust, if any "borrower" (as that term is defined in NRS 106.310) who may send a notice pursuant to NRS 106.380(1), (i) delivers, sends by mail or otherwise gives, or purports to deliver, send by mail or otherwise give, to a beneficiary under any of the Deeds of Trust (A) any notice of an election to terminate the operation of any such Deed of Trust as security for any secured obligation, including, without limitation, any obligation to repay any "future advance" (as defined in NRS 106.320) of "principal" (as defined in NRS 106.345), or (B) any other notice pursuant to NRS 106.380(1), (ii) records a statement pursuant to NRS 106.380(3), or (iii) causes any Deed of Trust, any secured obligation, or any Secured Party to be subject to NRS 106.380(2), 106.380(3) or 106.400.

7.2 *Remedies.* Upon the occurrence and during the continuation of an Event of Default, the Funding Agents and the Disbursement Agent may, without further notice of default, presentment or demand for payment, protest or notice of non-payment or dishonor, or other notices or demands of any kind, all such notices and demands being waived (to the extent permitted by applicable law), exercise any or all rights and remedies at law or in equity (in any combination or order that the Funding Agents may elect, subject to the foregoing), including without limitation or prejudice to the Funding Agents' other rights and remedies, the following:

(a) refuse, and the Funding Agents shall not be obligated, to make any Advances or make any payments from any Account or other funds held by the Disbursement Agent by or on behalf of the Company or suspend or terminate the Commitments; and

(b) exercise any and all rights and remedies available to it under any of the Financing Agreements.

ARTICLE 8.

—CONSULTANTS AND REPORTS

8.1 *Removal and Fees.* Only the Bank Agent in its sole discretion may remove from time to time the Independent Consultants and upon such removal a replacement acceptable to the Bank Agent shall be appointed in consultation with the Company. Notice of any replacement Independent Consultant shall be given by the Bank Agent to the Indenture Trustee, the FF&E Agent, the Disbursement Agent, the Company and the Independent Consultant being replaced. All reasonable fees and expenses of the Independent Consultants (whether the original ones or replacements) shall be paid by the Company. The Bank Agent will reasonably consult with the Company on a regular basis with respect to on-going costs of the Independent Consultants and unless a Potential Event of Default or Event of Default shall have occurred and be continuing, if requested by the Company, the Bank Agent may agree with the Company that such costs be subject to a reasonable fee cap. Neither the FF&E Agent nor the Indenture Trustee shall have the right to remove an Independent Consultant or appoint a replacement. The Company has reviewed the Construction Consultant's Engagement Agreement and hereby agrees to reimburse the Disbursement Agent and the Funding Agents for the fees of the Construction Consultant set forth therein.

8.2 *Duties.* The Independent Consultants shall be contractually obligated to the Bank Agent, the Indenture Trustee and the FF&E Agent to carry out the activities required of them in this Agreement and in the Construction Consultant Engagement Agreement and as otherwise requested by such Funding Agents. The Company acknowledges that it will not have any cause of action or claim against any Independent Consultant resulting from any decision made or not made, any action taken or not taken or any advice given by such Independent Consultant in the due performance in good faith of its duties.

8.3 *Acts of Disbursement Agent.* The Disbursement Agent will take such actions as any Funding Agent or the Company may reasonably request to cause the Independent Consultants to act diligently

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in the issuance of all certificates required to be delivered by the Independent Consultants hereunder and to otherwise fulfill their obligations to the Bank Agent, the Indenture Trustee and the FF&E Agent as described in the first sentence of Section 8.2.

ARTICLE 9.

9.1 **Appointment and Acceptance.** Subject to and on the terms and conditions of this Agreement, the Funding Agents hereby jointly and irrevocably appoint and authorize the Disbursement Agent to act on their behalf hereunder and under the Collateral Account Agreements and any other account agreements to which it is a party (collectively, the "*Related Agreements*"). The Disbursement Agent accepts such appointment and agrees to exercise commercially reasonable efforts and utilize commercially prudent practices in the performance of its duties hereunder consistent with those of similar institutions holding collateral, administering construction loans and disbursing disbursement control funds.

9.2 **Duties and Liabilities of the Disbursement Agent Generally.**

9.2.1 Commencing upon execution and delivery hereof, the Disbursement Agent shall have the right to meet periodically at reasonable times, however no less frequently than quarterly, upon three (3) Banking Days' notice, with representatives of the Company, the Construction Consultant, the Prime Contractor, the Project Architect and such other Contractors, employees, consultants or agents as the Disbursement Agent shall reasonably request to be present for such meetings. The Disbursement Agent may perform such inspections and tests of the Project as it deems reasonably appropriate in the performance of its duties hereunder. In addition, the Disbursement Agent shall have the right at reasonable times upon prior notice to review all information (including Project Documents) supporting the amendments to the Project Budget, amendments to any Project Documents, the Company's Advance Requests and any certificates in support of any of the foregoing, to inspect materials stored on the Mortgaged Property or at any other location, to review the insurance required pursuant to the terms of the Financing Agreements, to confirm receipt of endorsements from the Title Insurer insuring the continuing priority of the liens of the Deeds of Trust as security for each Advance hereunder, and to examine the Plans and Specifications and all shop drawings relating to the Project. The Disbursement Agent is authorized to contact any Contractor for purposes of confirming receipt of progress payments. The Disbursement Agent shall be entitled to examine, copy and make extracts of the books, records, accounting data and other documents of the Company, including without limitation bills of sale, statements, receipts, conditional and unconditional lien releases, contracts or agreements, which relate to any materials, fixtures or articles incorporated into the Project. From time to time, at the request of the Disbursement Agent, the Company shall make available to the Disbursement Agent a Project Schedule. The Company agrees to cooperate with the Disbursement Agent in assisting the Disbursement Agent to perform its duties hereunder and to take such further steps as the Disbursement Agent reasonably may request in order to facilitate the Disbursement Agent's performance of its obligations hereunder.

9.2.2 **Powers, Rights and Remedies.** The Disbursement Agent is authorized to take such actions and to exercise such powers, rights and remedies under this Agreement and the Related Agreements as are specifically delegated or granted to the Disbursement Agent by the terms hereof or thereof, together with such powers, rights and remedies as are reasonably incidental thereto. The Disbursement Agent agrees to act in accordance with the instructions of the Controlling Person and in the absence of such instructions shall take such actions or refrain from acting as it deems reasonable subject to any express requirements of this Agreement. Unless a Potential Event of Default or Event of Default shall have occurred or be continuing or as otherwise expressly provided herein, neither the Funding Agents nor the Disbursement Agent shall

instruct the Securities Intermediary to take an action inconsistent with the Company's instructions (if such Company instructions are consistent with the requirements of this Agreement).

9.2.3 **Notice of Events of Default.** If the Disbursement Agent notifies any Funding Agent that an Event of Default or a Potential Event of Default known to it (or as to which it has received notice from any Funding Agent) has occurred (which has not been cured or waived), the Disbursement Agent shall provide prompt notice to each of the Funding Agents of the same and otherwise shall exercise such of the rights and powers vested in it by this Agreement and the documents constituting or executed in connection with this Agreement, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the reasonable administration of its own affairs.

9.2.4 **No Risk of Own Funds.** None of the provisions of this Agreement shall require the Disbursement Agent to expend or risk its own funds or otherwise to incur any personal financial liability in the performance of any of its duties hereunder or under the Related Agreements, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

9.2.5 **No Imputed Knowledge.** Notwithstanding anything to the contrary in this Agreement, if the entity acting as Disbursement Agent also serves as a collateral agent or Funding Agent under the Financing Agreements, and except if such functions shall be performed by the same individuals within such entity to the maximum extent permitted by law, the Disbursement Agent shall not be deemed to have any knowledge of any fact known to such entity in its capacity as the collateral agent or Funding Agent by reason of the fact that the Disbursement Agent and the collateral agent or Funding Agent, as the case may be, are the same entity. Except as aforesaid, no knowledge of the collateral agent or any Funding Agent shall be attributed to the Disbursement Agent. The Disbursement Agent's duties and functions hereunder shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon the Disbursement Agent in its capacity as Bank Agent or as Lender. With respect to its participation in the extensions of credit under the Bank Credit Agreement, the Disbursement Agent shall have the same rights and powers hereunder as any other Funding Agent or Lender and may exercise the same as though it were not performing its duties and functions hereunder. The Disbursement Agent and its Affiliates may accept deposits from, lend money to and generally engage in any kind of banking, trust, financial advisory or other business with the Company or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from the Company for services in connection with this Agreement and otherwise without having to account for the same to the Lenders. Each party hereto acknowledges that, as of the Closing Date, Deutsche Bank Trust Company Americas is, in addition to acting as the Disbursement Agent hereunder, also acting as the initial Bank Agent, Securities Intermediary, investment manager on behalf of the Loan Parties, and may be a Bank Lender.

9.3 **Particular Duties and Liabilities of the Disbursement Agent.**

9.3.1 **Reliance For Instructions.** The Disbursement Agent may, from time to time, in the event that any matter arises as to which specific instructions are not provided herein or in a Related Agreement (as applicable), request directions from the Funding Agents or the Controlling Person with respect to such matters and may refuse to act until so instructed and shall be fully protected in acting or refusing to act in accordance with such instructions.

9.3.2 *Reliance Generally.* The Disbursement Agent may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval or other paper or document believed by it on reasonable grounds to be genuine and to have been signed or presented by the proper party or parties.

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Notwithstanding anything else in this Agreement to the contrary, in performing its duties hereunder, including approving any Advance Requests, making any other determinations or taking any other actions hereunder, the Disbursement Agent shall be entitled to rely on certifications from the Company (and, where contemplated herein, certifications from third parties, including the Construction Consultant) as to satisfaction of any requirements and/or conditions imposed by this Agreement. The Disbursement Agent shall not be required to conduct any independent investigation as to the accuracy, veracity or completeness of any such items or to investigate any other facts or circumstances to verify compliance by the Company with its obligations hereunder.

9.3.3 *Court Orders.* The Disbursement Agent is authorized, in its exclusive discretion, to obey and comply with all writs, orders, judgments or decrees issued by any court or administrative agency affecting any money, documents or things held by the Disbursement Agent. The Disbursement Agent shall not be liable to any of the parties hereto, their successors, heirs or personal representatives by reason of the Disbursement Agent's compliance with such writs, orders, judgments or decrees, notwithstanding the fact that such writ, order, judgment or decree is later reversed, modified, set aside or vacated.

9.3.4 *Requests, etc. of the Company.* Any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced (unless other evidence in respect thereof be herein specifically prescribed) by an instrument signed by one of its Responsible Officers, and any resolution of the Company may be evidenced to the Disbursement Agent by a copy thereof certified by the Secretary or an Assistant Secretary of the Company.

9.3.5 *Reliance on Opinions of Counsel.* The Disbursement Agent may consult with counsel and any written opinion of counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder or under any Related Agreement in good faith and in accordance with such opinion of counsel.

9.3.6 *Action through Agents or Attorneys.* The Disbursement Agent may execute any of the trusts or powers hereunder or perform any duties hereunder or under any Related Agreement either directly or by or through agents or attorneys appointed with due care, and the Disbursement Agent shall not be responsible for any act on the part of any agent or attorney so appointed.

9.3.7 *Marshaling of Assets.* The Disbursement Agent need not marshal in any particular order any particular part or piece of the Project Security held by the Disbursement Agent in its capacity as Disbursement Agent hereunder or under any Related Agreement, or any of the funds or assets that the Disbursement Agent may be entitled to receive or have claim upon.

9.3.8 *Disagreements.*

(a) In the event of any disagreement between a Funding Agent and the Company or any other Person or Persons whether or not named herein, and adverse claims or demands are made in connection with or for any of the investments or amounts held pursuant to this Agreement or under any Related Agreement, the Disbursement Agent shall be entitled at its option to refuse to comply with any such claim or demand so long as such disagreement shall continue, and in so doing, the Disbursement Agent shall not be or become liable for damages or interest to such Funding Agent or the Company or any other Person or Persons for the Disbursement Agent's failure or refusal to comply with such conflicting or adverse claims or demands. The Disbursement Agent shall be entitled to continue so to refrain and refuse so to act until:

(i) the rights of the adverse claimants have been fully adjudicated in the court assuming and having jurisdiction of the claimants and the investments and amounts held pursuant to this Agreement or under any Related Agreement; or

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(ii) all differences shall have been adjusted by agreement, and the Disbursement Agent shall have been notified thereof in writing by all persons deemed by the Disbursement Agent, in its sole discretion, to have an interest therein.

(b) In addition, the Disbursement Agent, in its sole discretion, may file a suit in interpleader for the purpose of having the respective rights of all claimants adjudicated, and may deposit with the court all of the investments and amounts held pursuant to this Agreement or under any Related Agreement. The Company agrees to pay all costs and reasonable counsel fees incurred by the Disbursement Agent in such action, said costs and fees to be included in the judgment in any such action.

9.4 *Segregation of Funds and Property Interest.* Except as otherwise expressly provided in the Financing Agreements, monies and other property received by the Disbursement Agent shall, until used or applied as herein provided, be held for the purposes for which they were received, and shall be segregated from other funds except to the extent required herein or by law. To the extent that the Disbursement Agent also acts as securities intermediary, (a) the Disbursement Agent shall note in its records that all funds and other assets in the Company Accounts (other than the FF&E Proceeds Account, the Company's FF&E Payment Account, the Bank Proceeds Account and the Second Mortgage Notes Proceeds Account), have been pledged to the Project Secured Parties and that the Disbursement Agent is holding such items for the Project Secured Parties, (b) the Disbursement Agent shall note in its records that all funds and other assets in the FF&E Proceeds Account and the Company's FF&E Payment Account have been pledged to the FF&E Agent for the benefit of the FF&E Secured Parties and that the Disbursement Agent is holding such items for such Persons, (c) the Disbursement Agent shall note in its records that all funds and other assets in the Bank Proceeds Account have been pledged to the Bank Agent for the benefit of the Bank Lenders and that the Disbursement Agent is holding such items for such Persons and (d) the Disbursement Agent shall note in its records that all funds and other assets in the Second Mortgage Notes Proceeds Account have been pledged to the Indenture Trustee for the benefit of the Second Mortgage Notes Holders and that the Disbursement Agent is holding such items for such Persons. Accordingly, all such funds and assets shall not be within the bankruptcy "estate" (as such term is used in 11 U.S.C. § 541) of the Disbursement Agent. The Disbursement Agent shall not be under any liability for interest on any monies received by it hereunder, except as otherwise specified in this Agreement. The Disbursement Agent hereby expressly waives any right of set-off or similar right it may have against or in relation to the Company Accounts and any monies, Permitted Investments or other amounts on deposit therein.

9.5 Compensation and Reimbursement of the Disbursement Agent. The Company covenants and agrees to pay to the Disbursement Agent from time to time, and the Disbursement Agent shall be entitled to, the fees set forth in that certain letter agreement between the Company and the Disbursement Agent, and the Company will further pay or reimburse the Disbursement Agent upon its request for all reasonable expenses, disbursements and advances incurred or made by the Disbursement Agent in accordance with any of the provisions of the Financing Agreements or the documents constituting or executed in connection with the Project Security including any Related Agreements (including the reasonable compensation and the reasonable expenses and disbursements of its counsel and of all persons not regularly in its employ). The obligations of the Company under this *Section 9.5* to compensate the Disbursement Agent and to pay or reimburse the Disbursement Agent for reasonable expenses, disbursements and advances shall constitute additional indebtedness (and shall be deemed permitted indebtedness under each Financing Agreement) hereunder and shall survive the satisfaction and discharge of this Agreement.

9.6 Qualification of the Disbursement Agent. The Disbursement Agent hereunder shall at all times be a corporation with offices in New York City, New York which (a) is authorized to exercise corporation trust powers, (b) is subject to supervision or examination by the applicable Governmental Authority, (c) shall have a combined capital and surplus of at least Five Hundred Million Dollars

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(\$500,000,000), (d) shall have a long-term credit rating of not less than A- or A3, respectively, by S&P or Moody's; and provided, that any such bank with a long-term credit rating of A- or A3 shall not cease to be eligible to act as Disbursement Agent upon a downward change in either such rating of no more than one category or grade of such minimum rating, as the case may be; and (e) with respect to any replacement of the Person acting as Disbursement Agent as of the Closing Date, shall be acceptable to each of the Bank Agent and the Indenture Trustee acting pursuant to the Project Lender Intercreditor Agreement. In case at any time the Disbursement Agent shall cease to be eligible in accordance with the provisions of this *Section 9.6*, the Disbursement Agent shall resign immediately in the manner and with the effect specified in *Section 9.7*.

9.7 Resignation and Removal of the Disbursement Agent. The Bank Agent and the Indenture Trustee, acting pursuant to the Project Lenders Intercreditor Agreement, shall have the right should they reasonably determine that the Disbursement Agent has breached or failed to perform its obligations hereunder or has engaged in willful misconduct or gross negligence, upon the expiration of thirty (30) days following delivery of written notice of substitution to the Disbursement Agent and the Company, to cause the Disbursement Agent to be relieved of its duties hereunder and to select a substitute disbursement agent to serve hereunder. The Disbursement Agent may resign at any time upon forty-five (45) days' written notice to all parties hereto. Such resignation shall take effect upon the earlier of receipt by the Disbursement Agent of an instrument of acceptance executed by a successor disbursement agent meeting the qualifications set forth in *Section 9.6* and consented to by the other parties hereto or forty-five (45) days after the giving of such notice. Upon selection of a substitute disbursement agent, the Funding Agents and the Company and the substitute disbursement agent shall enter into an agreement substantially identical to this Agreement and, the Disbursement Agent shall promptly transfer to the substitute disbursement agent upon request therefor originals of all books, records, and other documents in the Disbursement Agent's possession relating to this Agreement.

9.8 Merger or Consolidation of the Disbursement Agent. Any corporation into which the Disbursement Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Disbursement Agent shall be a party, or any corporation succeeding to the corporate trust business of the Disbursement Agent, shall, if eligible hereunder, be the successor of the Disbursement Agent hereunder; provided, that such corporation shall be eligible under the provisions of *Section 9.6* without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

9.9 Statements; Information.

9.9.1 Monthly Statements. The Disbursement Agent shall provide to the Funding Agents and the Company a monthly statement of all deposits to, and disbursements from, each account maintained with it and interest and earnings credited to each account established and maintained hereunder and under the other Operative Documents by the Disbursement Agent. The Disbursement Agent shall forward to the Funding Agents any such statements delivered to it by the securities intermediaries under the Collateral Account Agreements.

9.9.2 Information Requests. The Disbursement Agent shall, at the expense of the Company (i) as promptly as is reasonably practicable after receipt of any reasonable written request by the Company or any Funding Agent, but not more frequently than monthly (unless a Potential Event of Default or an Event of Default shall have occurred), provide the Company or such Funding Agent, as the case may be, with such information as the Company or such Funding Agent may reasonably request regarding all categories, amounts, maturities and issuers of investments made by the Disbursement Agent pursuant to this Agreement and regarding amounts available in the

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Company Accounts, and the various sub-accounts included therein, and (ii) upon the reasonable written request of the Company, arrange with the Company for a mutually convenient time for a Responsible Officer of the Reviewing Accountant to visit the offices of the Disbursement Agent to examine and take copies of records relating to and instruments evidencing the investments made by the Disbursement Agent pursuant to this Agreement.

9.10 Limitation of Liability. The Disbursement Agent's responsibility and liability under this Agreement shall be limited as follows: (a) the Disbursement Agent does not represent, warrant or guaranty to the Funding Agents or the Lenders the performance by the Company, the Prime Contractor, the Construction Guarantor, the Golf Course Contractor, the Construction Consultant, the Project Architect, the Golf Course Designer, the Aqua Theater Designer, or any other Contractor or Subcontractor of their respective obligations under the Operative Documents and shall have no duty to inquire of any Person whether a Potential Event of Default or an Event of Default has occurred and is continuing; (b) the Disbursement Agent shall have no responsibility to the Company, the Funding Agents or the Lenders as a consequence of performance by the Disbursement Agent hereunder except for any bad faith, fraud, gross negligence or willful misconduct of the Disbursement Agent as finally judicially determined by a court of competent jurisdiction; (c) the Company shall remain solely responsible for all aspects of its business and conduct in connection with the Project, including but not limited to the quality and suitability of the Plans and Specifications, the supervision of the work of construction, the qualifications, financial condition and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants and property managers, the accuracy of all applications for payment, and the proper application of all disbursements; and (d) the Disbursement Agent is not obligated to supervise, inspect or inform the Company of any aspect of the development, construction or operation of the Project or any other matter

referred to above. Each Funding Agent and Lender has made its own independent investigation of the financial condition and affairs of the Loan Parties in connection with the making of the extensions of credit contemplated by the Financing Agreements and has made and shall continue to make its own appraisal of the creditworthiness of the Loan Parties. Except as specifically set forth herein, the Disbursement Agent shall not have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of the Funding Agents or Lenders or to provide any Funding Agent or Lender with any credit or other information with respect thereto. The Disbursement Agent shall not have, by reason of this Agreement, a fiduciary relationship in respect of any Funding Agent or Lender; and nothing in this Agreement, expressed or implied, is intended to or shall be so construed as to impose upon the Disbursement Agent any obligations in respect of this Agreement except as expressly set forth herein or therein. The Disbursement Agent shall have no duties or obligations hereunder except as expressly set forth herein, shall be responsible only for the performance of such duties and obligations and shall not be required to take any action otherwise than in accordance with the terms hereof. The provisions of this *Article 9* are solely for the benefit of the Disbursement Agent and the Funding Agents and Lenders and the Company shall have no rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties under this Agreement, the Disbursement Agent does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for the Company or any of its Affiliates. Neither the Disbursement Agent nor any of its officers, directors, employees or agents shall be in any manner liable or responsible for any loss or damage arising by reason of any act or omission to act by it or them hereunder or in connection with any of the transactions contemplated hereby, including, but not limited to, any loss that may occur by reason of forgery, false representations, the exercise of its discretion, or any other reason, except as a result of their bad faith, fraud, gross negligence or willful misconduct as finally judicially determined by a court of competent jurisdiction.

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ARTICLE 10.

—SAFEKEEPING OF ACCOUNTS

10.1 Application of Funds in Company Accounts. Amounts deposited in the Company Accounts shall be applied exclusively as provided in this Agreement and the Disbursement Agent shall at all times act and direct the securities intermediaries under the Collateral Account Agreements so as to implement the application of funds provisions and procedures herein set forth. The Disbursement Agent is hereby authorized to direct the Securities Intermediary to reduce to cash any Permitted Investment (without regard to maturity) in any account in order to make any application required hereunder. No amount held in any Account maintained hereunder shall be disbursed except in accordance with the provisions hereof or as required by law.

10.2 Event of Default. Notwithstanding anything to the contrary in this Agreement, (a) upon the occurrence and during the continuance of an Event of Default of which it has actual knowledge, the Disbursement Agent shall not in any such event deposit or cause to be deposited any amounts into the Disbursement Account, the Soft Costs Cash Management Account, the Hard Costs Cash Management Account, the Bank Proceeds Account, the Company's Payment Account, the Company's FF&E Payment Account or the Interest Payment Account or release or cause to be released any amounts to the Company unless instructed to the contrary by (i) in the case of the Second Mortgage Notes Proceeds Account, the Indenture Trustee, (ii) in the case of the FF&E Proceeds Account and the Company's FF&E Payment Account, the FF&E Agent and (iii) in the case of all other Company Accounts, the Bank Agent; and (b) upon the occurrence of (i) an Event of Default, (ii) the dissolution or liquidation or Bankruptcy of the Completion Guarantor, or (iii) a breach by the Completion Guarantor of any of its covenants and agreements under the Completion Guaranty, in each case, of which it has knowledge, the Disbursement Agent shall withdraw all funds then on deposit in the Completion Guaranty Deposit Account and deposit the same in the Company's Funds Account. The Disbursement Agent is hereby irrevocably authorized by the Company to apply, or cause to be applied, amounts in any Company Account and any other sums held by the Securities Intermediary under any Collateral Account Agreement to the payment of interest, principal, fees, costs, charges or other amounts or obligations due or payable to the Secured Parties when instructed to do so by the Controlling Person.

10.3 Liens. The Disbursement Agent shall take such actions within its control that it customarily takes in the conduct of its business to protect the Company Accounts, and all cash, funds, Permitted Investments from time to time deposited therein, as well as any proceeds or income therefrom (collectively, the "*Company Accounts Collateral*") free and clear of all liens, security interests, safekeeping or other charges, demands and claims of any nature whatsoever now or hereafter existing, in favor of anyone other than the Secured Parties (or the Disbursement Agent, as agent for the Secured Parties) (collectively, the "*Third Party Claims*"); it being understood, however, that the foregoing shall in no way be deemed to be a guaranty or other assurance by the Disbursement Agent that Third Party Claims will not arise.

10.4 Perfection. The Disbursement Agent shall take any steps from time to time requested by the Bank Agent or the Indenture Trustee to confirm or cause the securities intermediaries under the Collateral Account Agreements to confirm and maintain the priority of their respective security interests in the Company Accounts Collateral.

10.5 Second Mortgage Notes Proceeds Account. Notwithstanding any other provision hereof, the parties hereto acknowledge that the security interest granted by the Company to the Indenture Trustee in the Second Mortgage Notes Proceeds Account (including any Permitted Investments held therein) pursuant to the Second Mortgage Notes Collateral Account Agreement is for the sole and exclusive benefit of the Indenture Trustee and the Second Mortgage Note Holders and, subject to the terms of the Project Lenders Intercreditor Agreement, only the Indenture Trustee shall have the right to direct the Disbursement Agent with respect thereto.

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10.6 Bank Proceeds Account. Notwithstanding any other provision hereof, the parties hereto acknowledge that the security interest granted by the Company to the Bank Agent in the Bank Proceeds Account (including any Permitted Investments held therein) pursuant to the Company Collateral Account Agreement is for the sole and exclusive benefit of the Bank Agent and the Bank Lenders, and subject to the terms of the Project Lenders Intercreditor Agreement, only the Bank Agent shall have the right to direct the Disbursement Agent with respect thereto.

10.7 FF&E Proceeds and Company's FF&E Payment Accounts. Notwithstanding any other provision hereof, the parties hereto acknowledge that the security interest granted by the Company to the FF&E Agent in the FF&E Proceeds Account (including any Permitted Investments held therein) pursuant to the FF&E Collateral Account Agreement and in the Company's FF&E Payment Account (including any Permitted Investments held therein) pursuant to the FF&E Local Company Collateral Account Agreement is for the sole and exclusive benefit of the FF&E Agent and the FF&E Lenders and, subject to the terms of the FF&E Intercreditor Agreement, only the FF&E Agent shall have the right to direct the Disbursement Agent with respect thereto.

ARTICLE 11.

—MISCELLANEOUS

11.1 **Addresses.** Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:

If to the Company:

Wynn Las Vegas, LLC,
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Ron Kramer
Telephone No.: (702) 733-4123
Facsimile No.: (702) 791-0167

Wynn Las Vegas Capital Corp.
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Ron Kramer
Telephone No.: (702) 733-4123
Facsimile No.: (702) 791-0167

Wynn Design & Development, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Kenneth Wynn
Attn: Todd Nisbet
Telephone No.: (702) 733-4497
Facsimile No.: (702) 733-4715

If to the Bank Agent:

Deutsche Bank Trust Company Americas
c/o Deutsche Bank Securities Inc.
200 Crescent Court, Suite 550
Dallas, TX 75201
Attn: Gerard Dupont
Telephone No.: (214) 740-7913
Facsimile No.: (214) 740-7910

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If to the Indenture Trustee:

Wells Fargo Bank, National Association
Wells Fargo Corporate Trust Services
MAC N9303-110
Sixth & Marquette
Minneapolis, MN 55479
Attn: Michael Slade
Telephone No.: 612-667-0266
Facsimile No.: 612-667-2160 -2134

If to the FF&E Agent:

Wells Fargo Bank Nevada, National Association
c/o Wells Fargo Bank, National Association
Attn: Corporate Trust Services
MAC: U1228-120
299 South Main Street, 12th Floor
Salt Lake City, Utah 84111
Telephone No.: (801) 246-5630
Facsimile No.: (801) 246-5053

If to the Disbursement Agent:

Deutsche Bank Trust Company Americas
31 West 52nd Street
New York, New York 10019
Attn: Amy Sinensky
Telephone No.: (212) 469-4063
Facsimile No.: (212) 469-6091

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by reputable overnight delivery service, (c) in the event overnight delivery services are not readily available, if mailed by first class mail, postage prepaid, registered or certified with return receipt requested or (d) if sent by prepaid telex, or by telecopy with correct answer back received. Notice so given shall be effective upon receipt by the addressee, except that communication or notice so transmitted by telecopy or other direct written electronic means shall be deemed to have been validly and effectively given on the day (if a Banking Day and, if not, on the next following Banking Day) on which it is validly transmitted if transmitted before 4 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; *provided, however*, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location by giving of no less than twenty (20) days' notice to the other parties in the manner set forth hereinabove.

11.2 **Further Assurances.** From time to time the Company shall execute and deliver, or cause to be executed and delivered, such additional instruments, certificates or documents, and take all such actions, as the Funding Agents or the Disbursement Agent may reasonably request for the purposes of implementing or effectuating the provisions of this Agreement and the other Operative Documents, or of more fully perfecting or renewing the rights of the Funding Agents and the Lenders with respect to the Project Security (or with respect to any additions thereto or replacements or proceeds or products thereof or with respect to any other property or assets hereafter acquired by any Loan Party which may be deemed to be part of the Project Security) pursuant hereto or thereto. Upon the exercise by the Funding Agents, the Disbursement Agent or any Lender of any power, right, privilege or remedy pursuant to this Agreement or the other Operative Documents which requires any consent, approval, recording, qualification or authorization of any Governmental Authority, the Company shall, or shall cause another Loan Party to, execute and deliver, or will cause the execution and delivery of, all applications, certifications, instruments and other documents and papers that the Funding Agent, the Disbursement Agent or such Lender may be required to obtain from the Company or the applicable Loan Party for such governmental consent, approval, recording, qualification or authorization.

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11.3 **Delay and Waiver.** No delay or omission to exercise any right, power or remedy accruing upon the occurrence of any Potential Event of Default or Event of Default or any other breach or default of the Company under this Agreement shall impair any such right, power or remedy of the Funding Agents, the Lenders, the Disbursement Agent or any other Secured Party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or in any similar breach or default thereafter occurring, nor shall any waiver of any single Potential Event of Default, Event of Default or other breach or default be deemed a waiver of any other Potential Event of Default, Event of Default or other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any of the Funding Agents, the Lenders, the Disbursement Agent or any other Secured Party, of any Potential Event of Default, Event of Default or other breach or default under this Agreement or any other Financing Agreement, or any waiver on the part of any of the Funding Agents, the Lenders, the Disbursement Agent or any other Secured Party, of any provision or condition of this Agreement or any other Operative Document, must be in writing and shall be effective only to the extent in such writing specifically set forth. All remedies, either under this Agreement or any other Financing Agreement or by law or otherwise afforded to any of the Funding Agents, the Lenders, the Disbursement Agent or any other Secured Party, shall be cumulative and not alternative.

11.4 **Additional Security; Right to Set-Off.** Any deposits or other sums at any time credited or due from any Secured Party and any securities or other property of the Company in the possession of any Secured Party or the Collateral Agent may at all times be treated as collateral security for the payment of the Obligations, and the Company hereby pledges to each such Secured Party for the benefit of the Project Secured Parties and grants such Secured Party a security interest in and to all such deposits, sums, securities or other property on deposit or in the possession of such Secured Party or the Collateral Agent, as the case may be. Regardless of the adequacy of any other collateral, any Secured Party may execute or realize on its security interest in any such deposits or other sums credited by or due from any such Person to the Company, may apply any such deposits or other sums to or set them off against the Company's obligations to the Project Secured Parties under this Agreement and the other Financing Agreements, subject to the Intercreditor Agreements, at any time after the occurrence and during the continuance of any Event of Default.

11.5 **Entire Agreement.** This Agreement and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof, all of which negotiations and writings are deemed void and of no force and effect.

11.6 **Governing Law.** This Agreement shall be governed by the laws of the State of New York of the United States of America and shall for all purposes be governed by and construed in accordance with the laws of such state without regard to the conflict of law rules thereof other than *Section 5-1401* of the New York General Obligations Law, provided, however, that to the extent any terms of this Agreement are incorporated in and made part of any other Financing Agreement, any such term so incorporated shall for all purposes be governed by and construed in accordance with the law governing the Financing Agreement into which such term is so incorporated.

11.7 **Severability.** In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the parties hereto shall enter into good faith negotiations to replace the invalid, illegal or unenforceable provision.

11.8 **Headings.** Paragraph headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such paragraph headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

11.9 **Limitation on Liability.** NO CLAIM SHALL BE MADE BY THE COMPANY OR ANY OF ITS AFFILIATES AGAINST THE FUNDING AGENTS, THE LENDERS, THE

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DISBURSEMENT AGENT, THE CONTROLLING PERSON OR ANY OTHER SECURED PARTY OR ANY OF THEIR RESPECTIVE AFFILIATES, DIRECTORS, EMPLOYEES, ATTORNEYS OR AGENTS FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (WHETHER OR NOT THE CLAIM THEREFOR IS BASED ON CONTRACT, TORT OR DUTY IMPOSED BY LAW), IN CONNECTION WITH, ARISING OUT OF OR IN ANY WAY RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR THE OTHER OPERATIVE DOCUMENTS OR ANY ACT OR OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH; AND THE COMPANY HEREBY WAIVES, RELEASES AND AGREES NOT TO SUE UPON ANY SUCH CLAIM FOR ANY SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

11.10 **Waiver of Jury Trial.** ALL PARTIES TO THIS AGREEMENT HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER FINANCING AGREEMENTS, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANY PARTY TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE FUNDING AGENTS, DISBURSEMENT AGENT AND EACH OF THE OTHER LENDERS AND SECURED PARTIES TO ENTER INTO THIS AGREEMENT.

11.11 **Consent to Jurisdiction.** Any legal action or proceeding by or against the Company or with respect to or arising out of this Agreement may be brought in or removed to the courts of the State of New York, in and for the County of New York, or of the United States of America for the Southern District of New York. By execution and delivery of this Agreement, the Company, accepts, for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts for legal proceedings arising out of or in connection with this Agreement and irrevocably consents to the appointment of the Corporation Service Company as its agent to receive service of process in New York, New York. Nothing herein shall affect the right to serve process in any other manner permitted by law or any right to bring legal action or proceedings in any other competent jurisdiction, including judicial or non-judicial foreclosure of real property interests which are part of the Project Security. The Company further agrees that the aforesaid courts of the State of New York and of the United States of America for the Southern District of New York shall have exclusive jurisdiction with respect to any claim or counterclaim of the Company based upon the assertion that the rate of interest charged by or under this Agreement, or under the other Financing Agreements is usurious. The Company hereby waives any right to stay or dismiss any action or proceeding under or in connection with any or all of the Project, this Agreement or any other Operative Document brought before the foregoing courts on the basis of *forum non-conveniens*.

11.12 **Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding the foregoing, the Company may not assign or otherwise transfer any of its rights under this Agreement.

11.13 **Reinstatement.** This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Company's obligations hereunder or under the other Financing Agreements, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by the Secured Parties. In the event that any payment or any part thereof is so rescinded, reduced, restored or returned, such obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

11.14 **No Partnership; Etc.** The Secured Parties and the Company intend that the relationship between them shall be solely that of creditor and debtor. Nothing contained in this Agreement or in

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any of the other Financing Agreements shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by or between the Secured Parties and the Company or any other Person. The Secured Parties shall not be in any way responsible or liable for the debts, losses, obligations or duties of the Company or any other Person with respect to the Project or otherwise. All obligations to pay real property or other taxes, assessments, insurance premiums, and all other fees and charges arising from the ownership, operation or occupancy of the Project and to perform all obligations under the agreements and contracts relating to the Project shall be the sole responsibility of the Company.

11.15 **Costs and Expenses.**

11.15.1 **Reimbursement of Costs.** The Company shall (subject to the limitations set forth herein and, with respect to each Funding Agent and the Collateral Agent, to the express provisions of the Financing Agreements or any other fee letters or engagement letters to which such Funding Agent or Collateral Agent is a party) pay the reasonable legal, engineering, other professional and all other fees and costs of the Funding Agents, the Collateral Agent and the Disbursement Agent and their consultants and advisors, the reasonable travel expenses and other out-of-pocket costs incurred by each of them in connection with the preparation, negotiation, execution and delivery, and where appropriate, registration of the Operative Documents (and all matters incidental thereto), the syndication of the Loans, the administration of the transactions contemplated by the Operative Documents (including, without limitation, the administration of this Agreement, the other Operative Documents and the Security Documents) and the preservation or enforcement of any of their respective rights or in connection with any amendments, waivers or consents required under the Financing Agreements or the Operative Documents. The Funding Agents and the Collateral Agent will reasonably consult with the Company on a regular basis with respect to on-going costs of such Persons' consultants and advisors and unless a Potential Event of Default or Event of Default shall have occurred and be continuing, if requested by the Company, the Funding Agents and the Collateral Agent may agree with the Company that such costs be subject to a reasonable fee cap.

11.15.2 **Indemnity.** The Company shall indemnify, defend and hold harmless the Bank Agent, the Bank Lenders, the FF&E Agent, the FF&E Lenders, the Indenture Trustee, the Second Mortgage Notes Holders, the Insurance Advisor, the Construction Consultant, the Controlling Person, the Disbursement Agent, the Collateral Agent, each of their respective affiliates and each of their respective officers, directors, partners, trustees, employers, affiliates, shareholders, advisors, agents, attorneys, attorneys-in-fact, representatives and "controlling persons" (within the meaning of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended), (collectively, the "Indemnitees") from and against and reimburse the Indemnitees for any and all present and future claims, expenses, obligations, liabilities, losses, damages, injuries (to person, property, or natural resources), penalties, stamp or other similar taxes, actions, suits, judgments, reasonable costs and expenses (including any legal or other expenses reasonably incurred by them in connection with the investigating, preparing to defend or defending, or providing evidence in or preparing to serve or serving as witness with respect to, any lawsuits, investigations, claims or other proceedings (whether or not such Indemnitee is a formal party thereto) of whatever kind or nature, whether or not well founded, meritorious or unmeritorious, demanded, asserted or claimed against any such Indemnitee including any liability resulting from any delay or omission to pay any such tax (collectively, "Claims") arising in any manner out of or in connection with this Agreement, the Financing Documents or any other Operative Documents, the use of proceeds therefrom, the development, construction, ownership and operation of the Project the transactions contemplated by this Agreement or any other Operative Document, any other transaction related hereto or thereto of any claim, litigation, investigation or proceeding relating to any of the foregoing (regardless of whether any Indemnitee is a party hereto or thereto) including without limitation (a) any and all Claims arising in connection with the release or presence of any Hazardous Substances at the Site or the Project, whether foreseeable or unforeseeable, including

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all costs of removal and disposal of such Hazardous Substances, all reasonable costs required to be incurred in (i) determining whether the Project is in compliance and (ii) causing the Project to be in compliance, with all applicable Legal Requirements, all reasonable costs associated with claims for damages to persons or property, and reasonable attorneys' and consultants' fees and court costs, (b) any and all Claims arising out of or based upon any untrue statement or alleged untrue statement of material fact contained in any preliminary or final prospectus or any other similar disclosure document or in any amendment or supplement thereto, any omission or alleged omission to state in any preliminary or final prospectus or any other similar disclosure document or in any amendment or supplement thereto any material fact required to be stated therein or necessary to make the statements therein not

misleading or (c) any and all Claims arising in any matter out of, relating to or in connection with any conduct by any Loan Party or their respective employees or agents or any action or failure to act undertaken by any book-running manager under the Facility Agreements at any Loan Party's request or with any Loan Party's consent. No Indemnitee shall be liable for any damages arising from the use by unauthorized Persons of information or other materials sent through electronic, telecommunication or other information transmission systems that are intercepted by other Persons.

11.15.3 *Gross Negligence.* The indemnity obligation of the Company pursuant to this *Section 11.15* shall not apply with respect to an Indemnitee, to the extent arising as a result of the fraud, bad faith, gross negligence or willful misconduct of such Indemnitee, as finally judicially determined by a court of competent jurisdiction, but shall continue to apply to other Indemnitees.

11.15.4 *Unenforceability.* To the extent that the undertaking in the preceding paragraphs of this *Section 11.15* may be unenforceable because it is violative of any law or public policy, the Company will contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of such undertakings.

11.15.5 *Foreclosure.* The provisions of this *Section 11.15* shall survive foreclosure of the Security Documents and satisfaction or discharge of the Company's obligations hereunder, and shall be in addition to any other rights and remedies of any Indemnitee.

11.15.6 *Payment Due Dates.* Any amounts payable by the Company pursuant to this *Section 11.15* shall be payable within the later to occur of (a) ten (10) Banking Days after the Company receives an invoice for such amounts from any applicable Indemnitee or (b) five (5) Banking Days prior to the date on which such Indemnitee reasonably expects to pay such costs on account of which the Company's indemnity hereunder is payable, and if not paid by such applicable date shall bear interest at the highest default rate set forth in any of the Financing Agreements from and after such applicable date until paid in full in immediately available funds.

11.15.7 *Actions; Counsel.* In case any action or proceeding shall be instituted involving any Indemnitee for which indemnification is to be sought hereunder by such Indemnitee, then such Indemnitee shall promptly notify the Company of the commencement of any action or proceeding; *provided, however,* that the failure so to notify the Company shall not relieve the Company from any liability that the Company may have to such Indemnitee pursuant to *Section 11.15.2* or from any liability that the Company may have to such Indemnitee other than pursuant to *Section 11.15.2*. Notwithstanding the above, following such notification, the Company may elect in writing to assume the defense of such action or proceeding, and, upon such election, the Company shall not be liable for any legal costs subsequently incurred by such Indemnitee (other than reasonable costs of investigation and providing evidence) in connection therewith, unless (i) the Company has failed to provide counsel reasonably satisfactory to such Indemnitee in a timely manner, (ii) counsel provided by the Company reasonably determines that its representation of such Indemnitee would present it with a conflict of interest or (iii) the Indemnitee reasonably determines, on the advice of counsel, that there may be legal defenses available to it which are different from or in addition to those available to the Company. In connection with any one action

or proceeding, the Company shall not be responsible for the fees and expenses of more than one separate law firm (in addition to local counsel) for all Indemnitees under each Facility.

11.15.8 *Reports.* The Company shall report promptly to such Indemnitee on the status of such action, suit or proceeding as material developments shall occur and from time to time as requested by such Indemnitee. The Company shall deliver to such Indemnitee a copy of each document filed or served on any party in such action, suit or proceeding, and each material document which the Company possesses relating to such action, suit or proceeding.

11.15.9 *Unconditional Release.* The Company shall not consent to the terms of any compromise or settlement of any action defended by the Company in accordance with the foregoing without the prior consent of the Indemnitee, unless such compromise or settlement (a) includes an unconditional release of the Indemnitee from all liability arising out of such action or claim and (b) does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of the Indemnitee.

11.15.10 *Settlement.* Any Indemnitee against whom any Claim is made shall be entitled, after consultation with the Company and upon consultation with legal counsel wherein such Indemnitee is advised that such Claim is reasonably meritorious, to compromise or settle any such Claim if such Indemnitee determines in its reasonable discretion that failure to compromise or settle such Claim could reasonably subject such Indemnitee to criminal liability or is reasonably likely to have a material adverse effect on such Indemnitee, the Company, the Project or such Indemnitee's interest in the Project. Any such compromise or settlement shall be binding upon the Company for purposes of this *Section 11.15*.

11.15.11 *Subrogation.* Upon payment of any Claim by the Company pursuant to this *Section 11.15* or other similar indemnity provisions contained herein to or on behalf of an Indemnitee, the Company, without any further action, shall be subrogated to any and all claims that such Indemnitee may have relating thereto, and such Indemnitee shall at the request and expense of the Company cooperate with the Company and give at the request and expense of the Company such further assurances as are reasonably necessary or advisable to enable the Company vigorously to pursue such claims.

11.16 *Agreements Among Funding Agents and Other Secured Parties.*

11.16.1 *Intercreditor Agreements.* The Company acknowledges that (a) the Bank Agent and the Indenture Trustee have entered into the Project Lenders Intercreditor Agreement and (b) the Bank Agent, the Indenture Trustee and the FF&E Agent have entered into the FF&E Intercreditor Agreement, and agrees that the agreements set forth therein do not violate the Bank Agent's, the FF&E Agent's or the Indenture Trustee's obligations to the Company under the Financing Agreements. The Company agrees not to take any action to invalidate or challenge the validity of, or assert in writing the invalidity of any provisions of the Intercreditor Agreements. Notwithstanding anything to the contrary contained herein or in any other Financing Agreement, (a) at such time that all Obligations under the Bank Credit Facility or under the Second Mortgage Notes Indenture have been indefeasibly paid or otherwise satisfied in full in immediately available funds and all Commitments thereunder have been terminated, each reference to the Project Lenders Intercreditor Agreement shall be of no further force or effect and (b) at such time as all Obligations under either (i) the Bank Credit Facility and the Second Mortgage Notes Indenture or (ii) the FF&E Facility have been indefeasibly paid or otherwise satisfied in full in immediately available funds and all Commitments thereunder have been terminated, each reference to the FF&E Intercreditor Agreement shall be of no further force or effect. Notwithstanding any other provision in this Agreement to the contrary, as among the Secured Parties, no provision hereof shall be deemed to relieve or in

any way affect the Secured Parties' respective obligations or liabilities under the Intercreditor Agreements. The Company is not a third party beneficiary of the Intercreditor Agreements and shall have no right to enforce the same against any party.

11.16.2 *Calculations.* Each Funding Agent agrees with each of the other Funding Agents that it will, upon request, provide such information to the other Funding Agents and the Disbursement Agent as may be necessary to enable them to make any calculation required under the Financing Agreements.

11.16.3 *Termination of Commitments.* Each of the Bank Agent and the FF&E Agent agree with each of the other Funding Agents that it will provide notice to each other Funding Agent and the Disbursement Agent of any termination of their respective Commitments within three (3) Banking Days of such termination.

11.17 *Counterparts.* This Agreement may be executed in one or more duplicate counterparts (including by facsimile) and when signed by all of the parties listed below shall constitute a single binding agreement.

11.18 *Termination.* This Agreement shall, subject to *Section 11.13* and to the next sentence, terminate and be of no further force or effect upon completion of the transfer and release of funds contemplated by *Section 2.9*. The provisions of *Article 9* and *Section 11.15* shall survive the termination of this Agreement.

11.19 *Amendments.*

From and after the initial Advance under the Bank Credit Facility, the Bank Agent, acting at the direction of the Bank Lenders (and without the consent of the Indenture Trustee or the FF&E Agent), may from time to time agree with the Company to amend the requirements set forth on *Exhibit X-1*; provided, however, that no such amendment shall cause the standards set forth in *Exhibit X-1* to be lower than the standards set forth in *Exhibit X-2*. From and after the initial Advance under the Bank Credit Facility, the Bank Agent and the FF&E Agent may, without the consent of the Indenture Trustee, amend the Disbursement Agreement or waive any Potential Event of Default or Event of Default by or with respect to the Company or any Loan Party; provided, however, that without the consent of the holders of a majority (in aggregate principal amount) of the Second Mortgage Notes, (i) such waiver of any Potential Event of Default or Event of Default must be made not later than one hundred eighty (180) days following the applicable date notice of such Potential Event of Default or Event of Default was delivered to the Disbursement Agent pursuant to *Section 5.7.1*, or, if no such notice was delivered, the date of occurrence of such Potential Event of Default or Event of Default, (ii) neither the Bank Agent nor the FF&E Agent shall waive any Potential Event of Default or Event of Default which otherwise independently (not by cross-default or cross-reference to another agreement) constitutes a default or event of default under the Second Mortgage Notes Indenture, (iii) neither the Bank Agent nor the FF&E Agent shall amend the definition of or the conditions or circumstances requiring a Required Scope Change Approval nor waive any Potential Event of Default or Event of Default resulting from, or any condition relating to, implementation of a Scope Change for which a Required Scope Change Approval is required pursuant to *Section 6.2.1* or (iv) amend or waive any Potential Event of Default or Event of Default under *Section 7.1.2* or *Section 7.1.11* or amend or waive any provision so as to effect an amendment or waiver of such Sections.

(a) Except as otherwise provided in clause (a) above, any amendment to this Agreement must be in writing and must be signed by each party hereto.

11.20 *Suretyship Waivers.* Each of Wynn Las Vegas Capital Corp. and Wynn Design hereby waives any and all defenses available to a surety or guarantor, whether arising as a result of the joint and several liability hereunder or otherwise. Without limiting the generality of the foregoing, the waivers of the guarantors under *Section 2.5* of the Bank Guarantee and Collateral Agreement and the "FF&E Guaranty" (as defined in the FF&E Facility Agreement) are hereby incorporated herein by this reference mutatis mutandis and such waivers shall be deemed to be made by Wynn Las Vegas Capital Corp. and Wynn Design hereunder as if such waivers had been expressly set forth herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their officers thereunto duly authorized as of the day and year first above written.

COMPANY:

WYNN LAS VEGAS, LLC,
a Nevada limited liability company

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

WYNN LAS VEGAS CAPITAL CORP.,
a Nevada corporation

By: /s/ STEPHEN A. WYNN
Name: Stephen A. Wynn
Title: President

WYNN DESIGN & DEVELOPMENT, LLC,
a Nevada limited liability company

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN
Name: Stephen A. Wynn
Title: Chief Executive Officer

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BANK AGENT:

DEUTSCHE BANK TRUST COMPANY AMERICAS,

By: /s/ GEORGE REYNOLDS
Name: George Reynolds
Title: Vice President

INDENTURE TRUSTEE:

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: /s/ MICHAEL G. SLADE
Name: Michael G. Slade
Title: Corporate Trust Officer

DISBURSEMENT AGENT:

DEUTSCHE BANK TRUST COMPANY AMERICAS,

By: /s/ GEORGE REYNOLDS
Name: George Reynolds
Title: Vice President

FF&E AGENT:

WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION,

By: /s/ C. SCOTT NIELSEN
Name: C. Scott Nielsen

DEFINITIONS

"Additional Contract Certificate" means an Additional Contract Certificate in the form of *Exhibit F* to the Disbursement Agreement.

"Additional Land" shall have the meaning given in the Bank Credit Agreement.

"Additional Project Document" means any other document or agreement entered into after the Closing Date, relating to the development, construction, maintenance or operation of the Project (other than the Financing Agreements but including, without limitation, any lease or license of any portion of the Project).

"Advance" means (a) with respect to the Bank Credit Facility, an advance of Loans deposited in the Disbursement Account or a transfer of funds from the Bank Proceeds Account to the Disbursement Account or the issuance of a Letter of Credit, (b) with respect to the Second Mortgage Notes, a transfer of funds from the Second Mortgage Notes Proceeds Account to the Disbursement Account or for the payment of Debt Service on the Second Mortgage Notes as provided in *Section 2.5.6*, (c) with respect to the FF&E Facility, (i) an advance of Loans deposited in the FF&E Proceeds Account (or with respect to the FF&E Reimbursement Advance, deposited in the Company's Funds Account), (ii) the advance of Loans in the amount of \$38,000,000 to refinance the purchase of the Aircraft and (iii) the advance of Loans in the amount of up to \$10,000,000 to finance the cost of the replacement Aircraft pursuant to *Section 7.5(p)* of the FF&E Facility Agreement to the extent such cost exceeds the proceeds from the sale of the existing Aircraft, and (d) with respect to amounts on deposit in the Company's Funds Account, a release of funds from the Company's Funds Account and (e) a transfer of funds from the Completion Guaranty Deposit Account pursuant to *Section 2.5.4(d)*, in each case, made pursuant to *Article 2* of the Disbursement Agreement and (except with respect to funds on deposit in the Company's Funds Account) the applicable Facility Agreements under which all or any part of such Advance is requested.

"Advance Confirmation Notice" has the meaning given in *Section 2.4.3(a)(i)* of the Disbursement Agreement.

"Advance Date" means the date on which an Advance is required to be deposited in the Disbursement Account pursuant to *Section 2.4.4(a)(ii)* of the Disbursement Agreement.

"Advance Request" means an advance request and certificate in the form of *Exhibit C-1* to the Disbursement Agreement.

"Affiliate" as applied to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by," and "under common control with") as applied to any Person means the power, directly or indirectly, either to (a) vote 10% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

"Affiliate Real Estate Agreements" means, collectively, the Golf Course Lease, the Driving Range Lease, the Parking Facility Lease, the Shuttle Easement, the Building Lease, the Art Gallery Lease and the Dealership Lease Agreement.

"Aircraft" has the meaning given in the FF&E Facility Agreement.

"Anticipated Cost Report" means a cost report in the format of the Summary Anticipated Cost Report but which, instead of setting forth the indicated information for each Line Item Category, sets forth the indicated information for each Line Item.

"Anticipated Earnings" means, at any time, with respect to the Second Mortgage Notes Proceeds Account, the Company's Funds Account, the Completion Guaranty Deposit Account and the Project Liquidity Reserve Account, respectively, the amount of investment income which the Company reasonably determines with the concurrence of the Disbursement Agent (acting in its sole discretion exercised in good faith) will accrue on the funds in each such Company Account through the anticipated Completion Date, taking into account the current and future anticipated rates of return on Permitted Investments in such Company Accounts and the anticipated times and amounts of draws from each such Company Account for the payment of Project Costs.

"Appraisal" means any appraisal of the FF&E Component received by the FF&E Agent pursuant to clause (d) of the definition of "Completion" from Tech EquipLease, Inc., or such other Person as the FF&E Agent may select.

"Aqua Theater Design Services Agreement" means that certain Professional Design Services Agreement dated as of October 12, 2001 between the Aqua Theater Designer and Wynn Las Vegas.

"Aqua Theater Designer" means Marnell Architecture, a Professional Corporation, a Nevada corporation (fka AA Marnell II, Chtd.).

"Aqua Theater Designer's Advance Certificate" means a certificate in the form of *Exhibit C-6* to the Disbursement Agreement.

"Art Gallery Lease Agreement" means that certain Lease Agreement between Valvino and Wynn Resorts Holdings dated as of November 1, 2001.

"Availability Period" shall mean the period commencing on the Closing Date and ending on the earlier to occur of (a) the Final Completion Date and (b) the Outside Completion Deadline.

"Available Funds" means, from time to time, the sum of (i) (A) \$968,490,525 million less the aggregate of Advances made under the Bank Credit Facility (specifically excluding Advances under the Bank Revolving Debt Service Commitment Portion), plus until the Completion Date, (B) the lesser of (1) the aggregate of the unutilized Bank Revolving Debt Service Commitment Portion and (2) the aggregate amount of Debt Service due and payable during the period commencing on April 30, 2005 and ending on the Scheduled Completion Date then in effect, plus (ii) the aggregate then undrawn and unexpired amount of the Letters of Credit then outstanding under the Bank Credit Facility, plus (iii) the aggregate of the amounts on deposit in the Company's Funds Account (excluding funds transferred from the Completion Guaranty Deposit Account to the Company's Funds Account pursuant to Section 5.8.1 of the Disbursement Agreement to the extent such funds would not count as Available Funds under clause (iv) hereof had such funds remained on deposit in the Completion Guaranty Deposit Account) and the Second Mortgage Notes Proceeds Account and all Anticipated Earnings thereon, plus (iv) the aggregate amount which the Company is entitled to withdraw from the Completion Guaranty Deposit Account and the Project Liquidity Reserve Account pursuant to Section 5.8.3(i) of the Disbursement Agreement but which it has not withdrawn from such Company Accounts, plus (v) all Anticipated Earnings on the Completion Guaranty Deposit Account and the Project Liquidity Reserve Account, plus (vi) the aggregate of the amounts on deposit in the Bank Proceeds Account, the Soft Costs Cash Management Account, the Hard Costs Cash Management Account, the Operating Account and the Interest Payment Account (after giving effect to any transfers of earnings thereon to the Company's Funds Account as contemplated in the Disbursement Agreement), plus (vii) the lesser of (A) the aggregate of (x) the unutilized "Gaming Equipment Commitment" specified in the FF&E Facility permitted under the FF&E Facility Agreement to be applied towards acquisition of Eligible FF&E Equipment consisting of "Gaming Equipment" or

"Transaction Costs" associated with Gaming Equipment (each as defined in the FF&E Facility Agreement) plus (y) amounts on deposit in the FF&E Proceeds Account, and (B) the aggregate amount of Remaining Costs for Line Items allocated to Eligible FF&E Equipment consisting of "Gaming Equipment" or "Transaction Costs" associated with Gaming Equipment (each as defined in the FF&E Facility Agreement) which has not yet been purchased; plus (viii) the lesser of (A) the aggregate of (x) the unutilized "Non-Gaming Equipment Commitment" specified in the FF&E Facility permitted under the FF&E Facility Agreement to be applied towards acquisition of Eligible FF&E Equipment consisting of "Non-Gaming Equipment" or "Transaction Costs" associated with Non-Gaming Equipment (each as defined in the FF&E Facility Agreement) plus (y) amounts on deposit in the FF&E Proceeds Account (excluding amounts on deposit in the FF&E Proceeds Account counted in clause (vii)(y) above), and (B) the aggregate amount of Remaining Costs for Line Items allocated to Eligible FF&E Equipment consisting of "Non-Gaming Equipment" or "Transaction Costs" associated with Non-Gaming Equipment (each as defined in the FF&E Facility Agreement) which has not yet been purchased, plus (ix) the lesser of (A) the aggregate amount of Project Costs which the Construction Guarantor and/or the Prime Contractor has agreed or confirmed in writing, to the reasonable satisfaction of the Disbursement Agent, that it is responsible for paying (on a timely basis relative to the Project's cash needs) from its own funds but which it has not yet paid, but only to the extent that such funds have been deposited in an account which is subject to a perfected first priority security interest in favor of the Disbursement Agent on behalf of the Project Secured Parties and (B) the aggregate amount of Remaining Costs for the "Marnell Corrao GMP" Line Item Category.

"Bank Agent" means Deutsche Bank Trust Company Americas in its capacity as Administrative Agent under the Bank Credit Agreement and its successors in such capacity.

"Bank Agent Fee Letter" means that certain Second Amended and Restated Administrative Agent Fee Letter dated as of October 30, 2002 among Wynn Las Vegas, Deutsche Bank Securities, Inc. and the Bank Agent.

"Bank Company Collateral Account Agreement" means that certain Bank Company Collateral Account Agreement dated as of October 30, 2002 among the Company, the Bank Agent, the Disbursement Agent and the Securities Intermediary.

"Bank Completion Guaranty Collateral Account Agreement" means that certain Bank Completion Guaranty Collateral Account Agreement dated as of October 30, 2002 among the Completion Guarantor, the Bank Agent, the Disbursement Agent and the Securities Intermediary.

"Bank Credit Agreement" means that certain Credit Agreement dated as of October 30, 2002 among Wynn Las Vegas, the Bank Agent, Deutsche Bank Securities, Inc., as advisor, lead arranger and joint book running manager, Banc of America Securities LLC, as advisor, lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as advisor, arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York and Grand Cayman Branches, as arranger and joint documentation agent, JP Morgan Chase Bank, as joint documentation agent, and the Bank Lenders, or any permitted refinancings thereof.

"Bank Credit Facility" means, collectively, the delay draw term loan credit facility and the revolving facility described in and made available from time to time to Wynn Las Vegas by the Bank Lenders under the Bank Credit Agreement.

"Bank Deeds of Trust" means, collectively, the Bank Golf Course Deed of Trust, the Bank Hotel/Casino Deed of Trust, the Bank Phase II Deed of Trust, the Bank Palo Deed of Trust and the Bank DIIC Deed of Trust.

"Bank DIIC Deed of Trust" means that certain Deed of Trust to be entered into pursuant to Section 3.3.22 of the Disbursement Agreement between Desert Inn Improvement as trustor, and

Nevada Title Company as trustee, for the benefit of the Bank Agent as beneficiary, substantially in the form of Exhibit D to the Bank Credit Agreement.

"Bank Fee Letter" the Amended and Restated Credit Facilities Fee Letter, dated June 14, 2002, among Valvino, Wynn Resorts Holdings, Wynn Las Vegas, Deutsche Bank Trust Company Americas, Bank of America, N.A., Bear, Stearns & Co., Inc., and those certain initial agents, arrangers and managers party thereto.

"Bank Golf Course Deed of Trust" means that certain Deed of Trust dated as of October 30, 2002 between Wynn Resorts Holdings as trustor, and Nevada Title Company as trustee, for the benefit of the Bank Agent as beneficiary.

"Bank Guarantee and Collateral Agreement" means that certain Guarantee and Collateral Agreement dated as of October 30, 2002 executed by Wynn Las Vegas and each other Loan Party, in favor of the Bank Agent.

"Bank Hotel/Casino Deed of Trust" means that certain Deed of Trust dated as of October 30, 2002 between Wynn Las Vegas as trustor, and Nevada Title Company as trustee, for the benefit of the Bank Agent as beneficiary.

"Bank IP Security Agreement" means that certain Bank Intellectual Property Security Agreement dated as of October 30, 2002 made by the Wynn Las Vegas for the benefit of the Bank Agent.

"Bank Lenders" means (a) the financial institutions which are now, or may in the future become, parties to the Bank Credit Agreement and (b) the counterparties to Interest Rate Agreements that are permitted to be secured by the Bank Security Documents, in each case, or their successors or assignees in such capacity as lenders or counterparties, as the case may be, under the Bank Credit Agreement.

"Bank Local Company Collateral Account Agreement(s)" means one or more control agreements with respect to the Soft Costs Cash Management Account, the Hard Costs Cash Management Account, the Company's Payment Account and the Operating Account substantially in the form of *Exhibit Z-1* and entered into by a bank that is reasonably acceptable to the Disbursement Agent pursuant to *Sections 2.3.4, 2.3.8 and 2.3.9* of the Disbursement Agreement.

"Bank Palo Deed of Trust" means that certain Deed of Trust dated as of October 30, 2002 between Palo as trustor, and Nevada Title Company as trustee, for the benefit of the Bank Agent as beneficiary.

"Bank Parent Guarantee" means that certain Parent Guarantee dated as of October 30, 2002 entered into by Wynn Resorts Limited for the benefit of the Bank Agent and the Bank Lenders.

"Bank Phase II Deed of Trust" means that certain Deed of Trust dated as of October 30, 2002 between Valvino as trustor, and Nevada Title Company as trustee, for the benefit of the Bank Agent as beneficiary.

"Bank Proceeds Account" means the account referenced in *Section 2.3.6* of the Disbursement Agreement and established pursuant to the Bank Company Collateral Account Agreement.

"Bank Revolver Debt Service Commitment Portion" means the portion of the Bank Revolving Facility made available to Wynn Las Vegas by the Bank Lenders solely after the Scheduled Completion Date for the purpose of paying Debt Service under *Section 6.11(a)(ii)* of the Bank Credit Agreement.

"Bank Revolving Facility" means the portion of the revolving loan credit facility described in and made available from time to time to Wynn Las Vegas by the Bank Lenders under the Bank Credit Agreement.

"Bank Security Documents" means the Bank Deeds of Trust, the Bank Guarantee and Collateral Agreement, the Bank Parent Guarantee, the Collateral Agency Agreement, the Bank IP Security

Agreement, the Bank Company Collateral Account Agreement, the Bank Completion Guaranty Collateral Account Agreement, the Bank Local Company Collateral Account Agreements, the Completion Guaranty and any other guaranties, deeds of trust, security agreements or collateral account agreements executed from time to time by any Loan Party and/or any of their direct or indirect Affiliates in favor of the Bank Agent or the Bank Lenders to guaranty or secure the obligations under the Bank Credit Facility.

"Banking Day" means (a) for all purposes other than as covered by clause (b) below, any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York, Nevada or Utah or is a day on which banking institutions located in either such state are authorized or required by law or other governmental action to close, and (b) with respect to all notices, determinations, fundings and payments in connection with the "Eurodollar Rate" (as defined in the Bank Credit Agreement) or any "Eurodollar Loans" (as defined in the Bank Credit Agreement"), any day that is a Banking Day described in clause (a) above and that is also a day for trading by and between banks in Dollar deposits in the London, England interbank market.

"Bankruptcy" means, with respect to any Person, that (i) a court having jurisdiction over any Project Security shall have entered a decree or order for relief in respect of such Person in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order has not been stayed; or any other similar relief shall have been granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against such Person, under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction over any Project Security for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over such Person, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of such Person, for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of such Person, and any such event described in this clause (ii) shall continue for 60 days unless dismissed, bonded or discharged; or (iii) such Person shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or such Person shall make any assignment for the benefit of creditors, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable or if the fair market value of its assets does not exceed its aggregate liabilities; or (iv) such Person shall, or the board of directors, manager or managing member of such Person (or any committee thereof) shall, adopt any resolution or otherwise authorize any action to approve any of the actions referred to in clause (iii) above.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute thereto.

"Base Rate Loans" means (a) with respect to Loans under the Bank Credit Facility, "Base Rate Loans" as defined in the Bank Credit Agreement and (b) with respect to Loans under the FF&E Facility, Loans in respect of which interest is payable at the "Base Rate" as defined in the FF&E Facility Agreement.

"Building Department" means the Clark County Building Department.

"Building Lease" means, that certain Lease Agreement, dated as of October 21, 2002 by and between Valvino, as lessor, and Wynn Las Vegas, as lessee, with respect to the lease of space in the Phase II Land Building.

"Business Plan" shall have the meaning given in *Section 3.1.9* in the Disbursement Agreement.

"Buy-Sell Agreement" means that certain Buy-Sell Agreement dated as of June 13, 2002 among Stephen A. Wynn, an individual, Kazuo Okada, an individual, Aruze USA, Inc., a Nevada corporation, and Aruze Corp., a Japanese public corporation.

"Capital Corp." means Wynn Las Vegas Capital Corp., a Nevada corporation.

"Capital Stock" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all classes of membership interests in a limited liability company, any and all classes of partnership interests in a partnership, any and all equivalent ownership interests in a Person, and any and all warrants, rights or options to purchase any of the foregoing.

"Casino Land" means the approximately 55-acre tract of land owned by Wynn Las Vegas as more particularly described in *Exhibit T-4* to the Disbursement Agreement.

"Claims" has the meaning given in *Section 11.15.2* of the Disbursement Agreement.

"Closing Date" means the first date on which each of the conditions precedent listed in *Section 3.1* of the Disbursement Agreement have been satisfied or waived.

"Closing Financing Agreements" has the meaning given in *Section 3.1.1(a)* of the Disbursement Agreement.

"Closing Payments" has the meaning given in *Section 3.1.25* of the Disbursement Agreement.

"Collateral Account Agreements" means, collectively, the Company Collateral Account Agreements, the FF&E Collateral Account Agreement, the Completion Guaranty Collateral Account Agreements and any other collateral account agreement entered into on or after the Closing Date granting any one or more of the Lenders a security interest in any account.

"Collateral Agent" means Bank of America, N.A. in its capacity as collateral agent under the Collateral Agency Agreement and its successors in such capacity.

"Collateral Agency Agreement" means that certain Collateral Agency Agreement dated as of October 30, 2002 among the Bank Agent, the Indenture Trustee and the Collateral Agent.

"Commitment" means, (a) with respect to the Bank Credit Facility, the aggregate principal amount of all Loans to the Company which may be made under such Facility for the purpose of financing Project Costs and (b) with respect to each other Facility, the aggregate principal amount of all Loans or other advances to the Company which may be made under such Facility, as specified in the applicable Facility Agreement.

"Commitment Letter" means that certain Amended and Restated Commitment Letter dated June 14, 2002, among Valvino, Wynn Resorts Holdings, Wynn Las Vegas, Deutsche Bank Trust Company Americas, Bank of America, N.A., Bear, Sterns & Co., Inc., and those certain initial agents, arrangers and managers party thereto.

"Company" means Wynn Las Vegas, Capital Corp. and Wynn Design, jointly and severally.

"Company Accounts Collateral" has the meaning given in *Section 10.3* of the Disbursement Agreement.

"Company Accounts" means the Company's Funds Account, the Second Mortgage Notes Proceeds Account, the Disbursement Account, the Soft Costs Cash Management Account, the Hard Costs Cash Management Account, the Company's Payment Account, the Interest Payment Account, the Bank Proceeds Account, the FF&E Proceeds Account, the Operating Account, the Completion Guaranty

Deposit Account, the Project Liquidity Reserve Account and any other accounts or sub-accounts established pursuant to the Collateral Account Agreements.

"Company Collateral Account Agreements" means, collectively, the Bank Company Collateral Account Agreement and the Second Mortgage Notes Company Collateral Account Agreement, the Bank Local Company Collateral Account Agreements, the Second Mortgage Notes Local Company Collateral Account Agreements.

"Company's Closing Certificate" means a Closing Certificate in the form of *Exhibit B-1* to the Disbursement Agreement.

"Company's Funds Account" means the account referenced in *Section 2.3.1* of the Disbursement Agreement and established pursuant to the Company Collateral Account Agreements.

"Company's Payment Account" means the account referenced in *Section 2.3.9* of the Disbursement Agreement and established pursuant to the Local Account Company Collateral Account Agreements.

"Company's FF&E Payment Account" means the account referenced in *Section 2.3.10* of the Disbursement Agreement and established pursuant to the FF&E Local Company Collateral Account Agreement.

"Completion" means that each of the following has occurred:

(a) the Opening Date shall have occurred under *Section 6.6* of the Disbursement Agreement;

(b) all Contractors and Subcontractors have been paid in full (other than (A) Retainage Amounts and other amounts that, as of the Completion Date, are being withheld from the Contractors and Subcontractors in accordance with the provisions of the Project Documents, (B) amounts being contested in accordance with the Financing Agreements so long as adequate reserves have been established through an allocation in the Anticipated Cost Report and in accordance with any requirements of such Financing Agreements and (C) amounts payable in respect of Project Punchlist Items to the extent not covered by the foregoing clause (A));

(c) for Project Punchlist Items:

(i) a list of any remaining Project Punchlist Items shall have been delivered to the Construction Consultant and the Disbursement Agent by the Company and approved by the Construction Consultant as a reasonable final punchlist (such approval not to be unreasonably withheld); and

(ii) a written agreement with all Contractors performing work with respect to Project Punchlist Items shall have been entered into by the Company and such Contractors detailing the cost of remaining Project Punchlist Items and shall have been delivered to the Construction Consultant and the Disbursement Agent by the Company and approved by the Construction Consultant and the Disbursement Agent;

(d) for the FF&E Component:

(i) the Company shall have, at its own cost and expense, caused to be completed and delivered to the FF&E Agent an Appraisal demonstrating the Fair Market Value of the items comprising the FF&E Component (excluding the Aircraft). If the aggregate principal amount of Loans advanced under the FF&E Facility (excluding the amounts advanced pursuant to *Sections 2.5.1(b)* of the Disbursement Agreement) exceeds 75% of the aggregate Fair Market Value of the FF&E Component as reflected in such Appraisal (excluding the Aircraft), the Company shall promptly cause, with the consent of the FF&E Agent, first (A) additional items of Eligible FF&E Equipment of a particular type or class selected by the Company (and otherwise acceptable to the FF&E Agent) to become part of the FF&E Component and

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subject to the first priority security interest of the FF&E Security Documents while the FF&E Agent simultaneously releases another particular type or class of items of Eligible FF&E Equipment currently part of the FF&E Component and subject to the FF&E Security Documents and selected by the FF&E Agent, in order that, in either case, the aggregate principal amount of Loans advanced under the FF&E Facility (excluding the amounts advanced pursuant to *Sections 2.5.1(b)* of the Disbursement Agreement) does not exceed 75% of the Fair Market Value of the FF&E Component (excluding the Aircraft), and second (B) additional items of Eligible FF&E Equipment of any type or class selected by the Company (and otherwise acceptable to the FF&E Agent) to become part of the FF&E Component and subject to the first priority security interest of the FF&E Security Documents.

(ii) a final *Exhibit T-3* listing the fixtures, furniture and equipment that constitutes the FF&E Component shall have been delivered by the Company to the Construction Consultant and the Disbursement Agent.

(e) the Title Insurer shall have issued a title insurance endorsement with respect to all work performed by any Contractor or Subcontractor prior to the Completion Date;

(f) delivery of an update to the Business Plan previously delivered under *Section 3.1.9* of the Disbursement Agreement and a written analysis of the business and prospects of the Loan Parties, in each case for the period from the Completion Date through the end of the calendar year in which the Completion Date occurs, all in form and substance satisfactory to the Bank Lenders and the FF&E Lenders;

(g) the Prime Contractor, the Golf Course Contractor and the Parking Structure Contractor each shall have delivered its Completion Certificate certifying, among other things, as to "substantial completion" of the work under its respective Construction Agreement and such certifications shall have been accepted by the Company and the Construction Consultant in accordance with *Section 6.2.2* of the Disbursement Agreement; and

(h) for each Contract and Subcontract for which a Payment and Performance Bond is required pursuant to *Section 5.14* of the Disbursement Agreement and for which the Company (or the applicable Contractor) will release retainage as a result of Completion being achieved, the Company shall have delivered from the surety under each such Payment and Performance Bond (i) a "Consent of Surety to Reduction in or Partial Release of Retainage" (AIA form G707A) if a partial release of Retainage Amounts held under such Contract or Subcontract will be made or (ii) a "Consent of Surety to Final Payment" (AIA form G707) if a release of all Retainage Amounts held under such Contract or Subcontract will be made).

"Completion Certificates" means, collectively, the Completion Certificates in the form of *Exhibits W-1, W-2, W-3, W-4, W-5, W-6, W-7, and W-8* to the Disbursement Agreement to be delivered by the Company, the Construction Consultant, the Project Architect, the Prime Contractor, the Golf Course Designer, the Aqua Theater Designer, the Golf Course Contractor and the Parking Structure Contractor, respectively.

"Completion Date" means the date on which the Disbursement Agent countersigns the Company's Completion Certificate acknowledging that Completion has occurred.

"Completion Guarantor" means Wynn Completion Guarantor, L.L.C., a Nevada limited liability company.

"Completion Guaranty" means that certain Completion Guaranty dated as of October 30, 2002 executed by the Completion Guarantor in favor of the Bank Agent (acting on behalf of the Bank Lenders) and the Indenture Trustee (acting on behalf of the Second Mortgage Note Holders).

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"Completion Guaranty Collateral Account Agreements" means, collectively, the Bank Completion Guaranty Collateral Account Agreement and the Second Mortgage Notes Completion Guaranty Collateral Account Agreement.

"Completion Guaranty Deposit Account" means the account referenced in *Section 2.3.11* of the Disbursement Agreement and established pursuant to the Completion Guaranty Collateral Account Agreement.

"Completion Guaranty Release Certificates" means, collectively, the Completion Guaranty Release Certificates in the form of *Exhibits V-5* and *V-6* to the Disbursement Agreement to be delivered by the Company and the Construction Consultant, respectively.

"Completion Guaranty Release Conditions" means that (a) Completion shall have occurred, (b) a Notice of Completion has been posted with respect to the Project and recorded in the Office of the County Recorder of Clark County, Nevada and the statutory period for filing mechanics liens under Nevada law with respect to work performed before filing such Notice of Completion has expired, (c) the Funding Agents have received final 101.6 endorsements from the Title Insurer insuring the priority of their respective Liens on the Project Security, (d) the Company shall have delivered to the Disbursement Agent, the Bank Agent, the Indenture Trustee and the FF&E Agent its Completion Guaranty Release Certificate certifying that (i) all Project Punchlist Items have been completed other than Punchlist Items with an aggregate value (as reasonably determined by the Construction Consultant) of not more than \$17.5 million so long as 150% of the Project Punchlist Completion Amount for such uncompleted Punchlist Items shall have been reserved in the Company's Funds Account, the Bank Proceeds Account, the FF&E Proceeds Account and/or the Completion Guaranty Deposit Account and (ii) the Company has settled with the Contractors all claims for payments and amounts due under the Contracts and the Company has received a final lien release from each Contractor and Subcontractor as required under the Disbursement Agreement, each in the form of *Exhibit N* to the Prime Construction Contract other than with respect to disputed claims (including claims subject to audit before payment) not exceeding \$15.0 million in the aggregate so long as an amount equal to such disputed amounts shall have been reserved in the Company's Funds Account, the Bank Proceeds Account, the FF&E Proceeds Account and/or the Completion Guaranty Deposit Account, (e) the Construction Consultant shall have delivered its Completion Guaranty Release Certificate, and (f) the Company shall have delivered from the surety under each Payment and Performance Bond required pursuant to *Section 5.14* of the Disbursement Agreement a "Consent of Surety to Final Payment" (AIA form G707) other than with respect to Contracts and Subcontracts which the Company is disputing amounts in accordance with clause (d)(ii) above.

"Completion Guaranty Release Date" means the date on which the Disbursement Agent countersigns the Company's Completion Guaranty Release Certificate acknowledging that Completion Guaranty Release Conditions have been satisfied.

"Consents" means consents to the collateral assignment by the Company of Material Project Documents in the form of *Exhibit S* to the Disbursement Agreement.

"Construction Agreements" means, collectively, the Prime Construction Contract, the Golf Course Construction Contract and the Parking Structure Construction Contract.

"Construction Consultant" means Inspection & Valuation International, Inc. or any other Person designated from time to time by the Bank Agent, in its sole discretion acting pursuant to the Disbursement Agreement, to serve as the Construction Consultant under the Disbursement Agreement.

"Construction Consultant Engagement Agreement" means that certain engagement letter dated as of July 17, 2002 by and among the Construction Consultant and Deutsche Bank Trust Company Americas, as amended by that certain letter dated as of October 30, 2002 by and among the

Construction Consultant, the Representatives of the Underwriters, the Disbursement Agent, the Bank Agent, the Indenture Trustee and the FF&E Agent.

"Construction Consultant's Advance Certificate" means an advance certificate in the form of *Exhibit C-2* to the Distribution Agreement.

"Construction Consultant's Closing Certificate" means a closing certificate in the form of *Exhibit B-2* to the Disbursement Agreement.

"Construction Consultant's Report" means a report or an updated report of the Construction Consultant delivered to the Disbursement Agent, the Bank Agent, the Representatives of the Underwriters and the FF&E Agent pursuant to *Section 3.1.11* and *Section 3.3.25* of the Disbursement Agreement and stating, among other things, that (a) the Construction Consultant has reviewed the Material Project Documents, the Plans and Specifications, and other material information deemed necessary by the Construction Consultant for the purpose of evaluating whether the Project can be constructed and completed in the manner contemplated by the Operative Documents, and (b) based on its review of such information, the Construction Consultant is of the opinion that the Project can be constructed in the manner contemplated by the Operative Documents and, in particular, that the Project can be constructed and completed in accordance with the Material Project Documents and the Plans and Specifications within the parameters set by the Project Schedule and the Project Budget.

"Construction Guarantor" means Austi, Inc., a Nevada corporation.

"Construction Guaranty" means that certain Amended and Restated Continuing Guaranty dated as of October 22, 2002 executed by the Construction Guarantor in favor of Wynn Las Vegas.

"Contract Amendment Certificate" means a Contract Amendment Certificate in the form of *Exhibit G* to the Disbursement Agreement.

"Contractors" means any architects, consultants, designers, contractors, Subcontractors, suppliers, laborers or any other Persons engaged by any Loan Party in connection with the design, engineering, installation and construction of the Project (including the Prime Contractor, the Golf Course Contractor, the Parking Structure Contractor, the Golf Course Designer and the Aqua Theater Designer).

"Contracts" means, collectively, the contracts entered into, from time to time, between any Loan Party and any Contractor for performance of services or sale of goods in connection with the design, engineering, installation or construction of the Project (including Construction Agreements, each Payment and Performance Bond and the Professional Design Services Agreements).

"Controlled Group" means all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the Company, are treated as a single employer under *Section 414(b)* or *414(c)* of the Internal Revenue Code of 1986, as amended.

"Controlling Person" means (a) until the initial Advance under the Bank Credit Facility, the Indenture Trustee and (b) from and after the initial Advance under the Bank Credit Facility, (i) in connection with the exercise of remedies with respect to, or disbursement of funds from, the FF&E Proceeds Account or the

Company's FF&E Payment Account during a Potential Event of Default or Event of Default, the FF&E Agent; (ii) from and after the funding of the FF&E Reimbursement Advance by the FF&E Lenders, in connection with the exercise of remedies with respect to the FF&E Component during a Potential Event of Default or Event of Default or any other matter relating exclusively to the FF&E Component, the FF&E Agent; and (iii) in connection with any matter not specifically addressed in clauses (b)(i) and (ii) above, the Bank Agent.

"Dealership Lease Agreement" means that certain Lease Agreement to be entered into by Wynn Las Vegas, as lessor, and an Affiliate of Wynn Las Vegas, as lessee, with respect to the lease of space at the Casino Land for the development and operation of a Ferrari and Maserati automobile dealership.

"Debt Service" means all principal repayments, interest or premium, if any, and other amounts payable or accrued from time to time under any of the Bank Credit Agreement, the Second Mortgage Notes, or the FF&E Facility.

"Deeds of Trust" means, collectively, the Bank Deeds of Trust and the Second Mortgage Notes Deeds of Trust.

"De Minimis Scope Change(s)" means any Scope Change which does not increase or decrease the amount of Project Costs by more than \$250,000; *provided that*, the aggregate absolute value of all such De Minimis Scope Changes may not exceed \$10,000,000, in the aggregate.

"Delivery Requirement" has the meaning given to such term in the Bank Credit Agreement.

"Desert Inn Improvement" means Desert Inn Improvement Co., a Nevada corporation.

"Desert Inn Water" means Desert Inn Water Company, LLC, a Nevada limited liability company.

"Development Agreements" means collectively, that certain Restrictive Covenant Running with the Land by and between Clark County, Nevada and Sheraton Desert Inn Corporation, dated as of December 9, 1999, that certain Dedication Agreement by and between Clark County, Nevada and Hotel A LLC, a Nevada limited liability company, dated as of May 21, 2002 and any other agreements relating to the construction of the Project entered into between the Company and a Governmental Authority.

"DIIC Permitted Encumbrances" means the exceptions set forth on *Exhibit N-5* to the Disbursement Agreement and a standard A.L.T.A. exception for mechanics liens; provided that any mechanic's or materialmen's lien that has been actually filed or recorded shall not constitute a DIIC Permitted Encumbrance.

"Disbursement Account" means the account referenced in *Section 2.3.3* of the Disbursement Agreement and established pursuant to the Company Collateral Account Agreements.

"Disbursement Agent" means Deutsche Bank Trust Company Americas, in its capacity as the disbursement agent under the Disbursement Agreement and its successors in such capacity.

"Disbursement Agent Fee Letter" means that certain Disbursement Agent Fee Letter dated October 30, 2002 among the Company, Deutsche Bank Securities, Inc. and the Disbursement Agent.

"Disbursement Agreement" means that certain Master Disbursement Agreement dated as of October 30, 2002 among the Company, the Bank Agent, the Indenture Trustee, the FF&E Agent and the Disbursement Agent.

"Disposition" has the meaning given in the Bank Credit Agreement.

"Dollar" and "\$" means dollars in lawful currency of the United States of America.

"Driving Range Lease" means that certain Driving Range Lease dated as of October 21, 2002 between Valvino, as landlord, and Wynn Las Vegas, as tenant.

"Eligible FF&E Equipment" means the fixtures, furniture and equipment eligible to be financed under the FF&E Facility and described on *Exhibit T-2*.

"Environmental Claim" means any and all obligations, liabilities, losses, administrative, regulatory or judicial actions, suits, demands, decrees, claims, liens, judgments, warning notices, notices of

noncompliance or violation, investigations, proceedings, removal or remedial actions or orders, or damages (foreseeable and unforeseeable, including consequential and punitive damages), penalties, fees, out-of-pocket costs, expenses, disbursements, attorneys' or consultants' fees, relating in any way to any Environmental Law or any Permit issued under any such Environmental Law (hereafter "*Claims*") including (a) any and all Claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Substances or arising from alleged injury or threat of injury to health, safety or the environment.

"Environmental Law" means any of:

(a) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Section 9601 *et seq.*) ("*CERCLA*");

(b) the Federal Water Pollution Control Act (33 U.S.C. Section 1251 *et seq.*) ("*Clean Water Act*" or "*CWA*");

(c) the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 *et seq.*) ("*RCRA*");

- (d) the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 *et seq.*) ("AEA");
- (e) the Clean Air Act (42 U.S.C. Section 7401 *et seq.*) ("CAA");
- (f) the Emergency Planning and Community Right to Know Act (42 U.S.C. Section 11001 *et seq.*) ("EPCRA");
- (g) the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 *et seq.*) ("FIFRA");
- (h) the Oil Pollution Act of 1990 (P.L. 101-380, 104 Stat. 486);
- (i) the Safe Drinking Water Act (42 U.S.C. Sections 300f *et seq.*) ("SDWA");
- (j) the Surface Mining Control and Reclamation Act of 1974 (30 U.S.C. Sections 1201 *et seq.*) ("SMCRA");
- (k) the Toxic Substances Control Act (15 U.S.C. Section 2601 *et seq.*) ("TSCA");
- (l) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 *et seq.*) ("HMTA");
- (m) the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. Section 7901 *et seq.*) ("UMTRCA");
- (n) the Occupational Safety and Health Act (29 U.S.C. Section 651 *et seq.*) ("OSHA");
- (o) the Nevada Hazardous Materials law (NRS Chapter 459);
- (p) the Nevada Collection and Disposal of Solid Waste law (NRS Chapter 444);
- (q) the Nevada Water Controls/Pollution law (NRS Chapter 445A);
- (r) the Nevada Air Pollution law (NRS Chapter 445B);
- (s) the Nevada Cleanup of Discharged Petroleum law (NRS 590.700 to 590.920, inclusive);
- (t) the Nevada Control of Asbestos law (NRS 618.750 to 618.850);
- (u) the Nevada Appropriation of Public Waters law (NRS 533.437 to 533.4377, inclusive);
- (v) the Nevada Artificial Water Body Development Permit law (NRS 502.390);

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- (x) the Nevada Protection of Endangered Species, Endangered Wildlife Permit (NRS 503.585) and Endangered Flora Permit law (NRS 527.270);
 - (y) the Nevada Environmental Requirements Law, NRS 445C.010 to NRS 445C.120, inclusive;
 - (z) the Laws Regarding the Authority of the Nevada State Fire Marshall Division, NRS 477.010 to 477.250, inclusive;
 - (aa) the Nevada Occupational Safety and Health Act, NRS 618.005 to 618.900, inclusive; and

(bb) and all other Federal, state and local Legal Requirements which govern Hazardous Substances, and the regulations adopted and publications promulgated pursuant to all such foregoing laws.

"Environmental Matter" means any:

- (a) release, emission, entry or introduction into the air including, without limitation, the air within buildings and other natural or man-made structures above ground;
- (b) discharge, release or entry into water including, without limitation, into any river, watercourse, lake, or pond (whether natural or artificial or above ground or which joins or flows into any such water outlet above ground) or reservoir, or the surface of the riverbed or of other land supporting such waters, ground waters, sewer or the sea;
- (c) deposit, disposal, keeping, treatment, importation, exportation, production, transportation, handling, processing, carrying, manufacture, collection, sorting or presence of any Hazardous Substance (including, without limitation, in the case of waste, any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process or activity (including making it re-usable or reclaiming substances from it) and any substance or article which is required to be disposed of as being broken, worn out, contaminated or otherwise spoiled);
- (d) nuisance, noise, defective premises, health and safety at work, industrial illness, industrial injury due to environmental factors, environmental health problems (including, without limitation, asbestosis or any other illness or injury caused by exposure to asbestos) or genetically modified organisms;
- (e) conservation, preservation or protection of the natural or man made environment or any living organisms supported by the natural or man made environment; or
- (f) other matter howsoever directly affecting the environment or any aspect of it.

"Environmental Permits" has the meaning given in the Bank Credit Agreement.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and ruling issued thereunder.

"ERISA Plan" means any employee benefit plan (other than a Multiemployer Plan) (a) maintained by the Company or any member of the Controlled Group, or to which the Company or any member of the Controlled Group contributes or is obligated to contribute, for its employees and (b) covered by Title IV of ERISA or to which Section 412 of the Code applies.

"Event of Default" has the meaning given in Section 7.1 of the Disbursement Agreement.

"Eurodollar Loans" means (a) with respect to Loans under the Bank Credit Facility, "Eurodollar Loans" as defined in the Bank Credit Agreement and (b) with respect to Loans under the FF&E Facility, Loans as to which the "Eurodollar Rate," as defined in the FF&E Facility Agreement, applies.

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"Event of Force Majeure" means any event that causes a delay in the construction of the Project and is outside any Loan Party's reasonable control but only to the extent (a) such event does not arise out of the negligence or willful misconduct of any Loan Party and (b) such event consists of an Act of God (such as tornado, flood, hurricane, etc.); fires and other casualties; strikes, lockouts or other labor disturbances (except to the extent taking place at the Site only); riots, insurrections or civil commotions; embargoes, shortages or unavailability of materials, supplies, labor, equipment and systems that first arise after the Closing Date, but only to the extent caused by another act, event or condition covered by this clause (b); the requirements of law, statutes, regulations and other Legal Requirements enacted after the Closing Date (unless such Loan Party should, in the exercise of due diligence and prudent judgment, have anticipated such enactment); orders or judgments; or any similar types of events, *provided* that the Company has sought to mitigate the impact of the delay.

"Event of Loss" means, with respect to any property or asset (tangible or intangible, real or personal), any of the following: (A) any loss, destruction or damage of such property or asset; (B) any actual condemnation, seizure or taking by exercise of the power of eminent domain or otherwise of such property or asset, or confiscation of such property or asset or the requisition of the use of such property or asset; or (C) any settlement in lieu of clause (B) above.

"Exhaustion" means, (a) with respect to the Bank Credit Facility and the FF&E Facility, the time at which the "Commitment" under such Facility has been utilized, the Bank Proceeds Account or the FF&E Proceeds Account, as the case may be, has no funds remaining on deposit therein and no further Advances are available thereunder, (b) with respect to the Second Mortgage Notes, the time at which no funds remain in the Second Mortgage Notes Proceeds Account and (c) with respect to the Company's Funds Account, the time at which no funds remain on deposit therein.

"Facility" or "Facilities" means, as the context may require, any or all of the Bank Credit Facility, the Second Mortgage Notes Proceeds and the FF&E Facility.

"Facility Agreements" means, collectively, the Bank Credit Agreement, the Second Mortgage Notes Indenture and the FF&E Facility Agreement.

"Fair Market Value" means, with respect to the FF&E Collateral or a portion thereof as of any date, the price which a purchaser would pay to purchase such FF&E Collateral in an arm's-length transaction between a willing buyer and a willing seller, neither of them being under any compulsion to buy or sell. In making any determination of Fair Market Value, the appraiser shall assume such FF&E Collateral is in the same condition as it was when it was purchased by the Company (without giving effect to depreciation caused by the fact that such items may have been delivered and/or installed prior to the date of such Appraisal). Each appraiser shall use such reasonable methods of appraisal as are reasonably satisfactory to the FF&E Agent.

"FF&E Agent" means Wells Fargo Bank Nevada, National Association, in its capacity as Collateral Agent under the FF&E Facility Agreement and its successors in such capacity.

"FF&E Agent Fee Letter" means the "Collateral Agent Fee Letter" as defined in the FF&E Facility Agreement.

"FF&E Arrangement Fee Letter" means the "Arrangement Fee Letter" as defined in the FF&E Facility Agreement.

"FF&E Collateral Account Agreement" means that certain FF&E Collateral Account Agreement dated as of October 30, 2002 among the Company, the FF&E Agent, the Disbursement Agent and the Securities Intermediary.

"FF&E Component" means, from time to time, any and all items constituting Eligible FF&E Equipment that have been approved (or deemed approved) by the FF&E Lenders pursuant to Section 2.4.1(e) or Section 2.8 of the Disbursement Agreement and in respect of which the FF&E

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Lenders have advanced funds pursuant to the FF&E Reimbursement Advance or Section 2.5.1(a)(iii) of the Disbursement Agreement, and, in each case, any "Transaction Costs" (as defined in the FF&E Facility Agreement) related thereto; *provided, however*, that the term "FF&E Component" shall (a) include any items of Eligible FF&E Collateral which are added to the FF&E Component in accordance with the procedures contemplated in paragraph (d) of the definition of "Completion" and (b) shall exclude any items of Eligible FF&E Collateral which are deleted from the FF&E Component in accordance with the procedures set forth in paragraph (d) of the definition of "Completion." The FF&E Component, as it exists from time to time, shall be described in Exhibit T-3 to the Disbursement Agreement. The FF&E Component shall not include the Aircraft.

"FF&E Facility" means the loan credit facility made available to Wynn Las Vegas by the FF&E Lenders pursuant to the FF&E Facility Agreement.

"FF&E Facility Agreement" means that certain loan agreement among Wynn Las Vegas, the FF&E Agent and the FF&E Lenders dated as of October 30, 2002 or any permitted refinancings thereof.

"FF&E Intercreditor Agreement" means that certain Intercreditor Agreement (FF&E) dated as of October 30, 2002 among the Bank Agent, the Indenture Trustee and the FF&E Agent.

"FF&E Lenders" means the financial institution(s) which are now, or may in the future become, parties to the FF&E Facility Agreement.

"FF&E Local Company Collateral Account Agreement(s)" means one or more control agreements with respect to the Company's FF&E Payment Account substantially in the form of *Exhibit Z-3* and entered into by a bank that is reasonably acceptable to the Disbursement Agent pursuant to *Sections 2.3.10* of the Disbursement Agreement.

"FF&E Proceeds Account" means the account referenced in *Section 2.3.7* of the Disbursement Agreement and established pursuant to the FF&E Collateral Account Agreement.

"FF&E Reimbursement Advance" means the Advance made by the FF&E Lenders under the FF&E Facility in an amount equal to 75% of the aggregate amount of Project Costs previously Advanced from the Company's Funds Account and the Second Mortgage Notes Proceeds Account in respect of Eligible FF&E Component Equipment that will become FF&E Component pursuant to *Section 2.4.1(e)* of the Disbursement Agreement.

"FF&E Secured Parties" means the FF&E Agent, the FF&E Lenders, the Bank Agent, the Bank Lenders, the Indenture Trustee and the Second Mortgage Notes Holders and the Disbursement Agent acting on behalf of any of the foregoing.

"FF&E Security Documents" means collectively, (a) that certain Borrower Security Agreement dated as of October 30, 2002 between Wynn Las Vegas and the FF&E Agent, (b) that certain Aircraft Security Agreement dated as of October 30, 2002 to be executed by Wells Fargo Bank, National Association, not in its individual capacity but solely as trustee of that certain trust credit under the Trust Agreement dated May 10, 2002, (c) that certain Borrower Aircraft Assignment dated as of October 30, 2002 between Wynn Las Vegas and the FF&E Agent, (d) the FF&E Collateral Account Agreement and (e) any guaranties, security agreements or collateral account agreements executed from time to time by any of the Loan Parties or one or more of their direct or indirect Affiliates in favor of the FF&E Agent or the FF&E Lenders to guaranty or secure the obligations under the FF&E Facility and the FF&E Collateral Account Agreements.

"Fifty Percent Completion Date" means the date the following conditions have been satisfied as set forth in a certificate in the form of *Exhibit V-3* to the Disbursement Agreement delivered by the Company, and (other than with respect to clause (b)(B) below) a certificate in the form of *Exhibit V-4* to the Disbursement Agreement delivered by the Construction Consultant: (a) 50% of the work

required to achieve completion of the Project has been completed (determined by (i) the amount of Hard Costs incurred to such date and allocated to the "Marnell Corrao GMP Contract," "Interior Furnishings/Signage/Electronic Systems," "Miscellaneous Capital Projects," "Golf Course" and "Parking Garage" Line Item Categories under the Project Budget, as compared to (ii) the total amount of Hard Costs set forth in the Project Budget (as then in effect) under the following Line Item Categories: "Marnell Corrao GMP Contract," "Interior Furnishings/Signage/Electronic Systems," "Miscellaneous Capital Projects," "Golf Course" and "Parking Garage") and (b) all Contractors and Subcontractors have been paid in full or will be paid in full with the pending Advance Request for work performed through such date (other than (A) Retainage Amounts, and other amounts, that, as of the Fifty Percent Completion Date, are being withheld from the Contractors and Subcontractors in accordance with the provisions of the Project Documents, and (B) amounts being contested in accordance with the Financing Agreements so long as adequate reserves have been established through an allocation in the Anticipated Cost Report and in accordance with any requirements of such Financing Agreements) and have provided lien waivers to the extent required under *Section 3.3.7* of the Disbursement Agreement for all work performed prior to the Fifty Percent Completion Date.

"Fifty Percent Completion Date Certificate" means a certificate issued by the Company and confirmed by Construction Consultant in the form of *Exhibit V-3* to the Disbursement Agreement.

"Final Completion" means that (a) Completion shall have occurred, (b) the Project shall have received a permanent certificate of occupancy from the Building Department (and copies of such certificate shall have been delivered to the Disbursement Agent, the Bank Agent, the Indenture Trustee and the Construction Consultant), (c) a Notice of Completion has been posted with respect to the Project and recorded in the Office of the County Recorder of Clark County, Nevada and the statutory period for filing mechanics liens under Nevada law with respect to work performed before filing such Notice of Completion has expired, (d) the Funding Agents have received final 101.6 endorsements from the Title Insurer insuring the priority of their respective Liens on the Project Security, (e) the Company shall have delivered to the Disbursement Agent, the Bank Agent, the Indenture Trustee and the FF&E Agent its Final Completion Certificate certifying that (i) all Project Punchlist Items have been completed and (ii) the Company has settled with the Contractors all claims for payments and amounts due under the Contracts and the Company has received a final lien release from each Contractor and Subcontractor as required under the Disbursement Agreement, (f) the Construction Consultant, the Project Architect and the Prime Contractor each shall have delivered its Final Completion Certificate and the Company and the Construction Consultant shall have accepted the Prime Contractor's Final Completion Certificate in accordance with *Section 6.2.2* of the Disbursement Agreement, (g) the Company shall have delivered to the Funding Agents and the Construction Consultant an "as built survey" of the Project, and (h) the Company shall have delivered from the surety under each Payment and Performance Bond required pursuant to *Section 5.14* of the Disbursement Agreement a "Consent of Surety to Final Payment" (AIA form G707).

"Final Completion Certificates" means, collectively, the Final Completion Certificates in the forms of *Exhibits W-13, W-14, W-15, and W-16*, to the Disbursement Agreement to be delivered by the Company, the Construction Consultant, the Project Architect and the Prime Contractor, respectively.

"Final Completion Date" means the date on which Final Completion occurs.

"Final Plans and Specifications" means, with respect to any particular work or improvement, Plans and Specifications which (i) have received final approval from all Governmental Authorities required to approve such Plans and Specifications prior to completion of the work or improvements; (ii) contain sufficient specificity to permit the completion of the work or improvement and (iii) are consistent with the standards set forth in *Exhibit X-1* of the Disbursement Agreement.

"Financing Agreements" means, collectively, the Disbursement Agreement, the Bank Credit Agreement, the Second Mortgage Notes Indenture, the FF&E Facility Agreement, the Security

Documents, the Second Mortgage Notes, the Collateral Agency Agreement, the Disbursement Agent Fee Letter, the Bank Agent Fee Letter, the FF&E Agent Fee Letter, the Bank Fee Letter and any other loan or security agreements entered into on, prior to or after the Closing Date with the Bank Agent, the Disbursement Agent, the Indenture Trustee or the FF&E Agent in connection with the financing of the Project.

"Fiscal Year" shall have the meaning given in the Bank Credit Agreement.

"Funding Agents" means, collectively, the Bank Agent, the Indenture Trustee and the FF&E Agent.

"GAAP" means generally accepted accounting principles in the United States of America as in effect from time to time.

"Gaming Facility" means any building or other structure used or expected to be used to enclose space in which a gaming operation is conducted and (i) is wholly or partially owned, directly or indirectly, by Wynn Las Vegas or an Affiliate of Wynn Las Vegas or (ii) any portion or aspect of which is managed or used, or expected to be managed or used, by Wynn Las Vegas or an Affiliate of Wynn Las Vegas.

"Golf Course" means Le Rêve's Tom Fazio/Stephen A. Wynn designed 18-hole golf course to be situated on the Golf Course Land.

"Golf Course Construction Contract" means that one or more construction contracts to be entered into between Wynn Resorts Holdings and/or Wynn Las Vegas and a Contractor for the construction of the Golf Course.

"Golf Course Contractor" means one or more entities that will construct the Golf Course on the Golf Course Land pursuant to the Golf Course Construction Contract.

"Golf Course Contractor's Advance Certificate" means a certificate in the form of *Exhibit C-7* to the Disbursement Agreement.

"Golf Course Design Services Agreement" means that certain Agreement dated as of October 21, 2002 between the Golf Course Designer and Wynn Design.

"Golf Course Designer" means T.J.F. Golf, Inc., a Florida corporation.

"Golf Course Designer's Advance Certificate" means a certificate in the form of *Exhibit C-5* to the Disbursement Agreement.

"Golf Course Driving Range Lease" means that certain Lease Agreement dated as of October 21, 2002 between Valvino, as lessor, and Wynn Las Vegas, as lessee.

"Golf Course Land" means the land on which the Golf Course is to be located, as described in *Exhibit T-4* to the Disbursement Agreement. The Golf Course Land shall include (a) the Water Utility Land (b) the Wynn Home Site until such time (if ever) as the Wynn Home Site Release Conditions shall have been satisfied and (c) the Home Site Land and Palo Home Site Land until such time (if ever) as the release conditions set forth in *Section 7.5(l)* of the Bank Credit Agreement and *Section 10.03* of the Second Mortgage Notes Indenture shall have been satisfied.

"Golf Course Land Easements" means the easements appurtenant, easements in gross, license agreements and other rights running for the benefit of the Company, Wynn Resorts Holdings, Palo or Desert Inn Improvement and/or appurtenant to the Golf Course Land, including, without limitation, those certain easements and licenses described in the Title Policy.

"Golf Course Lease" means that certain Golf Course Lease dated as of October 21, 2002 between Wynn Resorts, as landlord, and Wynn Las Vegas, as tenant.

"Governmental Authority" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity, (including the Nevada Gaming Authorities, the Nevada Public Utilities Commission, any zoning authority, the FDIC, the Comptroller of the Currency or the Federal Reserve Board, any central bank or any comparable authority), any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any arbitrator with authority to bind a party at law.

"Hard Costs" means the Project Costs set forth in the Project Budget under (a) the "Hard Cost Construction Contingency" Line Item under the "Construction Contingency" Line Item Category, together with (b) the following other Line Item Categories:

- (i) Marnell Corrao GMP Contract;
- (ii) Interior Furnishings/Signage/Electronic Systems;
- (ii) Owner FF&E;
- (iii) Miscellaneous Capital Projects;
- (iv) Golf Course; and
- (v) Parking Garage.

"Hard Costs Cash Management Account" means the account referenced in *Section 2.3.4* of the Disbursement Agreement and established pursuant to the Local Account Company Collateral Account Agreements.

"Hazardous Substances" means (statutory acronyms and abbreviations having the meaning given them in the definition of "Environmental Laws") substances defined as "hazardous substances," "pollutants" or "contaminants" in *Section 101* of the CERCLA; those substances defined as "hazardous waste," "hazardous materials" or "regulated substances" by the RCRA; those substances designated as a "hazardous substance" pursuant to *Section 311* of the CWA; those substances defined as "hazardous materials" in *Section 103* of the HMTA; those substances regulated as a hazardous chemical substance or mixture or as an imminently hazardous chemical substance or mixture pursuant to *Sections 6* or *7* of the TSCA; those substances defined as "contaminants" by *Section 1401* of the SDWA, if present in excess of permissible levels; those substances regulated by the Oil Pollution Act; those substances defined as a pesticide pursuant to *Section 2(u)* of the FIFRA; those substances defined as a source, special nuclear or by-product material by *Section 11* of the AEA; those substances defined as "residual radioactive material" by *Section 101* of the UMTRCA; those substances defined as "toxic materials" or "harmful physical agents" pursuant to *Section 6* of the OSHA; those substances defined as hazardous wastes in 40 C.F.R. Part 261.3; those substances defined as hazardous waste constituents in 40 C.F.R. Part 260.10, specifically including Appendix VII and VIII of Subpart D of 40 C.F.R. Part 261; those substances designated as hazardous substances in 40 C.F.R. Parts 116.4 and 302.4; those substances defined as hazardous substances or hazardous materials in 49 C.F.R. Part 171.8; those substances regulated as hazardous materials, hazardous substances, or toxic substances in 40 C.F.R. Part 1910; in any other Environmental Laws; and in the regulations adopted and publications promulgated pursuant to said laws, whether or not such regulations or publications are specifically referenced herein.

"Hazardous Materials Activities" means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Substances, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Substances, and any corrective action or response action with respect to any of the foregoing.

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"Home Site Land" means a tract of land not greater than 20 acres located on the Golf Course where residential and non-gaming related developments may be built after Disposition of the Home Site Land in accordance with *Section 7.5(l)* of the Bank Credit Agreement.

"Improvements" means the buildings, fixtures and other improvements to be situated on the Mortgaged Property.

"In Balance" means that, at the time of calculation and after giving effect to any requested Advance (or, if no Advance is then being requested, after deducting from Available Funds the amount of costs incurred but not paid since the date of the immediately preceding Advance), (a) the Unallocated Contingency Balance equals or exceeds the Required Minimum Contingency, (b) the Available Funds equal or exceed the sum of the aggregate Remaining Costs for each Line Item Category plus the Required Minimum Contingency and (c) there shall be no negative number identified for any Line Item Category in column L ("Variance Over/Under") of the Summary Anticipated Cost Report.

"Indebtedness," as applied to any Person, means (a) all indebtedness for borrowed money, (b) that portion of obligations with respect to leases which are or should be, in accordance with generally accepted accounting principles, classified as a capital lease and a liability on a balance sheet, (c) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money, (d) any obligation owed for all or any part of the deferred purchase price of property or services (excluding any such obligations incurred under ERISA), which purchase price is (i) due more than six months from the date of incurrence of the obligation in respect thereof or (ii) evidenced by a note or similar written instrument, and (e) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person. Obligations under Interest Rate Agreements do not constitute Indebtedness hereunder. All obligations under the Financing Agreements shall constitute Indebtedness hereunder.

"Indemnitees" has the meaning given in *Section 11.15.2* of the Disbursement Agreement.

"Indenture Trustee" means Wells Fargo Bank, National Association, in its capacity as the initial trustee under the Second Mortgage Notes Indenture and its successors in such capacity.

"Independent Consultants" means collectively the Construction Consultant, the Insurance Advisor or their successors appointed pursuant to the Disbursement Agreement.

"Insurance Advisor" means Marsh USA Inc., or its successor, appointed pursuant to the Disbursement Agreement.

"Insurance Advisor's Closing Certificate" means a closing certificate in the form of *Exhibit B-3* to the Disbursement Agreement.

"Intercreditor Agreements" means, collectively, the Project Lenders Intercreditor Agreement and the FF&E Intercreditor Agreement.

"Interest Payment Account" means the account referenced in *Section 2.3.5* of the Disbursement Agreement and established pursuant to the Company Collateral Account Agreements.

"Interest Rate Agreement" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or other similar agreement or arrangement (including, without limitation, the "Specified Hedge Agreements" as such term is defined in the Bank Credit Agreement).

"Las Vegas Jet" means Las Vegas Jet, LLC, a Nevada limited liability company.

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"Legal Requirements" means all laws, statutes, orders, decrees, injunctions, licenses, permits, approvals, agreements and regulations of any Governmental Authority having jurisdiction over the matter in question, including, without limitation, Nevada Gaming Laws.

"Lender" means any of the Bank Lenders, the Second Mortgage Note Holders and the FF&E Lenders.

"Letter of Credit" has the meaning given in the Bank Credit Agreement.

"Lien" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction).

"Line Item" means each of the individual line items set forth in the Line Item Category Detailed Anticipated Cost Report and the Monthly Requisition Report (as in effect from time to time), which individual line items shall be reasonably acceptable to the Disbursement Agent and the Construction Consultant.

"Line Item Category" means each of the following line item categories of the Project Budget:

- (a) Land and Buildings;
- (b) Global Express Airplane Purchase;
- (c) Marnell Corrao GMP Contract;
- (d) Interior Furnishings/Signage/Electronic Systems;
- (e) Owner FF&E;
- (f) Miscellaneous Capital Projects;
- (g) Golf Course;
- (h) Parking Garage;
- (i) Capitalized Interest & Commitment Fees;
- (j) Pre-Opening Expense;
- (k) Transaction Fees & Expenses;
- (l) Design and Engineering Fees;
- (m) Working Capital Requirements at Opening;
- (n) Entertainment Production;
- (o) Insurance/Utilities/Security;
- (q) Property Taxes;
- (p) Government Approvals & Permits;
- (q) Miscellaneous Operating Costs; and
- (r) Construction Contingency.

"Line Item Category Detailed Anticipated Cost Report" means any of the anticipated cost reports in the forms of *Schedules 1* through 19 to *Exhibit H-3* to the Disbursement Agreement and which provides, for each Line Item Category, the detailed supporting information broken down by Line Item.

"Loan Parties" shall mean Valvino, Wynn Las Vegas, Wynn Design & Development, Wynn Resorts Holdings, Capital Corp., Palo, Desert Inn Improvement, Desert Inn Water, World Travel, Las Vegas Jet, and each other Subsidiary of Valvino (other than the Completion Guarantor) which is a party to a Material Project Document or a Security Document.

"Loans" means, as the context may require (a) the Term Loans made under the Bank Credit Facility and the Revolving Credit Loans made under the Bank Revolving Facility or (b) the loans made under the FF&E Facility.

"Local Account Company Collateral Account Agreement(s)" means the Bank Local Company Collateral Account Agreements and the Second Mortgage Notes Local Company Collateral Account Agreements.

"Loss Proceeds" has the meaning given in *Section 5.21* of the Disbursement Agreement.

"Major Project Participant" shall mean each Person who is party to a Material Project Document.

"Material Adverse Effect" means a material adverse condition or material adverse change in or affecting (a) the business, assets, liabilities, property, condition (financial or otherwise), results of operations, prospects, value or management of the Company and the other Loan Parties, taken as a whole, or of any Project Credit Support Provider, or that calls into question in any material respect the Projections or any of the material assumptions on which the Projections were prepared, (b) the Project, (c) the ability of the Company to achieve Completion on or prior to the Scheduled Completion Date; (d) the validity or enforceability of any Financing Agreement; (e) the validity, enforceability or priority of the Liens purported to be created under the Security Documents; or (f) the rights and remedies of any Secured Party under any Financing Agreement.

"Material Project Document" means any of the Prime Construction Contract, the Golf Course Construction Contract, the Parking Structure Construction Contract, the Professional Design Services Agreements, the Construction Guaranty, the Water Supply Contract, the Affiliate Real Estate Agreements, and, without duplication, any Project Document with a total contract amount in excess of \$5,000,000 and each Payment and Performance Bond issued to support any of the foregoing.

"Monthly Requisition Report" means a Monthly Requisition Report in the form of *Appendix III to Exhibit C-1* to the Disbursement Agreement and which provides the information therein segregated by Line Item Categories and by Line Item.

"Moody's" means Moody's Investors Service, Inc., a Delaware corporation, or any successor thereof.

"Mortgaged Property" means, collectively, all real and personal property which is subject or is intended to become subject to the security interests or liens granted by any of the Bank Deeds of Trust and the Second Mortgage Note Deeds of Trust.

"Multiemployer Plan" means a multi-employer plan as defined in Section 3(37) of ERISA to which the Company or any member of the Controlled Group contributes or has an obligation to contribute on behalf of its employees.

"Nevada Gaming Authorities" means, collectively, the Nevada Gaming Commission, the Nevada State Gaming Control Board, and the Clark County Liquor and Gaming Licensing Board.

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"Nevada Gaming Laws" means the Nevada Gaming Control Act, as modified in Chapter 463 of the Nevada Revised Statutes, as amended from time to time, and the regulations of the Nevada Gaming Commission promulgated thereunder, as amended from time to time.

"Notice of Advance Request" means a Notice of Advance Request in the form of *Exhibit D* to the Disbursement Agreement.

"On-Site Cash" shall have the meaning given to such term in the Bank Credit Agreement.

"Obligations" means (a) all loans, advances, debts, liabilities, and obligations, howsoever arising, owed by the Company or any other Loan Party under the Bank Credit Agreement, the Second Mortgage Notes Indenture, the FF&E Facility or otherwise to any Lender of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, pursuant to the terms of the Disbursement Agreement, any of the other Financing Agreements or any of the other Operative Documents, including all interest (including interest accruing after the maturity of the Loans and the Second Mortgage Notes and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Loan party, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), fees, premiums, if any, charges, expenses, attorneys' fees and accountants fees chargeable to any Loan Party in connection with its dealings with the such Loan Party and payable by any Loan Party hereunder or thereunder; (b) any and all sums advanced by the Disbursement Agent or any Lender in order to preserve the Project Security or preserve any Secured Party's security interest in the Project Security, including all Protective Advances; and (c) in the event of any proceeding for the collection or enforcement of the Obligations after an Event of Default shall have occurred and be continuing, the reasonable expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on the Project Security, or of any exercise by any Secured Party of its rights under the Security Documents, together with reasonable attorneys' fees and court costs.

"Opening Conditions" means, collectively, the following:

(a) the Funding Agents shall have received from the Company its Opening Date Certificate, pursuant to which the Company certifies that:

(i) the construction of the Project and all infrastructure and other improvements required to be constructed under applicable Legal Requirements or pursuant to the Development Agreements shall have been completed (except for Project Punchlist Items) in accordance with the Plans and Specifications;

(ii) all furnishings, fixtures and equipment necessary to use and occupy the various portions of the Project (including the hotel, the casino, the restaurants, the parking structure, all common areas and the Golf Course) for their intended uses (as more particularly set forth in *Exhibit X-1* to the Disbursement Agreement) shall have been installed and shall be operational;

(iii) all Project Costs (other than Project Costs consisting of (A) Retainage Amounts, and other amounts, that, as of the Opening Date, are being withheld from the Contractors in accordance with the provisions of the Project Documents, (B) amounts being contested in accordance with the Financing Agreements so long as adequate reserves have been established through an allocation in the Anticipated Cost Report and in accordance with any requirements of such Financing Agreements, (C) amounts payable in respect of Project Punchlist Items to the extent not covered by the foregoing clause (A) and (D) amounts incurred by any Contractors or Subcontractors within the last thirty (30) days and to be paid under the current Advance Request which has been submitted but not yet disbursed) shall have been paid in full;

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(iv) the Project shall be served by, and shall be equipped to accept water, gas, electric, sewer, sanitary sewer, storm drain and other facilities and utilities necessary for use of the Project and each portion thereof for Project Intended Uses, which utility service is provided by public or private utilities over utility lines, pipes, wires and other facilities that run solely over public streets or private property (in the case of private property, pursuant to recorded easements);

(v) a Project Certificate of Occupancy shall have been issued and each other Permit required to be obtained prior to Opening shall have been obtained (including the gaming license for the Project); and

(vi) the entire Project (other than the premises to be occupied by individual retail and restaurant tenants in the Project) shall be open for business to the general public for the Project Intended Uses; *provided* that in all events all rooms shall be ready for occupancy, at least eighty-five percent (85%) of restaurant seats shall be open for business and at least sixty-seven percent (67%) of the retail tenants shall be open for business.

(b) the Construction Consultant has delivered its Opening Date Certificate approving the Company's Opening Date Certificate and the Project Architect has delivered its Opening Date Certificate;

(c) the remaining work on the Project shall be such that it will not interfere with or disrupt the operation of the Project for its intended purposes or detract from the aesthetic appearance of the Project other than to a *de minimis* extent;

(d) the failure to complete the remaining work would not interfere with or disrupt the operation of the Project for its intended purposes or detract from the aesthetic appearance of the Project other than to a *de minimis* extent; and

(e) the Company shall have available a fully trained staff to operate the Project including the hotel, casino and Golf Course in accordance with industry standards.

"Opening Date" means the date on which all or any portion of the Project is open for business, and the Opening Conditions shall have been satisfied.

"Opening Date Certificates" means, collectively, the certificates in the form of *Exhibits W-9, W-10, W-11, and W-12* to the Disbursement Agreement to be delivered by the Company, the Construction Consultant, the Prime Contractor and the Project Architect, respectively.

"Operating Account" means the account referenced in *Section 2.3.8* of the Disbursement Agreement and established pursuant to the Local Account Company Collateral Account Agreements.

"Operating Costs" means all actual cash costs incurred by the Company and related to the operation of the Project or any portion thereof in the ordinary course of business, including, without limitation, costs incurred for labor, consumables, utility services, and all other operation related costs; *provided* that (a) Operating Costs shall not include non-cash charges (including depreciation and amortization), (b) Debt Service shall constitute Operating Costs from and after the Completion Date but not prior to such date and (c) operating costs of the "preview center" at the Site shall constitute Operating Costs at all times.

"Operative Documents" means the Financing Agreements and the Project Documents.

"Original Aircraft Lender" means Bank of America, N.A.

"Outside Completion Deadline" means September 30, 2005.

"Outstanding Releases" has the meaning given in *Section 3.3.7* of the Disbursement Agreement.

"Palo" means Palo, LLC, a Delaware limited liability company.

"Palo Home Site Land" means the approximately 1.24-acre tract of land adjacent to the Golf Course owned by Palo, as more particularly described in *Exhibit T-4* to the Disbursement Agreement.

"Palo Permitted Encumbrances" has the meaning given in *Section 3.1.28* of the Disbursement Agreement.

"Parking Facility Lease" means that certain Parking Facility Lease dated as of October 21, 2002 between Valvino, as landlord, and Wynn Las Vegas, as tenant.

"Parking Structure Construction Contract" means that certain Design/Build Agreement dated as of June 6, 2002 between the Company and the Parking Structure Contractor.

"Parking Structure Contractor" means Bomel Construction Co., Inc., a California corporation.

"Payment and Performance Bond" means any payment and performance bond delivered under any Contract or Subcontract (including the Prime Contractor Payment and Performance Bond) in favor of the Company or the Prime Contractor, the Bank Agent acting on behalf of the Bank Lenders) and the Indenture Trustee (acting on behalf of the Second Mortgage Note Holders) supporting the Contractor's or Subcontractor's obligations under any such Contract.

"Permits" means all authorizations, consents, decrees, permits, waivers, privileges, approvals from and filings with all Governmental Authorities necessary for the construction, development, ownership, lease or operation of the Project in accordance with the Operative Documents.

"Permitted Businesses" shall have the meaning given in the Bank Credit Agreement.

"Permitted Encumbrances" means with respect to the Deed of Trust executed by Wynn Las Vegas, the Wynn Las Vegas Permitted Encumbrances; with respect to the Deeds of Trust executed by Valvino, the Valvino Permitted Encumbrances; with respect to the Deeds of Trust executed by Palo, the Palo Permitted Encumbrances; with respect to the Deeds of Trust executed by Wynn Resorts Holdings, the Wynn Resorts Holdings Permitted Encumbrances; and with respect to the Deeds of Trust executed by the Desert Inn Improvement, the DIIC Permitted Encumbrances.

"Permitted Investments": means, prior to the Completion Date, the following:

(a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within 18 months from the date of acquisition; or

(b) shares of money market mutual or similar funds which invest exclusively in assets satisfying the requirements of clause (a) of this definition.

From and after the Completion Date, "Permitted Investments" means the following:

(1) United States dollars;

(2) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (as long as the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than six months from the date of acquisition;

(3) interest-bearing demand or time deposits (which may be represented by certificates of deposit) issued by banks having general obligations rated (on the date of acquisition thereof) at least "A" or the equivalent by S&P or Moody's or, if not so rated, secured at all times, in the manner and to the extent provided by law, by collateral security in clause (1) or (2) of this definition, of a market value of no less than the amount of monies so invested;

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(4) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (2) and (3) above entered into with any financial institution meeting the qualifications specified in clause (3) above;

(5) commercial paper having the highest rating obtainable from Moody's or S&P and in each case maturing within six months after the date of acquisition;

(6) money market funds or mutual funds at least 95% of the assets of which constitute Permitted Investments of the kinds described in clauses (1) through (5) of this definition; and

(7) to the extent not permitted in clauses (1) through (6) above, the investments permitted in clauses (a) and (b) above.

"Permitted Liens" means the following types of Liens (excluding any such Lien imposed pursuant to *Section 401(a)(29)* or *412(n)* of the Internal Revenue Code or by ERISA, any such Lien relating to or imposed in connection with any Environmental Claim, and any such Lien expressly prohibited by any applicable terms of any of the Security Documents):

(a) Liens for taxes, assessments or governmental charges or claims the payment of which is not, at the time due and payable or which is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as reserves (determined in accordance with GAAP) shall have been made therefor through an allocation in the Anticipated Cost Report;

(b) statutory Liens of landlords, statutory Liens of banks and rights of set-off, statutory Liens of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law, in each case incurred in the ordinary course of business (i) for amounts which are not overdue for a period of more than 30 days or (ii) that are being contested in good faith by appropriate proceedings (such contest proceedings conclusively operating to stay the sale of any portion of the Project Security on the account of such Lien) and with appropriate reserves (determined in accordance with GAAP) through an allocation in the Anticipated Cost Report which, in the aggregate with all other such reserves, including pursuant to *Section 3.3.7* of the Disbursement Agreement, shall not exceed \$10,000,000);

(c) Liens incurred or deposits made in the ordinary course of business including, without limitation, deposits permitted pursuant to *Section 6.10(c)* of the Disbursement Agreement in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money); provided that if such Liens are being contested, appropriate reserves (determined in accordance with GAAP) have been established through an allocation in the Anticipated Cost Report;

(d) any attachment or judgment Lien not constituting an Event of Default under *Section 8* of the Bank Credit Agreement and *Section 6.01* of the Second Mortgage Notes Indenture;

(e) leases or subleases granted to third parties in accordance with the applicable terms of the Security Documents and not interfering in any material respect with the ordinary conduct of the business of any Loan Party;

(f) easements, rights-of-way, restrictions, encroachments and other similar encumbrances incurred and minor defects and irregularities in title that, in the aggregate, are not substantial in amount and which do not in any case materially detract from the value of the Property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Loan Party;

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(g) leases and subleases permitted under *Section 7.5(f)* of the Bank Credit Agreement and *Section 6.5* of the Second Mortgage Notes Indenture and any leasehold mortgage in favor of any party financing the lessee under any lease or sublease permitted under such Sections; *provided* that (i) no Loan Party is liable for the payment of any principal of, or interest, premiums or fees on, such financing and (ii) the affected lease and leasehold mortgage are expressly made subject and subordinate to the Liens of the applicable Bank Deeds of Trust and Second Mortgage Notes Deeds of Trust encumbering the affected property;

(h) Liens created or contemplated by the Affiliate Real Estate Agreements (in each case, encumbering only the real property covered by such agreement);

- (i) Liens arising from filing UCC financing statements relating solely to leases permitted by the Bank Credit Agreement and the Second Mortgage Notes Indenture;
- (j) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;
- (k) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property;
- (l) licenses of patents, trademarks and other intellectual property rights granted by a Loan Party in the ordinary course of business and not interfering in any material respect with the ordinary conduct of the business of such Loan Party;
- (m) Liens incurred in connection with "Specified Hedge Agreements" maintained under and as defined in, the Bank Credit Agreement;
- (n) Liens in existence on the date hereof listed on Schedule 7.3(f) to the Bank Credit Agreement, securing Indebtedness permitted by *Section 7.2(d)* of the Bank Credit Agreement, *provided* that no such Lien is spread to cover any additional "Property" as defined in the Bank Credit Agreement (other than proceeds thereof) after the Closing Date and that the amount of "Indebtedness" as defined in the Bank Credit Agreement secured thereby is not increased;
- (o) Liens securing Indebtedness of the Loan Parties incurred pursuant to *Section 7.2(g)* of the Bank Credit Agreement to finance the acquisition of fixed or capital assets, *provided* that (i) such Liens shall be created substantially simultaneously with the acquisition of such fixed or capital assets (or the refinancing of such Indebtedness as otherwise permitted under the Bank Credit Agreement), (ii) such Liens do not at any time encumber any "Property" as defined in the Bank Credit Agreement other than the Property (and proceeds thereof) financed by such "Indebtedness" as defined in the Bank Credit Agreement, (iii) the principal amount of Indebtedness secured thereby is not increased and (iv) the Property financed by such Indebtedness, is not of a type that will become affixed to the Project such that the removal thereof could not reasonably be expected to materially interfere with the ongoing ordinary course operations of the Project;
- (p) Liens securing "Indebtedness" as defined in the Bank Credit Agreement of the Loan Parties incurred pursuant to *Section 7.2(j)* of the Bank Credit Agreement to finance the acquisition of the Additional Land, *provided* that (i) such Liens shall be created substantially simultaneously with the acquisition of the Additional Land, (ii) such Liens do not at any time encumber any "Property" as defined in the Bank Credit Agreement other than the Additional Land (and proceeds thereof) and (iii) the principal amount of Indebtedness secured thereby is not increased;
- (q) the rights and interests of the Lenders as provided under the Financing Agreements;
- (r) Permitted Encumbrances;
- (s) Liens with respect to the Aircraft granted by Las Vegas Jet to Wynn Las Vegas securing Indebtedness under the "Aircraft Note" (as defined in the Bank Credit Agreement); and

(t) Liens on cash Advanced pursuant to the Disbursement Agreement and deposited with, or held for the account of any Loan Party securing reimbursement obligations under performance bonds, guaranties, commercial letters of credit, bankers' acceptances or similar instruments permitted under *Section 7.2(k)* of the Bank Credit Agreement granted in favor of the issuers of such performance bonds, guaranties, commercial letters of credit or bankers' acceptances, so long as (i) any cash Advanced to secure such reimbursement obligations is invested (if at all) in Permitted Investments only to the extent the Company has the rights to direct investments thereof and (ii) the amount of cash and/or Permitted Investments secured by such Liens is not less than the amount of Indebtedness secured thereby and in any event does not exceed 110% of the amount of the Indebtedness secured thereby (ignoring, for purposes of this clause (ii), any interest earned or paid on such cash and any dividends or distributions declared or paid in respect of such Permitted Investments).

"Person" means any natural person, corporation, partnership, firm, association, Governmental Authority or any other entity whether acting in an individual, fiduciary or other capacity.

"Phase I Report" shall have the meaning given in *Section 3.1.33* of the Disbursement Agreement.

"Phase II Land" means the approximately 20-acre tract of land upon which the Phase II Project may be built, as more particularly described in *Exhibit T-4* to the Disbursement Agreement.

"Phase II Land Building" means the building existing, as of the Closing Date that is subject to the Building Lease.

"Phase II Easements" means the easements appurtenant, easements in gross, license agreements and other rights running for the benefit of the Company or Valvino and/or appurtenant to the Phase II Land, including, without limitation, those certain easements and licenses described in the Title Policy.

"Phase II Project" means a hotel, casino and mall complex proposed to be developed on the Phase II Land, which may be integrated with the Project.

"Phase II Report" means shall have the meaning given in *Section 3.1.33* of the Disbursement Agreement.

"Plan" means any employee benefit plan as defined in Section 3(3) of ERISA to which the Company or any member of the Controlled Group contributes or has an obligation to contribute on behalf of its employees other than a Multiemployer Plan.

"Plans and Specifications" means all plans, specifications, design documents, schematic drawings and related items for the design, architecture and construction of the Project that are listed on *Exhibit T-6* to the Disbursement Agreement including, from time to time, any further such plans, specifications, design documents, schematic drawings and related items which are consistent with the standards of *Exhibit X-1* and delivered pursuant to *Section 3.3.11* of the Disbursement Agreement, in each case, as amended in accordance with *Section 6.2* of the Disbursement Agreement.

"Potential Event of Default" means (i) any of the events specified in *Article 7*, whether or not any requirement for the giving of notice, the lapse of time, or both, has been satisfied and (ii) the occurrence of any "Default" under any Facility Agreement.

"Pre-Opening Deposits" means deposits received by the Company prior to the Opening Date from patrons to reserve rooms or event space at the Project.

"Prime Contractor" means Marnell Corrao Associates, Inc., a Nevada corporation.

"Prime Contractor's Advance Certificate" means a certificate in the form of *Exhibit C-4* to the Disbursement Agreement.

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"Prime Construction Contract" means that certain Agreement for Guaranteed Maximum Price Construction Services for Le Rêve dated as of June 4, 2002 between Wynn Las Vegas and the Prime Contractor.

"Prime Contractor Line Items" means, collectively, the Line Items of the Project Budget which relate to work covered by the Prime Construction Contract under the "Marnell Corrao GMP" Line Item Category.

"Prime Contractor Payment and Performance Bond" means that certain payment and performance bond issued by American International Companies (AIG) and Kemper Insurance, jointly and severally, in favor of the Company, the Bank Agent (acting on behalf of the Bank Lenders) and the Indenture Trustee (acting on behalf of the Second Mortgage Note Holders) supporting the Prime Contractor's obligations under the Prime Construction Contract.

"Professional Design Services Agreements" means, collectively, the Golf Course Design Services Agreement, the Aqua Theater Design Services Agreement and the Project Architect's Agreement.

"Project" means the Le Rêve Casino Resort, a hotel and casino resort, with related parking structure and golf course facilities to be developed at the Site, all as more particularly described in *Exhibit T-1* to the Disbursement Agreement.

"Project Architect" means Butler/Ashworth Architects Ltd., LLC, a Nevada limited liability company.

"Project Architect's Advance Certificate" means an advance certificate in the form of *Exhibit C-3* to the Disbursement Agreement.

"Project Architect's Agreement" means that certain Agreement between Owner and Project Architect dated as of October 30, 2002 between the Company and Project Architect.

"Project Budget" shall have the meaning given in *Section 3.1.14* of the Disbursement Agreement.

"Project Budget/Schedule Amendment Certificate" means a Project Budget/Schedule Amendment Certificate in the form of *Exhibit E* to the Disbursement Agreement.

"Project Certificate of Occupancy" means a permanent certificate of occupancy or a temporary certificate of occupancy, in either case, for the Project issued by the Building Department pursuant to applicable Legal Requirements which permanent or temporary certificate of occupancy shall permit the Project to be used for the Project Intended Uses, shall be in full force and effect and, in the case of a temporary certificate of occupancy, if such temporary certificate of occupancy shall provide for an expiration date, the number of days in the period from the Opening Date to such expiration date shall be not less than 133% of the number of days that the Construction Consultant, pursuant to the Opening Date Certificate, estimate it will take to complete the Project Punchlist Items (assuming reasonable diligence in performing the same).

"Project Costs" means all costs (other than any such costs for interest and other Debt Service accruing under the Bank Credit Agreement, the Second Mortgage Notes and the FF&E Facility from and after the Completion Date) incurred, or to be incurred in accordance with the Project Budget, which costs shall include, but not be limited to: (a) all costs incurred under the Contracts, (b) interest accruing under the Bank Credit Agreement, the Second Mortgage Notes and the FF&E Facility prior to the Completion Date, (c) reasonable financing, closing and administration costs related to the Project until the Completion Date including, but not limited to, insurance costs (including, with respect to directors and officers insurance costs, costs relating to such insurance extending beyond the Completion Date), guarantee fees, legal fees and expenses, financial advisory fees and expenses, technical fees and expenses (including, without limitation, fees and expenses of the Construction Consultant and the Insurance Advisor), commitment fees, management fees, and corporate overhead

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agency fees (including, without limitation, fees and expenses of the Disbursement Agent), interest (other than amounts listed in clause (b) above), taxes (including value added tax), and other out-of-pocket expenses payable by the Company under all documents related to the financing and administration of the Project until the Opening Date, (d) the costs of acquiring Permits for the Project prior to the Completion Date, (e) costs incurred in settling insurance claims in connection with Events of Loss and collecting Loss Proceeds at any time prior to the Final Completion Date, (f) working capital costs incurred in accordance with the Project Budget prior to the Completion Date, (g) cash to collateralize commercial letters of credit to the extent that payment of any such cash amount to the vendor or materialman who is the beneficiary of such letter of credit would have constituted a "Project Cost"; *provided* that the aggregate amount of all such letters of credit outstanding at any one time shall not exceed \$10,000,000.

"Project Credit Support Provider" means the Construction Guarantor, the Completion Guarantor and the issuers of any Prime Contractor Payment and Performance Bond.

"Project Documents" means the Construction Agreements, the Construction Guaranty, each other Contract, the Prime Contractor Payment and Performance Bond and each other Payment and Performance Bond issued to the Company, the Affiliate Real Estate Agreements, the Water Supply Contract, the Professional Design Services Agreements, each other agreement entered into on or prior to the Closing Date relating to the development, construction, maintenance or

operation of the Project (other than the Financing Agreements) and each Additional Project Document, as the same may be amended from time to time in accordance with the terms and conditions of the Disbursement Agreement and thereof, in each case, other than Plans and Specifications.

"Project Intended Uses" means the intended uses of the Project, as more particularly set forth in *Exhibit X-1* to the Disbursement Agreement.

"Project Lenders Intercreditor Agreement" means that certain Intercreditor Agreement dated as of October 30, 2002 among the Bank Agent and the Indenture Trustee.

"Project Liquidity Reserve Account" means the account referenced in *Section 2.3.12* of the Disbursement Agreement and established pursuant to the Company Collateral Account Agreements.

"Project Punchlist Completion Amount" means, from time to time from and after the Completion Date, the estimated cost to complete all remaining Project Punchlist Items if the owner of the Project were to engage independent, reputable and appropriately experienced and licensed contractor(s) to complete such work and no other work (certified by the Company and the Construction Consultant with respect to each Advance from and after the Completion Date in their respective certificates in the form of *Exhibits C-1* and *C-2* to the Disbursement Agreement).

"Project Punchlist Items" means minor or insubstantial details of construction or mechanical adjustment, the non-completion of which, when all such items are taken together, will not interfere in any material respect with the use or occupancy of the Project for the Project Intended Uses or the ability of the owner or master lessee, as applicable, of any portion of the Project (or any tenant thereof) to perform work that is necessary or desirable to prepare such portion of the Project for such use or occupancy; *provided* that, in all events, "Project Punchlist Items" shall include (to the extent not already completed), without limitation, the items set forth in the punchlist to be delivered by the Company in connection with "Substantial Completion" under the Prime Construction Contract and all items that are listed on the "punchlists" furnished by the Building Department, the Nevada Department of Transportation or the Clark County Department of Public Works in connection with, or after, the issuance of the Project temporary certificate of occupancy as those that must be completed in order for the Building Department to issue a Project permanent certificate of occupancy.

"Project Schedule" has the meaning given in *Section 3.1.15* of the Disbursement Agreement.

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"Project Secured Parties" means the Bank Agent, the Indenture Trustee, the Bank Lenders, the Second Mortgage Note Holders, the counterparties to any Interest Rate Agreements entered into by the Company under the Bank Credit Agreement (to the extent that the Credit Agreement permits such Interest Rate Agreements to be secured) and the Disbursement Agent acting on behalf of any one or more of the foregoing (but not on behalf of the FF&E Agent or the FF&E Lenders).

"Project Security" means all real and personal property which is subject or is intended to become subject to the security interests or liens granted by any of the Security Documents.

"Protective Advances" means any Advances with respect to (i) the payment of any delinquent taxes or insurance premiums owed by any of the Company or its Affiliates with respect to the Project or other Mortgaged Property, (ii) the removal of any lien or encumbrance on the Project or the Mortgaged Property or the defense of Company's or any of its Affiliates' title thereto or of the validity, enforceability, perfection or priority of the liens and security interests granted or purported to be granted pursuant to the Security Documents, (iii) the payment of Project Costs after delivery of a Stop Funding Notice by the Disbursement Agent, or (iv) the repair, maintenance, protection or preservation of the value of the Project or any portion thereof, including, without limitation, for payment of (A) heating, gas, electric and other utility bills or (B) in the case of amounts paid by the Bank Agent or the Indenture Trustee, amounts reasonably necessary to prevent the provider of any financing pursuant to an FF&E Facility (i) from terminating its agreement to advance funds thereunder, or (ii) from exercising rights under the FF&E Security Documents so as to deprive the Project of the FF&E Component procured in whole or in part with Advances made pursuant to the FF&E Facility.

"Projections" means the financial information and projections set forth in the Business Plan.

"Rating Agencies" means, collectively, Moody's and S&P (or, if either or both of them is no longer in the business of rating debt securities, any other nationally recognized rating agency or agencies).

"Rating Downgrade" means a lowering by either Rating Agency of the then current credit rating of the Second Mortgage Notes.

"Realized Savings" means:

(a) with respect to each of the "Marnell Corrao GMP Contract," "Golf Course" and "Parking Garage" Line Item Categories, a decrease in the anticipated cost to complete the work contemplated by such Line Item Category but only to the extent that the applicable Contractor certifies (or the Construction Consultant is otherwise reasonably satisfied) that the "Guaranteed Maximum Price" under and as defined in the applicable Construction Agreement has been reduced as a result of such decrease in the anticipated cost;

(b) with respect to the "Miscellaneous Capital Projects" Line Item Category, a decrease in the anticipated cost to complete the work contemplated by such Line Item Category which (i) results from a decrease in the anticipated cost to complete the work which the Company is able to demonstrate to the reasonable satisfaction of the Construction Consultant, or (ii) results from a Scope Change which (A) complies with the requirements of *Section 6.2* of the Disbursement Agreement and (B) results, to the reasonable satisfaction of the Construction Consultant, in a quantifiable decrease in materials, supplies, or required services;

(c) with respect to the "Governmental Approvals and Permits" Line Item Category, a decrease in the cost anticipated to be incurred to obtain the permits and pay the fees contemplated by such Line Item Category as a result of the Company having obtained a permit for an amount that is less than the amount budgeted for such permit, which the Company is able to demonstrate to the reasonable satisfaction of the Disbursement Agent;

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(d) with respect to each of the "Transaction Fees and Expenses," "Design and Engineering Fees," "Entertainment Production," and "Insurance/Utilities/Security" Line Item Categories, a decrease in the anticipated cost to complete the work contemplated by such Line Item Category which the Company is able to demonstrate to the reasonable satisfaction of the Disbursement Agent;

(e) with respect to the "Property Taxes" Line Item Category, a decrease in the anticipated cost to complete the work contemplated by such Line Item Category as a result of tax bills or assessment for real estate taxes being lower than the amounts budgeted therefor, which the Company is able to demonstrate to the reasonable satisfaction of the Disbursement Agent;

(g) with respect to the "Capitalized Interest and Commitment Fees" Line Item Category, a decrease in the anticipated cost of construction period interest or commitment fees resulting from a decrease in the interest rates payable by the Company during construction as determined by the Company with the concurrence of the Disbursement Agent (acting in its sole discretion exercised in good faith) taking into account the current and future anticipated interest rates and the anticipated times and amounts of draws under the relevant Facilities for the payment of Project Costs;

(h) with respect to the "Interior Furnishings/Signage/Electronic Systems" Line Item Category, a decrease in the anticipated cost to complete the work contemplated by such Line Item Category which (i) results from a Scope Change that (A) complies with the requirements of Section 6.2 of the Disbursement Agreement and (B) results, to the reasonable satisfaction of the Construction Consultant, in a quantifiable decrease in materials, supplies or required services or (ii) the Company is otherwise able to demonstrate to the reasonable satisfaction of the Construction Consultant;

(i) with respect to each of the "Pre-Opening Expenses," and "Miscellaneous Operating Costs" Line Item Categories, a decrease of up to ten percent (10%) in the cost anticipated to be incurred to complete the work contemplated by such Line Item Category if the Company certifies that it does not intend to spend more than the reduced amount and that such reduced amount is an appropriate amount for such Line Item Category; and

(j) with respect to the "Owner FF&E" Line Item Category, a decrease in the anticipated cost to complete the work contemplated by such Line Item Category which results from a Scope Change that (i) complies with the requirements of Section 6.2 of the Disbursement Agreement and (ii) results, to the reasonable satisfaction of the Construction Consultant in a quantifiable decrease in materials, supplies or required services;

in each case, which is documented by the Company in a Realized Savings Certificate in the form of *Exhibit L* attached to the Disbursement Agreement, duly executed and completed with all exhibits and attachments thereto. No Realized Savings shall be obtainable with respect to the "Land and Buildings," "Global Express Airplane Purchase," "Working Capital Requirements at Opening" and "Construction Contingency" Line Item Categories. The Disbursement Agent shall be entitled to rely on certifications from the Company (and, where contemplated above, the Construction Consultant) set forth in the Company's Realized Savings Certificate in determining whether "Realized Savings" has been achieved.

"Related Agreements" has the meaning given in Section 9.1 of the Disbursement Agreement.

"Release" means, any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal dumping, leaching or migration of Hazardous Substances into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Substances), including the movement of any Hazardous Substances through the air, soil, surface water or groundwater.

"Remaining Costs" means, at any given time for any Line Item Category or Line Item (other than the "Construction Contingency" Line Item Category), the "Balance to Complete (Net Amount)" set forth in column N of the Monthly Requisition Report (as in effect from time to time); *provided, however*, that from and after the Completion Date, any Remaining Costs which do not constitute Project Costs shall be disregarded for purposes of calculating whether the Project is In Balance.

"Representatives of the Underwriters" means Deutsche Bank Securities, Inc., Bear Stearns & Co. Inc., Banc of America Securities LLC and Dresdner Kleinwort Wasserstein—Grantchester, Inc.

"Required Completion Amount" has the meaning given in Section 2.9(a) of the Disbursement Agreement.

"Required Contractor Certificates" means, with respect to each Advance Request, the Contractor certificates required to be attached thereto pursuant to Section 2.4.1(b) of the Disbursement Agreement.

"Required Minimum Contingency" means:

- (a) initially, \$21,707,526;
- (b) from time to time after the Twenty Five Percent Completion Date and prior to the Completion Date, the amount determined pursuant to the following formula:

$$\text{RMC} = \$2,500,000 + (\$19,207,526 * (1.00 - (\text{PC} - 25/75)))$$

Where:

- (1) RMC = Required Minimum Contingency;
- (2) PC = Percentage of the Project completed as of the calculation date based upon the Hard Costs incurred as of such date in accordance with the Project Budget and allocated to the following Line Item Categories: the "Marnell Corrao GMP Contract," "Interior Furnishings/ Signage/ Electronic Systems," "Miscellaneous Capital Projects," "Golf Course" and "Parking Garage" compared to the total amount set forth such Line Item Categories in the Project Budget;

For example, if, as of the calculation date, the Twenty Five Percent Completion Date has occurred (but the initial advance of funds from the Second Mortgage Notes Proceeds Account has not occurred) and thirty percent (30%) of the Hard Costs allocated to the foregoing Line Item Categories have been

incurred in accordance with the Project Budget (PC=30), then $RMC = \$2,500,000 + \$19,207,526 * (1.00 - ((30-25)/75)) = \$2,500,000 + \$17,927,024 = \$20,427,024$.

provided, however, that, if at the time of the initial advance of funds from the Second Mortgage Notes Proceeds Account (the "Second Mortgage Notes Initial Advance Date") the conditions precedent set forth in Section 3.3.22(b) of the Disbursement Agreement have not been satisfied, then from and after such initial advance date until such time (if ever) as the conditions precedent set forth in Section 3.3.22(b) of the Disbursement Agreement have been satisfied, the amount determined pursuant to the following formula:

$$RMC = \$7,500,000 + (AA * (1.00 (PC - SMN) / (1 - SMN)))$$

Where:

(i) RMC = Required Minimum Contingency;

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(ii) PC = Percentage of the Project completed as of the calculation date based upon the Hard Costs incurred as of such date in accordance with the Project Budget and allocated to the following Line Item Categories: the "Marnell Corrao GMP Contract," "Interior Furnishings/ Signage/ Electronic Systems," "Miscellaneous Capital Projects," "Golf Course" and "Parking Garage" compared to the total amount set forth such Line Item Categories in the Project Budget;

(iii) SMN = Percentage of the Project completed as of the Second Mortgage Notes Initial Advance Date based upon the Hard Costs incurred as of such date in accordance with the Project Budget and allocated to the following Line Item Categories: the "Marnell Corrao GMP Contract," "Interior Furnishings/ Signage/ Electronic Systems," "Miscellaneous Capital Projects," "Golf Course" and "Parking Garage" compared to the total amount set forth such Line Item Categories in the Project Budget;

(iv) AA = The adjusted amortized amount calculated as of the Second Mortgage Notes Initial Advance Date calculated pursuant to the following formula (for definition of "SMN" as used in this clause (iv), see clause (iii) above):

$$(\$19,207,526 * (1.00 - (SMN - 25)/75)) - \$5,000,000$$

For example, if, as of the calculation date, the Twenty Five Percent Completion Date has occurred, the initial advance of funds from the Second Mortgage Notes Proceeds Account occurred on the date when fifty percent (50%) of the Hard Costs allocated to the foregoing Line Items had been incurred in accordance with the Project Budget but the conditions precedent set forth in Section 3.3.22(b) of the Disbursement Agreement have not yet been satisfied as of the calculation date (SMN=50) and seventy percent (70%) of the Hard Costs allocated to the foregoing Line Item Categories have been incurred to date (PC=70), then $AA = (\$19,207,526 * (1.00 - (50-25)/75)) - \$5,000,000 = \$7,805,071$ and $RMC = \$7,500,000 + (\$7,805,071 * (1.00 - ((70-50)/50)) = \$7,500,000 + \$7,805,071 * (0.60) = \$12,183,010$

(c) from time to time after the Completion Date, 150% of the Project Punchlist Completion Amount;

"Required Scope Change Approval" means, with respect to each proposed Scope Change, each of the following: (a) the consent of the Construction Consultant, (b) the consent of the Bank Agent, (c) the consent of the FF&E Agent, and, (d) the consent of a majority in principal amount of the holders of the Second Mortgage Notes.

"Reserved Amounts" has the meaning given in Section 2.10 of the Disbursement Agreement.

"Resort Component" means all portions of the Project other than the FF&E Component.

"Resort Component Funding Sources" means the Bank Credit Facility, the Second Mortgage Notes Proceeds and amounts on deposit in the Company's Funds Account.

"Responsible Officer" means as to any Person, the chief executive officer, president or chief financial officer of such Person, but in any event, with respect to financial matters, the chief financial officer of such Person.

"Retainage Amounts" means at any given time amounts which have accrued and are owing under the terms of a Contract for work or services already provided but which at such time (and in accordance with the terms of the Contract) are being withheld from payment to the Contractor, until certain subsequent events (e.g., completion benchmarks) have been achieved under the Contract.

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"Reviewing Accountant" means Deloitte & Touche or any subsequent nationally recognized firm of independent public accountants selected by the Company, with the consent of the Bank Agent from time to time (which shall not be unreasonably withheld or delayed), as auditors of the Company.

"Revolving Credit Loans" has the meaning given in the Bank Credit Agreement.

"S&P" means Standard & Poor's Ratings Group, a New York corporation, or any successor thereof.

"Safe Harbor Scope Change" means any Scope Change if, after giving effect thereto the Project will be within or shall exceed the "standards" set forth on Exhibit X-1 to the Disbursement Agreement.

"Scheduled Completion Date" means April 30, 2005, as the same may from time to time be extended pursuant to *Section 6.4* of the Disbursement Agreement.

"Scope Change" means any change in the Plans and Specifications or any other change to the design, layout, architecture or quality of the Project from that which is contemplated on the Closing Date, (unless such change is required by Legal Requirements), including, without limitation, (a) changes to the "Premises and Assumptions" (as defined in the Prime Construction Contract), (b) approval or submission to the Prime Contractor of "Drawings" or "Specifications" (each as defined in the Prime Construction Contract) that are inconsistent with the Premises and Assumptions, (c) additions, deletions or modifications in the "Work" (as defined in the Prime Construction Contract) (including, without limitation, the acceptance of any non-conforming "Work" (as defined in the Prime Construction Contract) pursuant to *Section 10.9* of the Prime Construction Contract), (d) the issuance of a "Construction Change Directive" (as defined in the Prime Construction Contract) directing a "Change" (as defined in the Prime Construction Contract) in the work and a proposed basis for adjustments, if any, in the "Guaranteed Maximum Price" (as defined in the Prime Construction Contract) or "Contract Time" (as defined in the Prime Construction Contract), or any combination of them, and (e) modifications to the "Drawings" (as defined in the Architect's Agreement) to the extent the same constitute an Additional Service under the Architect's Agreement.

"Second Mortgage Notes" means the 12% Mortgage Notes Due 2010 in the aggregate principal amount of \$370 million, priced to yield 13.5% at maturity, issued by the Company and Capital Corp., as co-issuers, pursuant to the Second Mortgage Notes Indenture.

"Second Mortgage Notes Company Collateral Account Agreement" means that certain Second Mortgage Notes Company Collateral Account Agreement dated as of October 30, 2002 among the Company, the Indenture Trustee, the Disbursement Agent and the Securities Intermediary.

"Second Mortgage Notes Completion Guaranty Collateral Account Agreement" means that certain Second Mortgage Notes Completion Guaranty Collateral Account Agreement dated as of October 30, 2002 among the Completion Guarantor, the Indenture Trustee, the Disbursement Agent and the Securities Intermediary.

"Second Mortgage Notes Deeds of Trust" means, collectively, the Second Mortgage Notes Golf Course Deed of Trust, the Second Mortgage Notes Hotel/Casino Deed of Trust, the Second Mortgage Notes Phase II Deed of Trust, the Second Mortgage Notes Palo Deed of Trust, and the Second Mortgage Notes DIIC Deed of Trust.

"Second Mortgage Notes DIIC Deed of Trust" means that certain Deed of Trust to be entered into pursuant to *Section 3.3.22* of the Disbursement Agreement, between Desert Inn Improvement as trustor, and Nevada Title Company as trustee, for the benefit of the Indenture Trustee as beneficiary, substantially in the form of *Exhibit D* to the Bank Credit Agreement.

"Second Mortgage Notes Golf Course Deed of Trust" means that certain Deed of Trust dated as of October 30, 2002 between Wynn Resorts Holdings as trustor, and Nevada Title Company as trustee, for the benefit of Indenture Trustee as beneficiary.

"Second Mortgage Notes Guarantee and Collateral Agreement" means that certain Guarantee and Collateral Agreement dated as of October 30, 2002 and made by Wynn Las Vegas and each other Loan Party for the benefit of the Indenture Trustee.

"Second Mortgage Note Holders" means the holders of the Second Mortgage Notes.

"Second Mortgage Notes Hotel/Casino Deed of Trust" means that certain Deed of Trust dated as of October 30, 2002 between Wynn Las Vegas as trustor, and Nevada Title Company as trustee, for the benefit of the Indenture Trustee as beneficiary.

"Second Mortgage Notes Indenture" means that certain Second Mortgage Notes Indenture dated as of October 30, 2002 among the Wynn Las Vegas, Capital Corp., the guarantors signatory thereto and the Indenture Trustee.

"Second Mortgage Notes Interest Reserve Amount" means Forty Four Million Four Hundred Thousand Dollars (\$44,400,000).

"Second Mortgage Notes Local Company Collateral Account Agreement(s)" means one or more control agreements with respect to the Soft Costs Cash Management Account, the Hard Costs Cash Management Account, the Company's Payment Account and the Operating Account substantially in the form of *Exhibit Z-2* and entered into by a bank that is reasonably acceptable to the Disbursement Agent pursuant to *Sections 2.3.4, 2.3.8 and 2.3.9*.

"Second Mortgage Notes IP Security Agreement" means that certain Intellectual Property Security Agreement dated as of October 30, 2002 and made by Wynn Las Vegas and Capital Corp. for the benefit of the Indenture Trustee.

"Second Mortgage Notes Palo Deed of Trust" means that certain Deed of Trust dated as of October 30, 2002 between Palo as trustor, and Nevada Title Company as trustee, for the benefit of the Indenture Trustee as beneficiary.

"Second Mortgage Notes Parent Guarantee" means that certain Parent Guarantee dated as of October 30, 2002 entered into by Wynn Resorts, Limited for the benefit of the Indenture Trustee and the Second Mortgage Notes Holders.

"Second Mortgage Notes Phase II Deed of Trust" means that certain Deed of Trust dated as of October 30, 2002 between Valvino as trustor, and Nevada Title Company as trustee, for the benefit of Indenture Trustee as beneficiary.

"Second Mortgage Notes Proceeds" means the amounts deposited in the Second Mortgage Notes Proceeds Account on the Closing Date.

"Second Mortgage Notes Proceeds Account" has the meaning given in the Second Mortgage Notes Collateral Account Agreement.

"Second Mortgage Notes Security Documents" means, collectively, the Second Mortgage Notes Deeds of Trust, the Second Mortgages Notes Guaranty and Collateral Agreement, the Second Mortgage Notes Parent Guarantee, the Collateral Agency Agreement, the Second Mortgage Notes IP Security Agreement, the Second Mortgage Notes Company Collateral Account Agreement, the Second Mortgage Notes Completion Guaranty Collateral Account Agreement, the Second

the Second Mortgage Notes Holders to guaranty the obligations under the Second Mortgage Notes and the Second Mortgage Notes Indenture.

"Secured Parties" means, collectively, the Project Secured Parties and the FF&E Secured Parties.

"Securities Intermediary" means Deutsche Bank Trust Company Americas in its capacity as securities intermediary under the Company Collateral Account Agreements and the Completion Guaranty Collateral Account Agreements and Bank of America, N.A. in its capacity as securities intermediary under the Local Account Company Collateral Account Agreements and the FF&E Local Company Collateral Account Agreement, in each case, and its successors in such capacity.

"Security Documents" means, collectively and without duplication, the Bank Security Documents, the Second Mortgage Notes Security Documents, the FF&E Security Documents, the Completion Guaranty, the Construction Guaranty, each Payment and Performance Bond, the Collateral Account Agreements, the Consents, and any other deeds of trust, security agreements or collateral account agreements entered into by any of the Loan Parties and/or one or more of their direct or indirect Subsidiaries for the benefit of any Secured Party in accordance with the terms of the Financing Agreements or the Intercreditor Agreements.

"Shuttle Easement" means that certain Easement Agreement dated as of October 30, 2002 by and among Wynn Resorts and Valvino, as grantors, and Wynn Las Vegas, as grantee.

"Site" means all or any portion of the Project, as described in *Exhibit T-4* to the Disbursement Agreement. The Site includes the Casino Land, the Golf Course Land (including (a) the Water Utility Land, (b) the Wynn Home Site until such time (if ever) as the Wynn Home Site Release Conditions shall have been satisfied and (c) the Home Site Land and Palo Home Site Land until such time (if ever) as the release conditions set forth in *Section 7.5(l)* of the Bank Credit Agreement and *Section 10.03* of the Second Mortgage Notes Indenture shall have been satisfied), the Phase II Land (until such time (if ever) as the release conditions set forth in *Sections 7.5(j), (k), (l) and (m)* of the Bank Credit Agreement and *Section 10.03* of the Indenture shall have been satisfied) and any other real property which is subject to a lien under any Bank Deed of Trust or any Second Mortgage Notes Deed of Trust.

"Site Easements" means the easements appurtenant, easements in gross, license agreements and other rights running for the benefit of the Company and/or appurtenant to the Site, including, without limitation, those certain easements and licenses described in the Title Policy. The Site Easements include (a) the Golf Course Land Easements and (b) the Phase II Land Easements (until such time (if ever) as the release conditions set forth in *Sections 7.5(j), (k), (l) and (m)* of the Bank Credit Agreement and *Section 10.03* of the Second Mortgage Notes Indenture shall have been satisfied).

"Soft Costs" means the Project Costs set forth in the Project Budget under (a) the "Soft Cost Construction Contingency" Line Item under the "Construction Contingency" Line Item Category, together with (b) following other Line Item Categories:

- (i) Capitalized Interest and Commitment Fees;
- (ii) Pre-Opening Expense;
- (iii) Transaction Fees and Expenses;
- (iv) Design and Engineering Fees;
- (v) Working Capital Requirements at Opening;
- (vi) Entertainment Production;
- (vii) Insurance/Utilities/Security;

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- (viii) Property Taxes;
 - (ix) Government Approvals and Permits; and
 - (x) Miscellaneous Operating Costs.

"Soft Costs Cash Management Account" means the account referenced in *Section 2.3.4* of the Disbursement Agreement and established pursuant to the Local Account Company Collateral Account Agreements.

"Solvent" means, when used with respect to any Person, as of any date of determination, (a) the amount of the "present fair saleable value" of the assets of such Person will, as of such date, exceed the amount of all "liabilities of such Person, contingent or otherwise", as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, (d) such Person will be able to pay its debts as they mature, and (e) such Person is not insolvent within the meaning of any applicable Requirements of Law. For purposes of this definition, (i) "debt" means liability on a "claim", and (ii) "claim" means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated,

unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

"Stop Funding Notice" has the meaning given in *Section 2.4.3(b)* of the Disbursement Agreement.

"Stop Funding Request" has the meaning given in *Section 2.4.4(b)* of the Disbursement Agreement.

"Subcontract" means any subcontract or purchase order entered into with any Subcontractor.

"Subcontractor" means any direct or indirect subcontractor of any tier under any Contract.

"Subsidiary" as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in the Disbursement Agreement shall refer to a Subsidiary or Subsidiaries of Wynn Las Vegas.

"Summary Anticipated Cost Report" means an Anticipated Cost Report in the form of *Exhibit H-2* to the Disbursement Agreement and which provides the information indicated therein segregated by each Line Item Category.

"Tax" shall mean shall mean any federal, state, local, foreign or other tax, levy, impost, fee, assessment or other government charge, including without limitation income, estimated income, business, occupation, franchise, property, payroll, personal property, sales, transfer, use, employment, commercial rent, occupancy, franchise or withholding taxes, and any premium, including without limitation interest, penalties and additions in connection therewith.

"Term Loans" has the meaning given in the Bank Credit Agreement.

"Third Party Claims" has the meaning given in *Section 10.3* of the Disbursement Agreement.

"Third Party Financing Agreement" means any loan or security document entered into on, prior to, or after the Closing Date with parties other than any one or more of the Bank Agent, the Indenture Trustee or the FF&E Lender.

"Title Insurer" means Nevada Title Company.

"Title Policies" means, collectively, the policies of title insurance issued by Title Insurer as of the Closing Date, as provided in *Section 3.1.28(i), (ii)* and *(iii)* of the Disbursement Agreement, including all amendments thereto, endorsements thereof and substitutions or replacements therefor.

"Trust Estate" shall have, with respect to each Deed of Trust, the meaning set forth in such Deed of Trust.

"Twenty Five Percent Completion Date" means the date the following conditions have been satisfied as set forth in a certificate in the form of *Exhibit V-1* to the Disbursement Agreement delivered by the Company and (other than with respect to clause (b)(B) below) a certificate in the form of *Exhibit V-2* to the Disbursement Agreement delivered by the Construction Consultant: (a) 25% of the work required to achieve completion of the Project has been completed (determined by (i) the amount of Hard Costs incurred to such date and allocated to the "Marnell Corrao GMP Contract," "Interior Furnishings/Signage/Electronic Systems," "Miscellaneous Capital Projects," "Golf Course" and "Parking Garage" Line Item Categories under the Project Budget, as compared to (ii) the total amount of Hard Costs set forth in the Project Budget (as then in effect) under the following Line Item Categories: "Marnell Corrao GMP Contract," "Interior Furnishings/Signage/Electronic Systems," "Miscellaneous Capital Projects," "Golf Course" and "Parking Garage"), and (b) all Contractors and Subcontractors have been paid in full for work performed through such date or will be paid in full with the pending Advance Request (other than (A) Retainage Amounts, and other amounts, that, as of the Twenty Five Percent Completion Date, are being withheld from the Contractors and Subcontractors in accordance with the provisions of the Project Documents, and (B) amounts being contested in accordance with the Financing Agreements so long as adequate reserves have been established through an allocation in the Anticipated Cost Report and in accordance with any requirements of such Financing Agreements) and have provided lien waivers to the extent required under *Section 3.3.7* of the Disbursement Agreement for all work performed prior to the Twenty Five Percent Completion Date.

"UCC" means the Uniform Commercial Code of the jurisdiction the law of which governs the document with respect to the term is used.

"Unallocated Contingency Balance" means, from time to time, the amount of the "Construction Contingency" Line Item Category as set forth in the Project Budget then in effect.

"Unincorporated Materials" has the meaning given in *Section 3.3.26* of the Disbursement Agreement.

"Valvino" means Valvino Lamore, LLC, a Nevada limited liability company.

"Valvino Permitted Encumbrances" has the meaning given in *Section 3.1.28* of the Disbursement Agreement.

"Water Supply Contract" means that certain [water supply contract] between Desert Inn Improvement, as supplier, and Wynn Las Vegas, as purchaser, dated as of October 30, 2002.

"Water Utility Land" means the approximately 0.17-acre tract of land located on the Golf Course owned by Desert Inn Improvement, as more particularly described in *Exhibit T-4* of the Disbursement Agreement.

"World Travel" means World Travel, LLC, a Nevada limited liability company.

"Wynn Design" means Wynn Design and Development, LLC, a Nevada limited liability company.

"Wynn Home Site" means the approximately two-acre tract of land located on the Golf Course where Stephen A. Wynn's personal residence may be built.

"Wynn Home Site Release Conditions" means:

(a) The Bank Agent shall have confirmed that the conditions set forth in *Section 7.5(j)* of the Bank Credit Agreement shall have been satisfied; and

(b) The Indenture Trustee shall have confirmed that all the conditions set forth in *Section 10.03(d)* of the Second Mortgage Notes Indenture shall have been satisfied.

"Wynn Las Vegas" means Wynn Las Vegas, LLC, a Nevada limited liability company.

"Wynn Las Vegas Permitted Encumbrances" has the meaning given in *Section 3.1.28* of the Disbursement Agreement.

"Wynn Resorts Holdings" means Wynn Resorts Holdings, LLC, a Nevada limited liability company.

"Wynn Resorts Holdings Permitted Encumbrances" has the meaning given in *Section 3.1.28* of the Disbursement Agreement.

RULES OF INTERPRETATION

1. The singular includes the plural and the plural includes the singular.

2. The word "or" is not exclusive.

3. A reference to a Legal Requirement includes any amendment or modification of such Legal Requirement, and all regulations, rulings and other Legal Requirements promulgated under such Legal Requirement.

4. A reference to a Person includes its permitted successors and permitted assigns.

5. Accounting terms have the meanings assigned to them by U.S. GAAP, as applied by the accounting entity to which they refer.

6. The words "include," "includes" and "including" are not limiting.

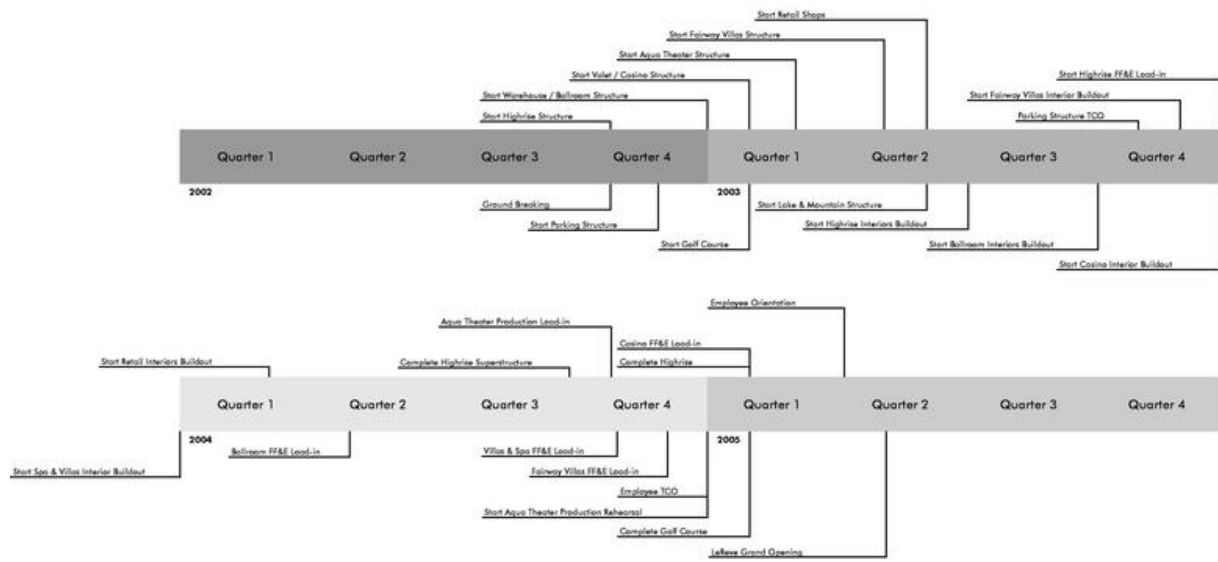
7. A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document.

8. References to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) shall mean, unless specifically indicated, such document, instrument or agreement as in effect on the date hereof, notwithstanding any termination, such expiration or amendment of such agreement unless all of the parties to the Disbursement Agreement are signatories to such amendment, in which case any references shall be to such agreement as so amended.

9. The words "hereof," "herein" and "hereunder" and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.

10. References to "days" shall mean calendar days, unless the term "Banking Days" shall be used.

11. The Financing Agreements are the result of negotiations among, and have been reviewed by, the Company, Valvino, Valvino's subsidiaries, the Funding Agents, the Lenders and the Disbursement Agent. Accordingly, the Financing Agreements shall be deemed to be the product of all parties thereto, and no ambiguity shall be construed in favor of or against any such Person.



**EXHIBIT T-2
to the Disbursement Agreement**

Description of Eligible FF&E Equipment

- Aircraft
- Communication Equipment
- Elevators and Escalators
- Electrical Generators and Power Supplies
- Furniture
- Fixtures
- Gaming Equipment
- House keeping Equipment
- HVAC Equipment
- Laundry Equipment
- Maintenance Equipment
- Restaurant Equipment
- Security and surveillance Equipment
- Signage
- Theater Equipment
- Vaults
- Water systems

**EXHIBIT Z-1
to the Disbursement Agreement**

FORM OF LOCAL BANK COLLATERAL ACCOUNT AGREEMENT

This **LOCAL BANK COLLATERAL ACCOUNT AGREEMENT** (this "**Agreement**") is dated as of October 30, 2002 and entered into by and among **WYNN LAS VEGAS, LLC**, a Nevada limited liability company ("**Wynn Las Vegas**"), **WYNN LAS VEGAS CAPITAL CORP.**, a Nevada corporation ("**Capital Corp.**"), **WYNN DESIGN & DEVELOPMENT, LLC**, a Nevada limited liability company ("**Wynn Design**" and, jointly and severally with Wynn Las Vegas and Capital Corp., "**Pledgor**"), **DEUTSCHE BANK TRUST COMPANY AMERICAS**, as Bank Agent under the Bank Credit Agreement (in such capacity herein called "**Secured Party**"), and **BANK OF AMERICA, N.A.**, as custodian and securities intermediary for the Pledgor and Secured Party (in such capacity, "**Securities Intermediary**").

A. *The Project.* Pledgor proposes to develop, construct and operate the Le Rêve Casino Resort with related parking structure and golf course facilities, as part of the redevelopment of the site of the former Desert Inn in Las Vegas, Nevada.

B. *Bank Credit Agreement.* Concurrently herewith, Wynn Las Vegas, the Bank Agent, Deutsche Bank Securities, Inc., as advisor, lead arranger and joint book running manager, Banc of America Securities LLC, as advisor, lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as advisor, arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York and Grand Cayman Branches, as arranger and joint documentation agent, and the Bank Lenders have entered into the Bank Credit Agreement pursuant to which the Bank Lenders have agreed, subject to the terms thereof, to provide certain revolving loans to Wynn Las Vegas in an aggregate principal amount not to exceed \$750,000,000 and certain delay draw term loans to Wynn Las Vegas in an aggregate principal amount not to exceed \$250,000,000, as more particularly described therein. Valvino, Wynn Resorts Holdings and certain other guarantors have, pursuant to the Bank Guarantee and Collateral Agreement, guaranteed the obligations of Wynn Las Vegas under the Bank Credit Agreement.

C. *Second Mortgage Notes Indenture.* Concurrently herewith, Wynn Las Vegas, Capital Corp., certain guarantors signatory thereto (including Valvino and Wynn Resorts Holdings) and the Indenture Trustee have entered into the Second Mortgage Notes Indenture pursuant to which Wynn Las Vegas and Capital Corp. will issue the Second Mortgage Notes due 2010 to finance Project Costs, as more particularly described therein.

D. *FF&E Facility Agreement.* Concurrently herewith, Wynn Las Vegas and Wells Fargo Bank, National Association, as the FF&E Agent, and the FF&E Lenders have entered into the FF&E Facility Agreement pursuant to which the FF&E Lenders have agreed, subject to the terms thereof, to provide certain loans in an aggregate principal amount not to exceed \$188,500,000 to finance acquisition and installation costs for the FF&E Component, as more particularly described therein.

E. *Intercreditor Agreements.* Concurrently herewith, (i) the Bank Agent (acting on behalf of itself and the Bank Lenders) and the Indenture Trustee (acting on behalf of itself and the Second Mortgage Note Holders) have entered into the Project Lenders Intercreditor Agreement and (ii) the Bank Agent (acting on behalf of itself and the Bank Lenders), the Indenture Trustee (acting on behalf of itself and the Second Mortgage Note Holders) and the FF&E Agent (acting on behalf of itself and the FF&E Lenders) have entered into the FF&E Intercreditor Agreement, pursuant to each of which the parties thereto have set forth certain intercreditor provisions, including the priority of the liens, the method of decision making among the Lenders party thereto, the arrangements applicable to actions in respect of

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approval rights and waivers, the limitations on rights of enforcement upon default and the application of proceeds upon enforcement.

F. *Completion Guaranty.* Concurrently herewith, the Completion Guarantor has executed in favor of the Bank Agent (acting on behalf of the Bank Lenders) and the Indenture Trustee (acting on behalf of the Second Mortgage Note Holders) the Completion Guaranty pursuant to which the Completion Guarantor has agreed, subject to the terms and limitations thereof, to guaranty completion of the Project and payment by the Company of certain Project Costs.

G. *Master Disbursement Agreement.* Concurrently herewith, the Pledgor, the Bank Agent (acting on behalf of itself and the Bank Lenders), the Indenture Trustee (acting on behalf of itself and the Second Mortgage Note Holders), the FF&E Agent (acting on behalf of itself and the FF&E Lenders) and Deutsche Bank Trust Company Americas as "**Disbursement Agent**" have entered into that certain Master Disbursement Agreement ("**Disbursement Agreement**") for the purpose of setting forth, among other things, (a) the mechanics for and allocation of the Company's requests for Advances under the various Facilities and from the Company's Funds Account, (b) the conditions precedent to the Closing Date, to the initial Advance and to subsequent Advances, (c) certain common representations, warranties and covenants of the Company in favor of the Funding Agents and the Lenders and (d) the common events of default and remedies.

H. *Condition.* It is a condition precedent to the extensions of the Bank Credit Facility by the Bank Lenders that Pledgor shall have established the Collateral Accounts, granted control to the Bank Agent (as Secured Party) of such accounts, and undertaken the obligations contemplated by this Agreement.

NOW, THEREFORE, in consideration of the premises and in order to induce the Bank Lenders to extend the Bank Credit Facility under the Bank Credit Agreement and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Pledgor hereby agrees with Secured Party as follows:

SECTION 1. Certain Definitions.

(a) *Specific Definitions.* The following terms used in this Agreement shall have the following meanings:

"**Broker-Dealer**" means a person registered as a broker or dealer under the Securities Exchange Act of 1934, as amended.

"**Business Day**" means any day other than a Saturday, Sunday or any other day which is a legal holiday or a day on which banking institutions are permitted to be closed in New York or Nevada.

"**Code**" shall mean the Uniform Commercial Code as in effect in New York.

"**Collateral**" means (i) the Collateral Accounts, (ii) all amounts held from time to time in the Collateral Accounts, (iii) all Investments, including all Financial Assets, security entitlements, securities (whether certificated or uncertificated), instruments, accounts, general intangibles and deposits representing or evidencing any Investments, (iv) all interest, dividends, cash, instruments, securities and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Collateral, and (v) to the extent not covered by clauses (i) through (iv) above, all proceeds of any or all of the foregoing Collateral.

"**Collateral Accounts**" means the Securities Account and the Deposit Accounts and any other accounts or subaccounts in which Investments may be held or registered.

"**Deposit Accounts**" means the deposit accounts established and maintained by Pledgor and Secured Party with Securities Intermediary pursuant to Section 2, including the Soft Costs Cash

Management Account, Hard Costs Cash Management Account, the Operating Account and the Company's Payment Account.

"**Investments**" means any Financial Assets credited to the Securities Account or the Deposit Accounts, and any other property acquired by Securities Intermediary as securities intermediary hereunder in exchange for, with proceeds from or distributions on, or otherwise in respect of any Investments.

"**Overnight Investments**" means the investments described in paragraph (b) of the definition of Permitted Investments.

"**Permitted Investments**" means, prior to the Completion Date, the following:

- (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within 18 months from the date of acquisition; or
- (b) shares of money market mutual or similar funds which invest exclusively in assets satisfying the requirements of clause (a) of this definition.

From and after the Completion Date, "Permitted Investments" means the following:

- (1) United States dollars;
- (2) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (as long as the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than six months from the date of acquisition;
- (3) interest-bearing demand or time deposits (which may be represented by certificates of deposit) issued by banks having general obligations rated (on the date of acquisition thereof) at least "A" or the equivalent by S&P or Moody's or, if not so rated, secured at all times, in the manner and to the extent provided by law, by collateral security in clause (1) or (2) of this definition, of a market value of no less than the amount of monies so invested;
- (4) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (2) and (3) above entered into with any financial institution meeting the qualifications specified in clause (3) above;
- (5) commercial paper having the highest rating obtainable from Moody's or S&P and in each case maturing within six months after the date of acquisition;
- (6) money market funds or mutual funds at least 95% of the assets of which constitute Permitted Investments of the kinds described in clauses (1) through (5) of this definition;
- (7) to the extent not permitted by clauses (1)—(6) above, those items described in clauses (a) and (b) above.

"**Secured Obligations**" shall mean all of the Obligations owed by Pledgor and the other Loan Parties to Secured Party and the Bank Lenders from time to time under the Financing Documents.

"**Securities Account**" means any securities account established and maintained with Securities Intermediary pursuant to Section 2.

"**Securities Intermediary**" means Bank of America, N.A.

"**Suspension Period**" means the period (i) beginning promptly after receipt by Securities Intermediary of written notice from Secured Party, substantially in the form of the Prohibition Notice attached to this Agreement as Attachment 1, suspending Pledgor's right to direct the

investment of funds held for the credit of the Collateral Accounts, and (ii) ending promptly after receipt by Securities Intermediary of written notice from Secured Party, substantially in the form of the Rescission of Prohibition Notice attached to this Agreement as Attachment 2, rescinding the preceding Prohibition Notice.

(b) *General Provisions.* Capitalized terms used but not defined herein shall have the meaning given to such terms in *Exhibit A*. Unless otherwise defined herein or in *Exhibit A*, terms used in Articles 8 and 9 of the Code are used herein as therein defined. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context indicates is appropriate. When a reference is made in this Agreement to an Appendix, Exhibit, Introduction, Recital, Section or Schedule, such reference shall be to an Appendix, an Exhibit, the Introduction, a Recital or a Section of, or a Schedule to, this Agreement unless otherwise indicated. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

SECTION 2. *Establishment and Operation of the Collateral Accounts.*

(a) *Establishment of Operating Account.* Pledgor and Secured Party hereby authorize and direct Securities Intermediary to establish and maintain at its office at 300 South Fourth Street, 2nd Floor, NV1-119-02-01, Las Vegas, Nevada, 89101-6014, a non-interest bearing deposit account in the name of Pledgor and under the control of Secured Party, designated as "Wynn Las Vegas, Operating Account". Securities Intermediary hereby undertakes to treat Pledgor as the person

entitled to exercise the rights that comprise any Financial Asset credited to the Operating Account. Secured Party and the Pledgor agree that this account shall be the "**Operating Account.**"

(b) *Establishment of Soft Costs Cash Management Account.* Pledgor and Secured Party hereby authorize and direct Securities Intermediary to establish and maintain at its office at 300 South Fourth Street, 2nd Floor, NV1-119-02-01, Las Vegas, Nevada, 89101-6014, a non-interest bearing deposit account in the name of Pledgor and under the control of Secured Party, designated as "Wynn Las Vegas, Soft Costs Cash Management Account". Securities Intermediary hereby undertakes to treat Pledgor as the person entitled to exercise the rights that comprise any Financial Asset credited to the Soft Costs Cash Management Account. The Secured Party and the Pledgor agree that this account shall be the "**Soft Costs Cash Management Account.**"

(c) *Establishment of Hard Cost Cash Management Account.* Pledgor and Secured Party hereby authorize and direct Securities Intermediary to establish and maintain at its office at 300 South Fourth Street, 2nd Floor, NV1-119-02-01, Las Vegas, Nevada, 89101-6014, a non-interest bearing deposit account in the name of Pledgor and under the control of Secured Party, designated as "Wynn Las Vegas, Hard Costs Cash Management Account". Securities Intermediary hereby undertakes to treat Pledgor as the person entitled to exercise the rights that comprise any Financial Asset credited to the Hard Costs Cash Management Account. The Secured Party and the Pledgor agree that this account shall be the "**Hard Costs Cash Management Account.**"

(d) *Establishment of Company's Payment Account.* Pledgor and Secured Party hereby authorize and direct Securities Intermediary to establish and maintain at its office at 300 South Fourth Street, 2nd Floor, NV1-119-02-01, Las Vegas, Nevada, 89101-6014, a non-interest bearing deposit account in the name of Pledgor and under the control of Secured Party, designated as "Wynn Las Vegas, Company's Payment Account". Securities Intermediary hereby undertakes to treat Pledgor as the person entitled to exercise the rights that comprise any Financial Asset credited to the Company's Payment Account. The Secured Party and the Pledgor agree that this account shall be the "**Company's Payment Account.**"

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(e) *Operations of the Collateral Accounts.* The Collateral Accounts shall be operated, and all Investments shall be acquired and registered or held (as applicable), in accordance with the terms of this Agreement and the directions of Secured Party.

(f) *Account Statements.* Securities Intermediary shall send Secured Party and Pledgor written account statements with respect to the Collateral Accounts not less frequently than monthly. Absent mathematical or similar errors, reports or confirmations of the execution of orders and statements of account shall be conclusive if not objected to in writing within 30 days after delivery pursuant to Section 21.

SECTION 3. Mechanics of Deposits of Funds in and between Collateral Accounts.

(a) *Transfers to Operating Account.* All transfers of funds to the Operating Account shall be made by wire transfer (or, if applicable, intra-bank transfer from another account with Securities Intermediary) of immediately available funds, in each case addressed as follows:

Account No.: #004964891348
ABA No.: #122400724
Reference: Le Rêve Project—Operating Account

(b) *Transfers to Soft Costs Cash Management Account.* All transfers of funds to the Soft Costs Cash Management Account shall be made by wire transfer (or, if applicable, intra-bank transfer from another account with Securities Intermediary) of immediately available funds, in each case addressed as follows:

Account No.: #004964891351
ABA No.: #122400724
Reference: Le Rêve Project—Soft-Costs Cash Management Account

(c) *Transfers to Hard Costs Cash Management Account.* All transfers of funds to the Hard Costs Cash Management Account shall be made by wire transfer (or, if applicable, intra-bank transfer from another account with Securities Intermediary) of immediately available funds, in each case addressed as follows:

Account No.: #004964891364
ABA No.: #122400724
Reference: Le Rêve Project—Hard Costs Cash Management Account

(d) *Transfers to Company's Payment Account.* Transfers of funds to the Company's Payment Account shall be made by wire transfer (or, if applicable, intra-bank transfer from another account with Securities Intermediary) of immediately available funds, in each case addressed as follows:

Account No.: #004964891377
ABA No.: #122400724
Reference: Le Rêve Project—Company's Payment Account

(e) *Notice of Transfers.* In the event of any transfer of funds to or from the Collateral Accounts pursuant to any provision of Section 3, Pledgor, Secured Party or Securities Intermediary, as the case may be, shall promptly after initiating or sending out written instructions with respect to such transfer, give notice to each other such party by facsimile of the date and amount of such transfer.

SECTION 4. Permitted Investments and Transfers of Amounts in the Collateral Accounts.

(a) *Strict Compliance.* Cash and Investments held by Securities Intermediary in the Collateral Accounts shall not be (i) invested or reinvested, (ii) sold or redeemed, or (iii) transferred from or among the Collateral Accounts, except as provided in this Section 4.

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(b) *Pledgor's Right to Direct Investment.* Except during any Suspension Period, Securities Intermediary shall, in accordance with Pledgor's written Entitlement Orders given to Securities Intermediary from time to time, sell or redeem Investments, and apply amounts transferred to or held for the credit of the respective Securities Account to make investments for credit to the Securities Account, in Securities Intermediary's name and as custodian under this Agreement, in Permitted Investments denominated and payable in United States Dollars. During any Suspension Period, (i) Pledgor's right to direct such investments under this Section 4(b) shall be suspended, and Securities Intermediary shall not accept Entitlement Orders with respect to the Securities Account from any person other than Secured Party; and (ii) any credit balances shall be invested and reinvested only as provided in Section 4(c).

(c) *Overnight Investments.* To the extent that (i) with respect to the Deposit Accounts, there are credit balances expected in the Deposit Accounts as of the end of a day, or (ii) with respect to the Securities Account (A) a Suspension Period is then in effect or (B) based on the maturities of Investments then held in a Securities Account a credit balance is expected in such Securities Account as of 2:00 p.m., New York time on any Business Day after settlement of all pending transactions, unless otherwise instructed by Secured Party, Securities Intermediary shall apply such expected credit balances to acquire Overnight Investments. Any Overnight Investments shall be held for the credit of the Collateral Account from which the proceeds for acquisition was derived. Pledgor shall have no right to invest funds in a Securities Account to the extent that free balances have been invested in Overnight Investments pursuant to this Section. Except as specifically set forth above, any amount received after 1:00 p.m., New York time will remain uninvested and shall not bear interest.

(d) *Actions of Securities Intermediary on Purchase of Investments.* Promptly upon the purchase, acquisition or transfer for credit of any Collateral Account of any Investment, Securities Intermediary shall take all steps that it customarily takes in the ordinary course of its business to ensure that such Investment is credited on its books to the Collateral Account for which the Investment was acquired. Without limiting the generality of the foregoing, Securities Intermediary shall promptly (i) send to Pledgor and Secured Party a written confirmation of the acquisition of such Investment, and (ii) indicate by book entry in its records that such Investment has been credited to, and is held for the credit of, the specified Collateral Account. Securities Intermediary agrees with Pledgor and Secured Party that any credit balances or property credited to, or held for the credit of, the Collateral Accounts shall be treated as "Financial Assets" as that term is defined in Section 8-102(a)(9) of the Code.

(e) *Interest on Collateral Accounts.* Amounts held on deposit or as credit balances, whether in a Deposit Account or a Securities Account shall not bear interest, although to the extent invested in Investments (including Overnight Investments), deposit or credit balances may realize interest income.

(f) *Control Agreement.* Anything contained herein to the contrary notwithstanding, including the actual or alleged absence of a Potential Event of Default or Event of Default, Securities Intermediary shall, if and as directed in writing by Secured Party, without the consent of Pledgor, (i) comply with Entitlement Orders originated by Secured Party with respect to the Collateral Accounts and any Security Entitlements therein, (ii) comply with instructions, including, without limitation, instructions within the meaning of Section 9-104 of the Code originated by Secured Party directing the disposition of funds in the Collateral Accounts, (iii) transfer, sell or redeem any of the Collateral, (iv) transfer any or all of the Collateral to any account or accounts designated by Secured Party, including any Collateral Account or an account established in Secured Party's name (whether at Secured Party or Securities Intermediary or otherwise), (v) register title to any Collateral in any name specified by Secured Party, including the name of Secured Party or any of its nominees or agents, without reference to any interest of Pledgor, or (vi) otherwise deal with the Collateral as directed by Secured Party. Securities Intermediary shall act on any Entitlement Order or instruction of Secured Party notwithstanding assertions or proof that (1) Secured Party has no right under Sections 14 or 15 to originate the Entitlement Order or instruction or take the underlying action; (2) such Entitlement Order or

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instruction or action constitutes a breach of this Agreement or any other agreement; or (3) this Agreement has terminated, unless notified in writing by Secured Party that this Agreement has terminated and such notice has not been withdrawn. Nothing contained in this paragraph shall constitute a waiver by Pledgor of any rights or remedies it may have against Secured Party under this Agreement or any other agreement.

(g) *Deposit of Proceeds.* Any interest earned on the Deposit Accounts in accordance with Section 4(e), any interest, cash dividends or other cash distributions received in respect of any Investments and the net proceeds of any sale or payment of any Investments shall be promptly credited to, and held for the credit of, the Collateral Account to which such Investment was credited. Any distribution of property in respect of any Investment shall be credited to and held for the credit of the Collateral Account to which the related Investment was credited; *provided that*, unless otherwise instructed in writing by Secured Party, Securities Intermediary shall, for credit to the Collateral Accounts, promptly sell, redeem or otherwise liquidate any such property that, as of the date of receipt, is not a Permitted Investment.

(h) *Segregation of Accounts.* Except to the extent otherwise instructed by Secured Party or as provided in Section 2(a), 2(b), 2(c), 2(d) or 4(g), Securities Intermediary shall separately maintain each of the Collateral Accounts and shall not transfer property or proceeds among the Collateral Accounts.

SECTION 5. *Pledge of Security for Secured Obligations.* Pledgor hereby pledges and assigns to Secured Party, and hereby grants to Secured Party for the benefit of the Bank Lenders a security interest in, all of Pledgor's right, title and interest in and to the Collateral as collateral security for the prompt payment or performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the United States Bankruptcy Code, 11 U.S.C. 362(a)), of all Secured Obligations.

SECTION 6. *Acknowledgement of Security Interest in Favor of Secured Party; Covenant Against Creation of other Interests.*

(a) *Acknowledgement of Security Interest.* Securities Intermediary acknowledges the security interest granted by Pledgor in favor of Secured Party in the Collateral.

(b) *Acknowledgement of Securities Intermediary's Role.* Securities Intermediary hereby further acknowledges that it holds the Collateral Accounts, and all Security Entitlements therein, as securities intermediary (as defined in Section 8-102(a)(14) of the Code) and custodian for, for the benefit of, and subject to the control of, Secured Party. Securities Intermediary shall, by book entry or otherwise, indicate that the Collateral Accounts, and all Security Entitlements registered to or held therein, are subject to the control of Secured Party as provided in Section 4(f).

(c) *Securities Intermediary Has No Notice of Adverse Claims.* Securities Intermediary represents and warrants that (i) it has no notice of any adverse claim against any of the Collateral other than the claim of Secured Party under this Agreement; and (ii) it is not, in its capacity as securities intermediary, party to any agreement other than this Agreement that governs its rights or duties, or limits or conflicts with the rights of Secured Party, including the exclusive right of Secured Party to control as provided in Section 4(f), with respect to the Collateral Accounts; *provided, however*, that the parties hereto recognize and

acknowledge that immediately after the execution and delivery of this Agreement, the Pledgor, Securities Intermediary and the Indenture Trustee will enter into a Local Second Mortgage Notes Collateral Account Agreement (the "Local Second Mortgage Notes Collateral Account Agreement") pursuant to which Pledgor shall grant a security interest in, and control over, certain of the Collateral Accounts to the Indenture Trustee. Pursuant to the Project Lenders Intercreditor Agreement, the security interest so granted to the Indenture Trustee shall be subject to and subordinate to the security interest over the same collateral granted to Secured Party hereunder.

Securities Intermediary agrees that until such time as it has been notified in writing by Secured Party that this Agreement has terminated, Securities Intermediary shall not comply with any Entitlement Orders originated by the Indenture Trustee or take any of the actions specified in clauses (i) through (vi) of Section 4(f) above, except with the consent of Secured Party.

(d) *Securities Intermediary Shall Not Acknowledge Other Claims.* Securities Intermediary agrees that, except as expressly provided in Section 6(c) above or elsewhere in this Agreement or with the written consent of Secured Party, it shall not agree to or acknowledge (i) any right by any Person other than Secured Party to originate Entitlement Orders or control with respect to the Collateral Accounts; or (ii) any limitation on the right of Secured Party to originate Entitlement Orders with respect to or direct the transfer of any Investments or cash credited to the Collateral Accounts.

SECTION 7. *Securities Intermediary Maintenance of the Collateral Accounts.*

(a) *Transactions Shall Comply With Rules.* The parties acknowledge that all transactions in Financial Assets under this Agreement shall be in accordance with the rules and customs of the exchange, market or clearing organization, if any, in which the transactions are executed or settled and in conformity with applicable law and regulations of governmental authorities and future amendments or supplements thereto.

(b) *Fees and Charges of Securities Intermediary.* Pledgor shall pay to Securities Intermediary, in accordance with Securities Intermediary's usual schedule of charges or any written agreement between Securities Intermediary and Pledgor, any fees or charges reasonably imposed by Securities Intermediary with respect to, the establishment, maintenance and transactions in or affecting the Collateral Accounts.

(c) *Securities Intermediary Shall Not Permit Leverage of Investments.* Securities Intermediary shall not execute any transaction to acquire a Financial Asset under Section 4(b) unless (A) there are sufficient funds in a specific Collateral Account to settle such transactions or (B) it is reasonably anticipated that such funds will be generated through the liquidation of Financial Assets in such Collateral Account. Notwithstanding the foregoing sentence, in the event that Securities Intermediary executes a transaction without adequate funds to settle the transaction, then unless the Securities Intermediary acted willfully or in a grossly negligent manner, Pledgor shall be liable to Securities Intermediary for any deficiency and shall promptly reimburse Securities Intermediary for any loss or expense incurred thereby, including losses sustained by reason of Securities Intermediary's inability to borrow any securities or other property sold for the Collateral Account. Pledgor agrees to pay interest charges which may be imposed by Securities Intermediary in accordance with its usual custom, with respect to late payments for Financial Assets purchased for any Collateral Account and prepayments to any Collateral Account (*i.e.*, the crediting of the proceeds of sale before the settlement date or receipt by Securities Intermediary of the items sold in good deliverable form). Pledgor agrees to pay promptly any amount which may become due in order to satisfy demands for additional margin or marks to market with respect to any security purchased or sold on instruction from Pledgor.

(d) *Risk of Investments and Transactions.* It is not the intention of the parties that Securities Intermediary should bear any investment risk associated with Permitted Investments or Overnight Investments acquired for the credit of the Collateral Accounts in accordance with Section 4. Any losses or gains realized on such Investments shall be charged or credited to the Collateral Accounts, as appropriate. On committing to a transaction for the credit of the Collateral Accounts pursuant to an instruction permitted in accordance with Section 4, Securities Intermediary may, (i) pending settlement, block (A) the Investments to be sold or (B) credit balances sufficient to settle any acquisition and, (ii) at the time of settlement, deliver such Investments or funds in accordance with the rules, custom or practice of the particular market.

(e) *Use of Intermediaries and Nominees.* Securities Intermediary is authorized, subject to Secured Party's written instructions, to register any Financial Assets acquired by Securities Intermediary

pursuant to this Agreement in the name of Securities Intermediary or in the name of its nominee, or to cause such securities to be registered in the name of a Federal reserve bank, a recognized securities intermediary or clearing corporation, or a nominee of any of them. Securities Intermediary may at any time and from time to time appoint, and may at any time remove, any bank, trust company, clearing corporation, or Broker-Dealer as its agent to carry out such of the provisions of this Agreement. The appointment or use of any intermediary, or the appointment of any such agent, shall not relieve Securities Intermediary of any responsibility or liability under this Agreement.

(f) *Corporate Actions.* Except as otherwise set forth herein, the parties agree that neither Secured Party nor Securities Intermediary shall have any responsibility for ascertaining or acting upon any calls, conversions, exchange offers, tenders, interest rate changes or similar matters relating to any Financial Assets credited to or held for the credit of the Securities Account (except based on written instructions originated by Pledgor or Secured Party), or for informing Pledgor or Secured Party with respect thereto, whether or not Securities Intermediary or Secured Party has, or is deemed to have, knowledge of any of the aforesaid. Securities Intermediary is authorized to withdraw securities sold or otherwise disposed of, and to credit the appropriate Collateral Account with the proceeds thereof or make such other disposition thereof as may be directed in accordance with this Agreement. Securities Intermediary is further authorized to collect all income and other payments which may become due on Financial Assets credited to the Collateral Accounts, to surrender for payment maturing obligations and those called for redemption and to exchange certificates in temporary form for like certificates in definitive form, or, if the par value of any shares is changed, to effect the exchange for new certificates. It is understood and agreed by Pledgor and Secured Party that, although Securities Intermediary will use reasonable efforts to effect the transactions set forth in the preceding sentence, Securities Intermediary shall incur no liability for its failure to effect the same unless its failure is the result of wilful misconduct.

(g) *Disclosure of Account Relationships.* Pledgor and Secured Party acknowledge that Securities Intermediary may be required to disclose to securities issuers the name, address and securities positions with respect to Financial Assets credited to the Collateral Accounts, and hereby consent to such disclosures.

(h) *Forwarding of Documents.* Securities Intermediary shall forward to Pledgor and Secured Party, or notify Pledgor and Secured Party by telephone of, all communications received by Securities Intermediary as owner of any Financial Assets credited to the Collateral Accounts and which are intended to be transmitted to the beneficial owner thereof.

(i) *Direction of Secured Party Controls in Disputes.* Pledgor, Securities Intermediary and Secured Party hereby agree that in the event any dispute arises with respect to the payment, ownership or right to possession of the Collateral Accounts or any other Collateral credited to or held therein, Securities Intermediary shall take such actions and shall refrain from taking such actions with respect thereto as may be directed by Secured Party.

(j) *No Setoff, etc.* Securities Intermediary shall not exercise on its own behalf any claim, right of set-off, banker's lien, clearing lien, counterclaim or similar right against any of the Collateral; provided that Securities Intermediary may deduct, from any credit balances, any usual and ordinary transaction and administration fees payable in connection with the administration and operation of the Collateral Accounts. Except for claims for deductions permitted in the preceding sentence, Securities Intermediary agrees that any security interest it may have in the Collateral Accounts or any security entitlement carried therein shall be subordinate and junior to the interest of Secured Party.

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(k) *Only Agreement.* This Agreement shall govern the actions, rights and obligations of Securities Intermediary, and shall determine the governing law, with respect to the Collateral Accounts and the Collateral notwithstanding any term or condition in any agreement other than this Agreement as it may be amended, supplemented or otherwise modified in writing.

(l) *Care of Financial Assets.* Securities Intermediary shall maintain possession or control of all Financial Assets credited to the Collateral Accounts by segregating such Financial Assets from its proprietary assets and keeping them free of any lien, charge or claim of any third party granted or created by Securities Intermediary. Securities Intermediary shall take such other steps to ensure that Financial Assets credited to the Collateral Accounts are identified as being held for customers of Securities Intermediary as may required under applicable law, including 17 CFR Part 450, or in accordance with custom and practice in the industry.

SECTION 8. *Transactions in Collateral Accounts.*

(a) *Power of Secured Party to Sell or Transfer.* Pledgor agrees that Secured Party may sell or cause the sale or redemption of any Investment and instruct Securities Intermediary to transfer the proceeds of such sale or any other credit or balance in any of Collateral Accounts to any of the Collateral Accounts or any third party or account, in either case (i) if such sale or redemption is necessary to permit Secured Party or the Disbursement Agent to perform its duties under this Agreement, the Disbursement Agreement or the Intercreditor Agreement, or (ii) as provided in Section 14.

(b) *Drawings Permitted from Certain Accounts.* By Pledgor. Except during any Suspension Period, Pledgor may by Check (as defined in Section 3-104(2)(b) of the Code) or other means draw funds from the Operating Account, the Soft Costs Cash Management Account, the Hard Costs Cash Management Account and the Company's Payment Account for the purposes set forth in the Disbursement Agreement. During any Suspension Period, the Operating Account, the Soft Costs Cash Management Account, the Hard Costs Cash Management Account and the Company's Payment Account shall be blocked, and Pledgor shall have no right to draw any amounts therefrom or cause any Financial Assets to be transferred out of any Collateral Account.

SECTION 9. *Representations and Warranties By Securities Intermediary.* Securities Intermediary hereby represents and warrants to Pledgor and Secured Party as follows:

(a) *Corporate Power.* Securities Intermediary has all necessary corporate power and authority to enter into and perform this Agreement.

(b) *Execution Authorized.* The execution, delivery and performance of this Agreement by Securities Intermediary have been duly authorized by all necessary corporate action on the part of Securities Intermediary.

(c) *Securities Intermediary.* Securities Intermediary is a "securities intermediary" (as that term is defined in Section 8-102(a)(14) of the Code) and is acting in such capacity with respect to the Collateral Accounts. Securities Intermediary is not a "clearing corporation" (as that term is defined in Section 8-102(a)(5) of the Code).

SECTION 10. *Representations and Warranties.* Pledgor represents and warrants as follows:

(a) *Ownership of Collateral; Security Interest; Perfection and Priority.* Except as specifically set forth in Section 2.3.3 of the Disbursement Agreement, Pledgor is (or at the time of transfer thereof to Securities Intermediary will be) the legal and beneficial owner of the Collateral from time to time transferred by Pledgor to Securities Intermediary, as agent for Secured Party, free and clear of any Lien except for the security interest created by this Agreement and the security interest created by the Local Second Mortgage Notes Collateral Account Agreement. The pledge and assignment of the Collateral pursuant to this Agreement creates a valid security interest in the Collateral securing the

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Payment of the Secured Obligations. Assuming compliance by Securities Intermediary with this Agreement, Secured Party will have a perfected security interest in the Collateral senior in priority to any other security interest created by Pledgor.

(b) *Governmental Authorizations.* Subject to any Nevada Gaming Commission Approvals, no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for either (i) the grant by Pledgor of the security interest granted hereby, (ii) the execution, delivery or performance of this Agreement by Pledgor, or (iii) the perfection of or, subject to any Nevada Gaming Commission approvals, the exercise by Secured Party or Securities Intermediary of its rights and remedies hereunder (except as may have been taken by or at the direction of Pledgor).

(c) *Other Information.* All information heretofore, herein or hereafter supplied to Secured Party or Securities Intermediary by or on behalf of Pledgor with respect to the Collateral, the establishment of the Collateral Accounts or otherwise is accurate and complete in all material respects.

SECTION 11. Further Assurances.

(a) *Pledgor.* Pledgor agrees that from time to time, at the expense of Pledgor, Pledgor shall promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or reasonably desirable, or that Secured Party may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Secured Party or Securities Intermediary to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, Pledgor shall: (a) execute and file such financing or continuation statements, or amendments thereto, and such other instruments or notices, as Secured Party may reasonably request, in order to perfect and preserve the security interests granted or purported to be granted hereby, and (b) at Secured Party's request, appear in and defend any action or proceeding that may affect Pledgor's title to or Secured Party's security interest in all or any part of the Collateral.

(b) *Securities Intermediary.* Securities Intermediary shall take such further actions as Secured Party shall reasonably request as being necessary or desirable to maintain or achieve perfection or priority of Secured Party's security interest with respect to the Collateral and to permit Secured Party to exercise its rights with respect to the Collateral.

SECTION 12. Transfers and other Liens. Pledgor agrees that, except as permitted in Section 4(b) and for the security interest created by this Agreement and the Local Second Mortgage Notes Collateral Account Agreement, it shall not (a) sell, assign (by operation of law or otherwise), redeem or otherwise dispose of any of the Collateral or (b) create or suffer to exist any Lien upon or with respect to any of the Collateral.

SECTION 13. Secured Party Appointed Attorney-in-Fact; Secured Party Performance.

(a) *Secured Party Appointed Attorney-in-Fact.* Pledgor hereby irrevocably appoints Secured Party as Pledgor's attorney-in-fact, with full authority in the place and stead of Pledgor and in the name of Pledgor, Secured Party or otherwise, from time to time in Secured Party's discretion to take any action and to execute any instrument that Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement, including (a) to file one or more financing or continuation statements, or amendments thereto, relative to all or any part of the Collateral without the signature of Pledgor and (b) to receive, endorse and collect any instruments or other Investments made payable to Pledgor representing any dividend, principal or interest payment or other distribution in respect of the Collateral or any part thereof and to give full discharge for the same.

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(b) *Performance by Secured Party.* If Pledgor fails to perform any agreement contained herein, Secured Party may itself perform, or cause performance of, such agreement, and the expenses of Secured Party incurred in connection therewith shall be payable by Pledgor under Section 16.

SECTION 14. Remedies.

(a) *Transfer or Sequestration of Collateral after Potential Event of Default or Event of Default.* If any Potential Event of Default or Event of Default shall have occurred and be continuing, subject to any Nevada Gaming Laws and the receipt of any required Nevada Gaming Approvals, Secured Party may instruct Securities Intermediary to (i) sell or redeem any Investments, (ii) transfer any or all of the Collateral constituting cash to the Deposit Accounts or transfer any or all of the Collateral to any account designated by Secured Party, including account or accounts established in Secured Party's name (whether at Secured Party or Securities Intermediary or otherwise), (iii) register title to any Collateral in any name specified by Secured Party, including the name of Secured Party or any of its nominees or agents, without reference to any interest of Pledgor, or (iv) otherwise deal with the Collateral as directed by Secured Party.

(b) *Rights of Secured Party after Event of Default.* If any Event of Default shall have occurred and be continuing, Secured Party may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it at law or in equity, all the rights and remedies of a secured party on default under the Uniform Commercial Code as in effect in any relevant jurisdiction (the "UCC") (whether or not the UCC applies to the affected Collateral), and Secured Party may also in its sole discretion sell the Collateral or any part thereof in one or more parcels at public or private sale, at any exchange or broker's board or at any of Secured Party's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as Secured Party may deem commercially reasonable, irrespective, of the impact of any such sales on the market price of the Collateral. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of Pledgor, and Pledgor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Secured Party shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. Secured Party may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(c) *Agreement as to Manner of Sale.* Pledgor hereby agrees that the Collateral is of a type customarily sold on recognized markets and, accordingly, that no notice to any Person is required before any sale of any of the Collateral pursuant to the terms of this Agreement; provided that, without prejudice to the foregoing, Pledgor agrees that, to the extent notice of any such sale shall be required by law, at least ten days' notice to Pledgor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification.

(d) *Deficiency.* If the proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Secured Obligations, Pledgor shall be liable for the deficiency and the fees of any attorneys employed by Secured Party to collect such deficiency.

(e) *Set-off.* Anything contained herein to the contrary notwithstanding, all sums in the Collateral Accounts shall be subject to Secured Party's or any Bank Lender's rights of set-off.

SECTION 15. Application of Proceeds. If any Event of Default shall have occurred and be continuing, all cash included as Collateral and all proceeds received by Secured Party in respect of any sale or redemption of, collection from, or other realization upon all or any part of the Collateral may, in the discretion of Secured Party, be held by or for Secured Party as Collateral for, or then, or at any

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other time thereafter, applied in full or in part by Secured Party against, the Secured Obligations in any order or priority as may be determined by the Secured Party.

SECTION 16. *Limitations on Duties; Exculpation; Indemnity, Expenses.*

(a) *Securities Intermediary.*

(i) *Limitation on Duties.* Securities Intermediary's duties hereunder are only those specifically provided herein, and Securities Intermediary shall incur no liability whatsoever for any actions or omissions hereunder except for any such liability arising out of or in connection with Securities Intermediary's gross negligence or wilful misconduct. Securities Intermediary has no obligation to inquire into, or to ensure, the sufficiency of this Agreement or the arrangements described hereunder to satisfy any objectives of Secured Party or Pledgor. Securities Intermediary shall have no duty to supervise or to provide investment counseling or advice to Pledgor or Secured Party with respect to the purchase, sale, retention or other disposition of any Financial Assets held hereunder. Except as specifically otherwise provided in this Agreement, Securities Intermediary shall not be responsible for enforcing compliance by the other parties to this Agreement with their respective duties and obligations to each other under this or any other Agreement. Securities Intermediary shall have no liability in the event it is unable to perform its duties hereunder due to acts of war or other force majeure events outside its control, including court orders instructing the Securities Intermediary to take or omit taking certain actions.

(ii) *Consultation with Counsel.* Securities Intermediary may consult with, and obtain advice from, legal counsel as to the construction of any of the provisions of this Agreement, and shall incur no liability in acting in good faith in accordance with the reasonable advice and opinion of such counsel.

(iii) *Indemnification.* Pledgor agrees to indemnify Securities Intermediary in accordance with Section 11.15.2 of the Disbursement Agreement, and hereby agrees that the Securities Intermediary shall be an indemnified party under such Section 11.15.2, which is hereby incorporated by reference.

(iv) *Reasonable Reliance.* Securities Intermediary shall be fully protected and shall suffer no liability in acting in accordance with any written instructions reasonably believed by it to have been given (i) by Secured Party with respect to any aspect of the operation of the Collateral Accounts (including any such instructions relating to any investment or transfer of any amounts held therein) or (ii) by Pledgor, to the extent provided in Section 4(b), with respect to the Collateral Accounts.

(b) *Secured Party.*

(i) *Exculpation.* The powers conferred on Secured Party hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, Secured Party shall have no duty as to any Collateral, it being understood that Secured Party shall have no responsibility for (a) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Collateral, whether or not Secured Party has or is deemed to have knowledge of such matters, (b) taking any necessary steps (other than steps taken in accordance with the standard of care set forth above to maintain possession of the Collateral) to preserve rights against any parties with respect to any Collateral, (c) taking any necessary steps to collect or realize upon the Secured Obligations or any guarantee therefor, or any part thereof, or any of the Collateral, (d) initiating any action to protect the Collateral against the possibility of a decline in market value, (e) any loss resulting from Investments made, held or sold pursuant to Section 4, except for a loss resulting from Secured Party's gross negligence or wilful misconduct in complying with Section 4, or (f) determining (i) the correctness of any statement or calculation made by

Pledgor in any written or telex (tested or otherwise) instructions or (ii) whether any transfer to the Collateral Accounts is proper. Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that which Secured Party accords its own property of like kind. In addition to the foregoing and without limiting the generality thereof, Secured Party shall not be responsible for any actions or omissions of Securities Intermediary.

(ii) *Indemnification.* Pledgor agrees that its indemnity of Secured Party and each Bank Lender set forth in the Disbursement Agreement and the Bank Credit Agreement shall apply, subject to the terms thereof, to any and all claims, losses and liabilities in any way relating to, growing out of or resulting from this Agreement and the transactions contemplated hereby (including enforcement of this Agreement).

(iii) *Reasonable Reliance.* Secured Party shall be fully protected and shall suffer no liability in acting in accordance with any written instructions reasonably believed by it to have been given by Pledgor, to the extent provided in Section 4(b), with respect to any investments of any amounts held for the credit of the Collateral Accounts.

(iv) *Expenses.* Pledgor shall pay to Secured Party upon demand the amount of any and all costs and expenses, including the reasonable fees and expenses of its counsel and of any experts and agents, that Secured Party may reasonably incur in connection with (i) the administration of this Agreement, (ii) the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, any of the Collateral, (iii) the exercise or enforcement of any of the rights of Secured Party hereunder, or (iv) the failure by Pledgor to perform or observe any of the provisions hereof.

SECTION 17. *Resignation and Removal of Securities Intermediary.*

(a) *Removal.* Securities Intermediary may be removed at any time by written notice given by Secured Party to Securities Intermediary and Pledgor, but such removal shall not become effective until a successor Securities Intermediary shall have been appointed by Secured Party and shall have accepted such appointment in writing.

(b) *Resignation.* Securities Intermediary may resign at any time by giving not less than thirty days' written notice to Secured Party and Pledgor, but such removal shall not become effective until a successor Securities Intermediary shall have been appointed by Secured Party and shall have accepted such appointment in writing. If an instrument of acceptance by a successor Securities Intermediary shall not have been delivered to the resigning Securities Intermediary within thirty days after the giving of any such notice of resignation, the resigning Securities Intermediary may, at the expense of Pledgor, petition any court of competent jurisdiction for the appointment of a successor Securities Intermediary.

(c) *Successor Securities Intermediary.* Any successor Securities Intermediary shall be a corporation qualified to, and located in, New York, which (A) is subject to supervision or examination by the applicable Governmental Authority, (B) has a combined capital and surplus of at least Five Hundred Million Dollars

(US\$500,000,000), (C) has a long-term credit rating of not less than "A-" or "A3", respectively, by any Rating Agency; and provided, that any such bank with a long-term credit rating of "A-" or "A3" shall not cease to be eligible to act as Securities Intermediary upon a downward change in either such rating of no more than one category or grade of such minimum rating, as the case may be.

(d) *Process of Succession.* Upon the appointment of a successor Securities Intermediary and its acceptance of such appointment, the resigning or removed Securities Intermediary shall transfer all items of Collateral held by it to such successor (which items of Collateral shall be transferred to appropriate new Collateral Accounts established and maintained by such successor). Following such appointment all references herein to Securities Intermediary shall be deemed a reference to such

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successor; provided that the provisions of Section 16(a) hereof shall continue to inure to the benefit of the resigning or removed Securities Intermediary with respect to any actions taken or omitted to be taken by it under this Agreement while it was Securities Intermediary hereunder.

SECTION 18. *Continuing Security Interest; Termination of Obligations of Securities Intermediary.* This Agreement shall create a continuing security interest in the Collateral and shall (a) remain in full force and effect until the indefeasible payment in full of the Secured Obligations, the cancellation or termination of the commitments under the Bank Credit Agreement and the cancellation or expiration of all letters of credit outstanding thereunder, (b) be binding upon Pledgor, its successors and assigns, and (c) inure, together with the rights and remedies of Secured Party hereunder, to the benefit of Secured Party and the Bank Lenders and their respective successors, transferees and assigns. Upon the indefeasible payment in full of all Secured Obligations and the cancellation or termination of the commitments under the Bank Credit Agreement and the cancellation or expiration of all letters of credit outstanding thereunder, the security interest granted hereby shall terminate and all rights to the Collateral shall revert to Pledgor. Upon any such termination Secured Party shall, at Pledgor's expense, execute and deliver to Pledgor such documents, instruments of transfer, certificates, termination statements and the like as Pledgor shall reasonably request to evidence such termination and Pledgor shall be entitled to the return, upon its request and at its expense, against receipt and without recourse to Secured Party, of such of the Collateral as shall not have been sold or otherwise applied pursuant to the terms hereof. Securities Intermediary shall not be released from its obligations hereunder, and shall continue to maintain any Collateral in accordance with this Agreement, until notified in writing by Secured Party that this Agreement has terminated and so long as Secured Party has not withdrawn such notification.

SECTION 19. *Secured Party as Bank Agent.*

(a) *Agency.* Secured Party has been appointed to act as Secured Party hereunder by the Bank Lenders pursuant to the Bank Credit Agreement. Secured Party shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including, without limitation, the release or substitution of Collateral), solely in accordance with this Agreement, the Disbursement Agreement and the Bank Credit Agreement.

(b) *Identity of Agent.* Secured Party shall at all times be the same Person that is the Bank Agent under the Bank Credit Agreement. Written notice of resignations by the Bank Agent pursuant to subsection 9.9 of the Bank Credit Agreement shall also constitute notice of resignation as Secured Party under this Agreement and substitution of a successor bank agent pursuant to subsection 9.9 of the Bank Credit Agreement shall also constitute substitution of a successor Secured Party under this Agreement. Upon the acceptance of any appointment as Bank Agent under subsection 9.9 of the Bank Credit Agreement by a successor Bank Agent, that successor Bank Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Secured Party under this Agreement, and the retiring or removed Secured Party under this Agreement shall promptly (i) transfer to such successor Secured Party all items of Collateral held by Secured Party (which as appropriate shall be credited to, and held for the credit of, any new Collateral Accounts established and maintained by such successor Secured Party), together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Secured Party under this Agreement, and (ii) execute and deliver to such successor Secured Party such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Secured Party of the security interests created hereunder, whereupon such retiring or removed Secured Party shall be discharged from its duties and obligations under this Agreement. After any retiring or removed Bank Agent's resignation or removal hereunder as Secured Party, the provisions of this Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was Secured Party hereunder.

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SECTION 20. *Amendments, Etc.* No amendment or waiver of any provision of this Agreement, or consent to any departure by any party herefrom, shall in any event be effective unless the same shall be in writing and signed by the other parties, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

SECTION 21. *Notices.* Any communications between the parties hereto or notices provided herein to be given may be given to the address of the party as set forth under such party's name on the signature pages hereof. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by a reputable overnight delivery service, (c) in the event overnight delivery services are not readily available, if mailed by first class mail, postage prepaid, registered or certified with return receipt requested or (d) if sent by prepaid telex, or by telecopy with correct answer back received. Notice so given shall be effective upon receipt by the addressee, except that communication or notice so transmitted by telecopy or other direct written electronic means shall be deemed to have been validly and effectively given on the day (if a Banking Day and, if not, on the next following Banking Day) on which it is validly transmitted if transmitted before 4 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location by giving of no less than twenty (20) days' notice to the other parties in the manner set forth hereinabove.

SECTION 22. *Failure or Indulgence Not Waiver, Remedies Cumulative.* No failure or delay on the part of Secured Party in the exercise of any power, right or privilege hereunder shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude any other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

SECTION 23. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

SECTION 24. Headings. Section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

SECTION 25. Governing Law. **THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.** Securities Intermediary's/banks jurisdiction (within the meaning of Section 9-304 of the Code) shall be the State of New York and to the extent that notwithstanding the intention of the parties, any of the Collateral Accounts are Securities Accounts, the bank's jurisdiction (within the meaning of Section 8-110 of the Code) shall be the State of New York.

SECTION 26. Consent to Jurisdiction and Service of Process. **ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST PLEDGOR ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF NEW YORK, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT PLEDGOR ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS**

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AGREEMENT. Pledgor hereby agrees that service of all process in any such proceeding in any such court may be made by registered or certified mail, return receipt requested, to Pledgor at its address provided in Section 21, such service being hereby acknowledged by Pledgor to be sufficient for personal jurisdiction in any action against Pledgor in any such court and to be otherwise effective and binding service in every respect. Nothing herein shall affect the right to serve process in any other manner permitted by law or shall limit the right of Secured Party to bring proceedings against Pledgor in the courts of any other jurisdiction.

SECTION 27. Waiver of Jury Trial. **PLEDGOR, SECURITIES INTERMEDIARY AND SECURED PARTY HEREBY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT.** The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. Pledgor and Secured Party each acknowledge that this waiver is a material inducement for Pledgor and Secured Party to enter into a business relationship, that Pledgor and Secured Party have already relied on this waiver in entering into this Agreement and that each will continue to rely on this waiver in their related future dealings. Pledgor and Secured Party further warrant and represent that each has reviewed this waiver with its legal counsel, and that each knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. **THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT.** In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

SECTION 28. Counterparts. This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

SECTION 29. Secured Party's Representative. The Secured Party hereby authorizes the entity from time to time acting as the Disbursement Agent under the Disbursement Agreement to, from time to time, act on its behalf hereunder. Until the Secured Party notifies Securities Intermediary and Pledgor to the contrary, any such Disbursement Agent shall be a "representative" (as defined in Section 1-201(35) of the Code) of the Secured Party and, as such, any Entitlement Orders or other instructions or actions issued or taken by such Disbursement Agent hereunder shall be as effective as if issued or taken directly by the Secured Party.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

PLEDGOR:

WYNN LAS VEGAS, LLC,
a Nevada limited liability company

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its managing member

By:

Name:

Title:

Notice Address:

Wynn Las Vegas, LLC
c/o Wynn Resorts Holdings, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Ron Kramer
Telephone No.: (702) 733-4123
Facsimile No.: (702) 791-0167

WYNN LAS VEGAS CAPITAL CORP.,
a Nevada corporation

By:

Name:

Title:

Notice Address:

Wynn Las Vegas Capital Corp.
c/o Wynn Resorts Holdings, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Ron Kramer
Telephone No.: (702) 733-4123
Facsimile No.: (702) 791-0167

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WYNN DESIGN & DEVELOPMENT, LLC,
a Nevada limited liability company

By:

Name:

Title:

Notice Address:

Wynn Design & Development
c/o Wynn Resorts Holdings, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Kenneth Wynn
Attn: Todd Nisbet
Telephone No.: (702) 733-4497
Facsimile No.: (702) 733-4715

SECURED PARTY:

DEUTSCHE BANK TRUST COMPANY
AMERICAS,
as Bank Agent under the Bank Credit Agreement

By:

Name:

Title:

Notice Address:

Deutsche Bank Trust Company Americas
31 West 52nd Street
New York, New York 10019
Attn: George Reynolds
Telephone No.: (646) 324-2112
Facsimile No.: (646) 324-7450

SECURITIES INTERMEDIARY:

BANK OF AMERICA, N.A.,
as Securities Intermediary

By: _____
Name: _____
Title: _____

Notice Address: Bank of America, N.A.
300 South Fourth Street, 2nd Floor
NV1-119-02-01
Las Vegas, Nevada 89101-6014
Attn: Alan Gordon
Attn: Carmen Bungert
Telephone No.: (702) 654-7144
(702) 654-8531
Facsimile No.: (702) 654-7158

[FORM OF PROHIBITION NOTICE]

[Letterhead of Secured Party]

[date of notice]

TO: Bank of America, N.A.
300 South Fourth Street, 2nd Floor
NV1-119-02-01
Las Vegas, Nevada 89101-6014
Attn: Alan Gordon
Attn: Carmen Bungert
Facsimile No.: (702) 654-7158

CC: Wynn Las Vegas, LLC
c/o Wynn Resorts Holdings, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Ron Kramer
Facsimile No.: (702) 791-0167

Wynn Las Vegas Capital Corp.
c/o Wynn Resorts Holdings, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Ron Kramer
Facsimile No.: (702) 791-0167

Wynn Design & Development
c/o Wynn Resorts Holdings, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Kenneth Wynn
Attn: Todd Nisbet
Facsimile No.: (702) 733-4715

Re: Prohibition Notice under that Certain Local Bank
Collateral Account Agreement/[] []
Account Number []

Ladies and Gentlemen:

Pursuant to the Local Bank Collateral Account Agreement dated [], 2002 ("Local Bank Collateral Account Agreement") among [], as Secured Party, certain Pledgors and Securities Intermediary, we hereby give you this Prohibition Notice and notify you of the commencement of a Suspension

Period. Until further notice from the undersigned substantially in the form of Attachment 2 to the Local Bank Collateral Account Agreement, Securities Intermediary shall not accept or follow instructions from Pledgor pursuant to Section 4(b) of the Local Bank Collateral Account Agreement.

Capitalized terms used and not otherwise defined in this notice are used with their respective meanings in the Local Bank Collateral Account Agreement.

Yours truly,
[Secured Party]

By: _____

Its: _____

ATTACHMENT 2

[FORM OF RESCISSION OF PROHIBITION NOTICE]

[Letterhead of Secured Party]

[date of notice]

TO: Bank of America, N.A.
300 South Fourth Street, 2nd Floor
NV1-119-02-01
Las Vegas, Nevada 89101-6014
Attn: Alan Gordon
Attn: Carmen Bungert
Facsimile No.: (702) 654-7158

CC: Wynn Las Vegas, LLC
c/o Wynn Resorts Holdings, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Ron Kramer
Facsimile No.: (702) 791-0167

Wynn Las Vegas Capital Corp.
c/o Wynn Resorts Holdings, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Ron Kramer
Facsimile No.: (702) 791-0167

Wynn Design & Development
c/o Wynn Resorts Holdings, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Kenneth Wynn
Attn: Todd Nisbet
Facsimile No.: (702) 733-4715

Re: Rescission of Prohibition Notice under that Certain Local Bank Collateral Account Agreement/[] [] Account Number [] []

Ladies and Gentlemen:

Pursuant to the Local Bank Collateral Account Agreement dated [], 2002 ("Local Bank Collateral Account Agreement") among [], as Secured Party, certain Pledgors and Securities Intermediary, we hereby notify you of the rescission by Secured Party of the Prohibition Notice dated [date of Prohibition Notice] and the end of the related Suspension Period. You are hereby instructed that, until receipt of a new Prohibition Notice, you shall accept and follow written instructions from Pledgor pursuant to Section 4(b) of the Local Bank Collateral Account Agreement.

Capitalized terms used and not otherwise defined in this notice are used with their respective meanings in the Local Bank Collateral Account Agreement.

Yours truly,
[Secured Party]

By: _____

Its: _____

DEFINITIONS

[Attached]

EXHIBIT A-1

Exhibit 7-2
to Disbursement Agreement

LOCAL FF&E COLLATERAL ACCOUNT AGREEMENT

This **LOCAL FF&E COLLATERAL ACCOUNT AGREEMENT** (this "**Agreement**") is dated as of October 30, 2002 and entered into by and among **WYNN LAS VEGAS, LLC**, a Nevada limited liability company ("**Wynn Las Vegas**"), **WYNN LAS VEGAS CAPITAL CORP.**, a Nevada corporation ("**Capital Corp.**"), **WYNN DESIGN & DEVELOPMENT, LLC**, a Nevada limited liability company ("**Wynn Design**" and, jointly and severally with Wynn Las Vegas and Capital Corp., "**Pledgor**"), **WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION**, not in its individual capacity, but solely as Collateral Agent under the Loan Agreement ("**Collateral Agent**") (in such capacity herein called "**Secured Party**"), and Bank of America, N.A., as custodian and securities intermediary for the Pledgor and Secured Party (in such capacity, "**Securities Intermediary**").

PRELIMINARY STATEMENTS

A. *The Project.* Pledgor proposes to develop, construct and operate the Le Rêve Casino Resort with related parking structure and golf course facilities, as part of the redevelopment of the site of the former Desert Inn in Las Vegas, Nevada.

B. *Bank Credit Agreement.* Concurrently herewith, Wynn Las Vegas, the Bank Agent, Deutsche Bank Securities, Inc., as advisor, lead arranger and joint book running manager, Banc of America Securities LLC, as advisor, lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as advisor, arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York and Grand Cayman Branches, as arranger and joint documentation agent, and the Bank Lenders have entered into the Bank Credit Agreement pursuant to which the Bank Lenders have agreed, subject to the terms thereof, to provide certain revolving loans to Wynn Las Vegas in an aggregate principal amount not to exceed \$750,000,000 and certain delay draw term loans to Wynn Las Vegas in an aggregate principal amount not to exceed \$250,000,000, as more particularly described therein. Valvino, Wynn Resorts Holdings and certain other guarantors have, pursuant to the Bank Guarantee and Collateral Agreement, guaranteed the obligations of Wynn Las Vegas under the Bank Credit Agreement.

C. *Second Mortgage Notes Indenture.* Concurrently herewith, Wynn Las Vegas, Capital Corp., certain guarantors signatory thereto (including Valvino and Wynn Resorts Holdings) and the Indenture Trustee have entered into the Second Mortgage Notes Indenture pursuant to which Wynn Las Vegas and Capital Corp. will issue the Second Mortgage Notes in an aggregate principal amount of \$340,000,000 to finance Project Costs, as more particularly described therein.

D. *FF&E Facility Agreement.* Concurrently herewith, Wynn Las Vegas, Collateral Agent and the FF&E Lenders have entered into the FF&E Facility Agreement pursuant to which the FF&E Lenders have agreed, subject to the terms thereof, to provide certain loans in an aggregate principal amount not to exceed \$188,500,000 to finance acquisition and installation costs for the FF&E Component, as more particularly described therein.

E. *Intercreditor Agreements.* Concurrently herewith, (i) the Bank Agent (acting on behalf of itself and the Bank Lenders) and the Indenture Trustee (acting on behalf of itself and the Second Mortgage Note Holders) have entered into the Project Lenders Intercreditor Agreement and (ii) the Bank Agent (acting on behalf of itself and the Bank Lenders), the Indenture Trustee (acting on behalf of itself and the Second Mortgage Note Holders) and the Collateral Agent (acting on behalf of itself and the FF&E Lenders) have entered into the FF&E Intercreditor Agreement, pursuant to each of which the parties thereto have set forth certain intercreditor provisions, including the priority of the liens, the method of decision making among the Lenders party thereto, the arrangements applicable to actions in respect of approval rights and waivers, the limitations on rights of enforcement upon default and the application of proceeds upon enforcement.

F. *Completion Guaranty.* Concurrently herewith, the Completion Guarantor has executed in favor of the Bank Agent (acting on behalf of the Bank Lenders) and the Indenture Trustee (acting on behalf of the Second Mortgage Note Holders) the Completion Guaranty pursuant to which the Completion Guarantor has agreed, subject to the terms and limitations thereof, to guaranty completion of the Project and payment by the Company of certain Project Costs.

G. *Master Disbursement Agreement.* Concurrently herewith, the Pledgor, the Bank Agent (acting on behalf of itself and the Bank Lenders), the Indenture Trustee (acting on behalf of itself and the Second Mortgage Note Holders), the Collateral Agent (acting on behalf of itself and the FF&E Lenders) and Deutsche Bank Trust Company Americas as "**Disbursement Agent**" have entered into that certain Master Disbursement Agreement ("**Disbursement Agreement**") for the purpose of setting forth, among other things, (a) the mechanics for and allocation of Wynn Las Vegas' requests for Advances under the various Facilities and from the Company's Funds Account, (b) the conditions precedent to the Closing Date, to the initial Advance and to subsequent Advances, (c) certain common representations, warranties and covenants of Wynn Las Vegas in favor of the Funding Agents and the Lenders and (d) the common events of default and remedies.

H. *Condition.* It is a condition precedent to the making of the Loans by the FF&E Lenders that Pledgor shall have established the FF&E Proceeds Account, granted control to the Collateral Agent (as Secured Party) of such accounts, and undertaken the obligations contemplated by this Agreement.

NOW, THEREFORE, in consideration of the premises and in order to induce the FF&E Lenders to make their respective loans under the Loan Agreement and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Pledgor hereby agrees with Secured Party as follows:

SECTION 1.

Certain Definitions.

(a) *Specific Definitions.* The following terms used in this Agreement shall have the following meanings:

"**Broker-Dealer**" means a person registered as a broker or dealer under the Securities Exchange Act of 1934, as amended.

"**Business Day**" means any day other than a Saturday, Sunday or any other day which is a legal holiday or a day on which banking institutions are permitted to be closed in New York or Nevada.

"**Code**" shall mean the Uniform Commercial Code as enacted and in effect in New York from time to time.

"**Collateral**" means (i) the FF&E Proceeds Account, (ii) all amounts held from time to time in the FF&E Proceeds Account, (iii) all Investments, including all Financial Assets, security entitlements, securities (whether certificated or uncertificated), instruments, accounts, general intangibles and deposits representing or evidencing any Investments, (iv) all interest, dividends, cash, instruments, securities and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Collateral and (v) to the extent not covered by clauses (i) through (iv) above, all proceeds of any or all of the foregoing Collateral.

"**Collateral Account**" means the Deposit Account and any other accounts or subaccounts in which Investments may be held or registered.

"**Deposit Account**" means the Deposit Account established and maintained by Pledgor and Secured Party with Securities Intermediary pursuant to Section 2.

"**FF&E Lenders**" means the Persons party to the Loan Agreement and listed as Lenders on Schedule I thereto and their permitted successors and assigns.

"**Investments**" means any Financial Assets credited to the Deposit Accounts and any other property acquired by Securities Intermediary as securities intermediary hereunder in exchange for, with proceeds from or distributions on, or otherwise in respect of any Investments.

"**Overnight Investments**" means the investments described in paragraph (b) of the definition of Permitted Investments.

"**Permitted Investments**" means, (a) prior to the Completion Date, the following:

- (1) marketable direct obligations issued by, or unconditionally guaranteed by, the United States government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within 18 months from the date of acquisition; or
- (2) shares of money market mutual or similar funds which invest exclusively in assets satisfying the requirements of clause (a)(1) of this definition;

(b) From and after the Completion Date, "Permitted Investments" means the following:

- (1) United States dollars;
- (2) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (as long as the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than six months from the date of acquisition;
- (3) interest-bearing demand or time deposits (which may be represented by certificates of deposit) issued by banks having general obligations rated (on the date of acquisition thereof) at least "A" or the equivalent by S&P or Moody's or, if not so rated, secured at all times, in the manner and to the extent provided by law, by collateral security in clause (1) or (2) of this definition, of a market value of no less than the amount of monies so invested;
- (4) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (2) and (3) above entered into with any financial institution meeting the qualifications specified in clause (3) above;
- (5) commercial paper having the highest rating obtainable from Moody's or S&P and in each case maturing within six months after the date of acquisition; and
- (6) money market funds or mutual funds at least 95% of the assets of which constitute Permitted Investments of the kinds described in clauses (1) through (5) of this definition;
- (7) to the extent not permitted by clauses (b)(1)-(6) above, those items described in clauses (a)(1)-(2) above.

"**Secured Obligations**" shall mean all of the Obligations owed by Pledgor and the other Loan Parties to Secured Party and the FF&E Lenders from time to time under the Financing Documents.

"**Securities Intermediary**" means Bank of America, N.A. and any successor.

"**Suspension Period**" means the period (i) beginning promptly after receipt by Securities Intermediary of written notice from Secured Party, substantially in the form of the Prohibition Notice attached to this Agreement as Attachment 1, suspending Pledgor's right to direct the investment of funds held for the credit of the Collateral Account, and (ii) ending promptly after receipt by Securities Intermediary of written notice from Secured Party, substantially in the form of the Rescission of Prohibition Notice attached to this Agreement as Attachment 2, rescinding the preceding Prohibition Notice.

(b) *General Provisions.* Capitalized terms used but not defined herein shall have the meaning given to such terms in *Exhibit A*. Unless otherwise defined herein or in *Exhibit A*, terms used in Articles 8 and 9 of the Code are used herein as therein defined. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number,

singular or plural, and any other gender, masculine, feminine or neuter, as the context indicates is appropriate. When a reference is made in this Agreement to an Appendix, Exhibit, Introduction, Recital, Section or Schedule, such reference shall be to an Appendix, an Exhibit, the Introduction, a Recital or a Section of, or a Schedule to, this Agreement unless otherwise indicated. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

SECTION 2.

Establishment and Operation of the Collateral Account.

(a) *Establishment of Company's FF&E Payment Account.* Pledgor and Secured Party hereby authorize and direct Securities Intermediary to establish and maintain at its office at 300 South 4th Street, 2nd Floor, Las Vegas, Nevada 89101-6014, a non-interest bearing deposit account in the name of Pledgor and under the control of Secured Party, designated as "Wynn Las Vegas, FF&E Payment Account fbo the FF&E Lenders". Securities Intermediary hereby undertakes to treat Pledgor as the person entitled to exercise the rights that comprise any Financial Asset credited to the Company's FF&E Payment Account. Secured Party and the Pledgor agree that this account shall be the "**Company's FF&E Payment Account.**"

(b) *Operations of the Collateral Account.* The Collateral Account shall be operated, and all Investments shall be acquired and registered or held (as applicable), in accordance with the terms of this Agreement and the directions of Secured Party.

(c) *Account Statements.* Securities Intermediary shall send Secured Party and Pledgor written account statements with respect to the Collateral Account not less frequently than monthly. Absent mathematical or similar errors, reports or confirmations of the execution of orders and statements of account shall be conclusive if not objected to in writing within 30 days after delivery pursuant to Section 21.

SECTION 3.

Mechanics of Deposits of Funds to or from the Collateral Account.

(a) *Transfers to Company's FF&E Payment Account.* All transfers of funds to the Company's FF&E Payment Account shall be made by wire transfer (or, if applicable, intra-bank transfer from another account with Securities Intermediary) of immediately available funds, in each case addressed as follows:

| | |
|--------------|---|
| Account No.: | #01419647 for further credit to account #004964891380 |
| ABA No.: | 122400724 |
| Reference: | Le Rêve Project—Company's FF&E Payment Account |

(b) *Notice of Transfers.* In the event of any transfer of funds to or from the Collateral Account pursuant to any provision of this Section 3, Pledgor, Secured Party or Securities Intermediary, as the case may be, shall promptly after initiating or sending out written instructions with respect to such transfer, give notice to each other such party by facsimile of the date and amount of such transfer.

SECTION 4.

Permitted Investments and Transfers of Amounts in the Collateral Account.

(a) *Strict Compliance.* Cash and Investments held by Securities Intermediary in the Collateral Account shall not be (i) invested or reinvested, (ii) sold or redeemed, or (iii) transferred from or among the Collateral Account, except as provided in this Section 4.

(b) *Pledgor's Right to Direct Investment.* Except during any Suspension Period, Securities Intermediary shall, in accordance with Pledgor's written Entitlement Orders given to Securities

Intermediary from time to time, sell or redeem Investments, and apply amounts transferred to or held for the credit of the Deposit Account to make investments for credit to the Deposit Account, in Securities Intermediary's name and as custodian under this Agreement, in Permitted Investments denominated and payable in United States Dollars. During any Suspension Period, (i) Pledgor's right to direct such investments under this Section 4(b) shall be suspended, and Securities Intermediary shall not accept Entitlement Orders with respect to the Deposit Account from any person other than Secured Party; and (ii) any credit balances shall be invested and reinvested only as provided in Section 4(c).

(c) *Overnight Investments.* To the extent that with respect to the Deposit Account, there is a credit balance expected as of the end of a day, unless otherwise instructed by Secured Party, Securities Intermediary shall apply such credit balances to acquire Overnight Investments. Any Overnight Investments shall be held for the credit of the Collateral Account. Pledgor shall have no right to invest funds in a Deposit Account to the extent that free balances have been invested in Overnight Investments pursuant to this Section. Except as specifically set forth above, any amount received after 2:00 p.m., New York time will remain uninvested and shall not bear interest.

(d) *Actions of Securities Intermediary on Purchase of Investments.* Promptly upon the purchase, acquisition or transfer for credit of the Collateral Account of any Investment, Securities Intermediary shall take all steps that it customarily takes in the ordinary course of its business to ensure that such Investment is credited on its books to the Collateral Account. Without limiting the generality of the foregoing, Securities Intermediary shall promptly (i) send to Pledgor and Secured Party a written confirmation of the acquisition of such Investment, and (ii) indicate by book entry in its records that such Investment has been credited to, and is held for the credit of, the Collateral Account. Securities Intermediary agrees with Pledgor and Secured Party that any credit balances or property credited to, or held for the credit of, the Collateral Account shall be treated as "Financial Assets" as that term is defined in Section 8-102(a)(9) of the Code.

(e) *Interest on Collateral Account.* Amounts held on deposit or as credit balances shall not bear interest, although to the extent invested in Investments (including Overnight Investments), deposit or credit balances may realize interest income.

(f) *Control Agreement.* Anything contained herein to the contrary notwithstanding, including the actual or alleged absence of a Potential Event of Default or Event of Default, Securities Intermediary shall, if and as directed in writing by Secured Party, without the consent of Pledgor, (i) comply with Entitlement Orders originated by Secured Party with respect to the Collateral Account and any Security Entitlements therein, (ii) comply with instructions, including, without limitation, instructions within the meaning of Section 9-104 of the Code, originated by Secured Party directing the disposition of funds in the Collateral Account, (iii) transfer, sell or redeem any of the Collateral, (iv) transfer any or all of the Collateral to any account or accounts designated by Secured Party, including the Collateral Account or an account established in Secured Party's name (whether at Secured Party or Securities Intermediary or otherwise), (v) register title to any Collateral in any name specified by Secured Party, including the name of Secured Party or any of its nominees or agents, without reference to any interest of Pledgor, or (vi) otherwise deal with the Collateral as directed by Secured Party. Securities Intermediary shall act on any Entitlement Order or instruction of Secured Party notwithstanding assertions or proof that (1) Secured Party has no right under Sections 14 or 15 to originate the Entitlement Order or instruction or take the underlying action; (2) such Entitlement Order or instruction or action constitutes a breach of this Agreement or any other agreement; or (3) this Agreement has terminated, unless notified in writing by Secured Party that this Agreement has terminated and such notice has not been withdrawn. Nothing contained in this paragraph shall constitute a waiver by Pledgor of any rights or remedies it may have against Secured Party under this Agreement or any other agreement.

(g) *Deposit of Proceeds.* Any interest earned on the Deposit Account in accordance with Section 4(e) and any interest, cash dividends or other cash distributions received in respect of any Investments and the net proceeds of any sale or payment of any Investments shall be promptly credited to, and held for the credit of, the Collateral Account. Any distribution of property in respect of any

Investment shall be credited to and held for the credit of the Collateral Account; *provided that*, unless otherwise instructed in writing by Secured Party, Securities Intermediary shall, for credit to the Collateral Account, promptly sell, redeem or otherwise liquidate any such property that, as of the date of receipt, is not a Permitted Investment.

(h) *Segregation of Accounts.* Except to the extent otherwise instructed by Secured Party, Securities Intermediary shall separately maintain the Collateral Account.

SECTION 5.

Pledge of Security for Secured Obligations. Pledgor hereby pledges and assigns to Secured Party, and hereby grants to Secured Party for the benefit of the FF&E Lenders a security interest in, all of Pledgor's right, title and interest in and to the Collateral as collateral security for the prompt payment or performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the United States Bankruptcy Code, 11 U.S.C. 362(a)), of all Secured Obligations.

SECTION 6.

Acknowledgement of Security Interest in Favor of Secured Party; Covenant Against Creation of other Interests.

(a) *Acknowledgement of Security Interest.* Securities Intermediary acknowledges the security interest granted by Pledgor in favor of Secured Party in the Collateral.

(b) *Acknowledgement of Securities Intermediary's Role.* Securities Intermediary hereby further acknowledges that it holds the Collateral Account, and all Security Entitlements therein, as securities intermediary (as defined in Section 8-102(a) of the Code) and custodian for, for the benefit of, and subject to the control of, Secured Party. Securities Intermediary shall, by book entry or otherwise, indicate that the Collateral Account, and all Security Entitlements registered to or held therein, are subject to the control of Secured Party as provided in Section 4(f).

(c) *Securities Intermediary Has No Notice of Adverse Claims.* Securities Intermediary represents and warrants that (i) it has no notice of any adverse claim against any of the Collateral other than the claim of Secured Party under this Agreement; and (ii) it is not, in its capacity as securities intermediary, party to any agreement other than this Agreement that governs its rights or duties, or limits or conflicts with the rights of Secured Party, including the exclusive right of Secured Party to control as provided in Section 4(f), with respect to the Collateral Account.

(d) *Securities Intermediary Shall Not Acknowledge Other Claims.* Securities Intermediary agrees that, except as expressly provided in Section 6(c) above or elsewhere in this Agreement or with the written consent of Secured Party, it shall not agree to or acknowledge (i) any right by any Person other than Secured Party to originate Entitlement Orders or control with respect to the Collateral Account; or (ii) any limitation on the right of Secured Party to originate Entitlement Orders with respect to or direct the transfer of any Investments or cash credited to the Collateral Account.

SECTION 7.

Securities Intermediary Maintenance of the Collateral Account.

(a) *Transactions Shall Comply With Rules.* The parties acknowledge that all transactions in Financial Assets under this Agreement shall be in accordance with the rules and customs of the exchange, market or clearing organization, if any, in which the transactions are executed or settled and in conformity with applicable law and regulations of governmental authorities and future amendments or supplements thereto.

(b) *Fees and Charges of Securities Intermediary.* Pledgor shall pay to Securities Intermediary, in accordance with Securities Intermediary's usual schedule of charges or any written agreement between

Securities Intermediary and Pledgor, any fees or charges reasonably imposed by Securities Intermediary with respect to, the establishment, maintenance and transactions in or affecting the Collateral Account.

(c) *Securities Intermediary Shall Not Permit Leverage of Investments.* Securities Intermediary shall not execute any transaction to acquire a Financial Asset under Section 4(b) unless (A) there are sufficient funds in the Collateral Account to settle such transactions or (B) it is reasonably anticipated that such funds will be generated through the liquidation of Financial Assets in the Collateral Account. Notwithstanding the foregoing sentence, in the event that Securities

Intermediary executes a transaction without adequate funds to settle the transaction, then unless the Securities Intermediary acted willfully or in a grossly negligent manner, Pledgor shall be liable to Securities Intermediary for any deficiency and shall promptly reimburse Securities Intermediary for any loss or expense incurred thereby, including losses sustained by reason of Securities Intermediary's inability to borrow any securities or other property sold for the Collateral Account. Pledgor agrees to pay interest charges which may be imposed by Securities Intermediary in accordance with its usual custom, with respect to late payments for Financial Assets purchased for the Collateral Account and prepayments to the Collateral Account (*i.e.*, the crediting of the proceeds of sale before the settlement date or receipt by Securities Intermediary of the items sold in good deliverable form). Pledgor agrees to pay promptly any amount which may become due in order to satisfy demands for additional margin or marks to market with respect to any security purchased or sold on instruction from Pledgor.

(d) *Risk of Investments and Transactions.* It is not the intention of the parties that Securities Intermediary should bear any investment risk associated with Permitted Investments or Overnight Investments acquired for the credit of the Collateral Account in accordance with Section 4. Any losses or gains realized on such Investments shall be charged or credited to the Collateral Account, as appropriate. On committing to a transaction for the credit of the Collateral Account pursuant to an instruction permitted in accordance with Section 4, Securities Intermediary may, (i) pending settlement, block (A) the Investments to be sold or (B) credit balances sufficient to settle any acquisition and, (ii) at the time of settlement, deliver such Investments or funds in accordance with the rules, custom or practice of the particular market.

(e) *Use of Intermediaries and Nominees.* Securities Intermediary is authorized, subject to Secured Party's written instructions, to register any Financial Assets acquired by Securities Intermediary pursuant to this Agreement in the name of Securities Intermediary or in the name of its nominee, or to cause such securities to be registered in the name of a Federal reserve bank, a recognized securities intermediary or clearing corporation, or a nominee of any of them. Securities Intermediary may at any time and from time to time appoint, and may at any time remove, any bank, trust company, clearing corporation, or Broker-Dealer as its agent to carry out such of the provisions of this Agreement. The appointment or use of any intermediary, or the appointment of any such agent, shall not relieve Securities Intermediary of any responsibility or liability under this Agreement.

(f) *Corporate Actions.* Except as otherwise set forth herein, the parties agree that neither Secured Party nor Securities Intermediary shall have any responsibility for ascertaining or acting upon any calls, conversions, exchange offers, tenders, interest rate changes or similar matters relating to any Financial Assets credited to or held for the credit of the Deposit Account (except based on written instructions originated by Pledgor or Secured Party), or for informing Pledgor or Secured Party with respect thereto, whether or not Securities Intermediary or Secured Party has, or is deemed to have, knowledge of any of the aforesaid. Securities Intermediary is authorized to withdraw securities sold or otherwise disposed of, and to credit the Collateral Account with the proceeds thereof or make such other disposition thereof as may be directed in accordance with this Agreement. Securities Intermediary is further authorized to collect all income and other payments which may become due on Financial Assets credited to the Collateral Account, to surrender for payment maturing obligations and those called for redemption and to exchange certificates in temporary form for like certificates in definitive form, or, if the par value of any shares is changed, to effect the exchange for new certificates. It is understood and agreed by Pledgor and Secured Party that, although Securities Intermediary will use reasonable efforts to effect the transactions set forth in the preceding sentence, Securities Intermediary

shall incur no liability for its failure to effect the same unless its failure is the result of wilful misconduct.

(g) *Disclosure of Account Relationships.* Pledgor and Secured Party acknowledge that Securities Intermediary may be required to disclose to securities issuers the name, address and securities positions with respect to Financial Assets credited to the Collateral Account, and hereby consent to such disclosures.

(h) *Forwarding of Documents.* Securities Intermediary shall forward to Pledgor and Secured Party, or notify Pledgor and Secured Party by telephone of, all communications received by Securities Intermediary as owner of any Financial Assets credited to the Collateral Account and which are intended to be transmitted to the beneficial owner thereof.

(i) *Direction of Secured Party Controls in Disputes.* Pledgor, Securities Intermediary and Secured Party hereby agree that in the event any dispute arises with respect to the payment, ownership or right to possession of the Collateral Account or any other Collateral credited to or held therein, Securities Intermediary shall take such actions and shall refrain from taking such actions with respect thereto as may be directed by Secured Party.

(j) *No Setoff, etc.* Securities Intermediary shall not exercise on its own behalf any claim, right of set-off, banker's lien, clearing lien, counterclaim or similar right against any of the Collateral; provided that Securities Intermediary may deduct, from any credit balances, any usual and ordinary transaction and administration fees payable in connection with the administration and operation of the Collateral Account. Except for claims for deductions permitted in the preceding sentence, Securities Intermediary agrees that any security interest it may have in the Collateral Account or any security entitlement carried therein shall be subordinate and junior to the interest of Secured Party.

(k) *Only Agreement.* This Agreement shall govern the actions, rights and obligations of Securities Intermediary, and shall determine the governing law, with respect to the Collateral Account and the Collateral notwithstanding any term or condition in any agreement other than this Agreement as it may be amended, supplemented or otherwise modified in writing.

(l) *Care of Financial Assets.* Securities Intermediary shall maintain possession or control of all Financial Assets credited to the Collateral Account by segregating such Financial Assets from its proprietary assets and keeping them free of any lien, charge or claim of any third party granted or created by Securities Intermediary. Securities Intermediary shall take such other steps to ensure that Financial Assets credited to the Collateral Account are identified as being held for customers of Securities Intermediary as may be required under applicable law, including 17 CFR Part 450, or in accordance with custom and practice in the industry.

SECTION 8.

Transactions in Collateral Account.

(a) *Power of Secured Party to Sell or Transfer.* Pledgor agrees that Secured Party may sell or cause the sale or redemption of any Investment and instruct Securities Intermediary to transfer the proceeds of such sale or any other credit or balance in the Collateral Account to any third party or account, in either case (i) if such sale or redemption is necessary to permit Secured Party or the Disbursement Agent to perform its duties under this Agreement, the Disbursement Agreement or the Intercreditor Agreement, or (ii) as provided in Section 14.

(b) *Drawings Permitted from Certain Accounts By Pledgor.* Except during any Suspension Period, Pledgor may by Check (as defined in Section 3-104(2) (b) of the Code) or other means draw funds from the Company's FF&E Payment Account for the purposes set forth in the Disbursement Agreement. During any

Suspension Period, the Company's FF&E Payment Account shall be blocked, and Pledgor shall have no right to draw any amounts therefrom or cause any Financial Assets to be transferred out of the Collateral Account.

SECTION 9.

Representations and Warranties By Securities Intermediary. Securities Intermediary hereby represents and warrants to Pledgor and Secured Party as follows:

(a) *Corporate Power.* Securities Intermediary has all necessary corporate power and authority to enter into and perform this Agreement.

(b) *Execution Authorized.* The execution, delivery and performance of this Agreement by Securities Intermediary have been duly authorized by all necessary corporate action on the part of Securities Intermediary.

(c) *Securities Intermediary.* Securities Intermediary is a "securities intermediary" (as that term is defined in Section 8-102(a)(14) of the Code) and is acting in such capacity with respect to the Collateral Account. Securities Intermediary is not a "clearing corporation" (as that term is defined in Section 8-102(a)(5) of the Code).

SECTION 10.

Representations and Warranties. Pledgor represents and warrants as follows:

(a) *Ownership of Collateral; Security Interest; Perfection and Priority.* Except as specifically set forth in Section 2.3.10 of the Disbursement Agreement, Pledgor is (or at the time of transfer thereof to Securities Intermediary will be) the legal and beneficial owner of the Collateral from time to time transferred by Pledgor to Securities Intermediary, as agent for Secured Party, free and clear of any Lien except for the security interest created by this Agreement. The pledge and assignment of the Collateral pursuant to this Agreement creates a valid security interest in the Collateral securing the Payment of the Secured Obligations. Assuming compliance by Securities Intermediary with this Agreement, Secured Party will have a perfected security interest in the Collateral senior in priority to any other security interest created by Pledgor.

(b) *Governmental Authorizations.* Subject to any Nevada Gaming Commission Approval, no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for either (i) the grant by Pledgor of the security interest granted hereby, (ii) the execution, delivery or performance of this Agreement by Pledgor, or (iii) the perfection of or, subject to any Nevada Gaming Commission approvals, the exercise by Secured Party or Securities Intermediary of its rights and remedies hereunder (except as may have been taken by or at the direction of Pledgor).

(c) *Other Information.* All information heretofore, herein or hereafter supplied to Secured Party or Securities Intermediary by or on behalf of Pledgor with respect to the Collateral, the establishment of the Collateral Account or otherwise is accurate and complete in all material respects.

SECTION 11.

Further Assurances.

(a) *Pledgor.* Pledgor agrees that from time to time, at the expense of Pledgor, Pledgor shall promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or reasonably desirable, or that Secured Party may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Secured Party or Securities Intermediary to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, Pledgor shall: (a) execute and file such financing or continuation statements, or amendments thereto, and such other instruments or notices, as Secured Party may reasonably request, in order to perfect and preserve the security interests granted or purported to be granted hereby, and (b) at Secured Party's request, appear in and defend any action or proceeding that may affect Pledgor's title to or Secured Party's security interest in all or any part of the Collateral.

(b) *Securities Intermediary.* Securities Intermediary shall take such further actions as Secured Party shall reasonably request as being necessary or desirable to maintain or achieve perfection or priority of Secured Party's security interest with respect to the Collateral and to permit Secured Party to exercise its rights with respect to the Collateral.

SECTION 12.

Transfers and other Liens. Pledgor agrees that, except as permitted in Section 4(b), and for the security interest created by this Agreement, it shall not (a) sell, assign (by operation of law or otherwise), redeem or otherwise dispose of any of the Collateral or (b) create or suffer to exist any Lien upon or with respect to any of the Collateral.

SECTION 13.

Secured Party Appointed Attorney-in-Fact; Secured Party Performance.

(a) *Secured Party Appointed Attorney-in-Fact.* Pledgor hereby irrevocably appoints Secured Party as Pledgor's attorney-in-fact, with full authority in the place and stead of Pledgor and in the name of Pledgor, Secured Party or otherwise, from time to time in Secured Party's discretion to take any action and to execute any instrument that Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement, including (a) to file one or more financing or continuation statements, or amendments thereto, relative to all or any part of the Collateral without the signature of Pledgor and (b) to receive, endorse and collect any instruments or other Investments made payable to Pledgor representing any dividend, principal or interest payment or other distribution in respect of the Collateral or any part thereof and to give full discharge for the same.

(b) *Performance by Secured Party.* If Pledgor fails to perform any agreement contained herein, Secured Party may itself perform, or cause performance of, such agreement, and the expenses of Secured Party incurred in connection therewith shall be payable by Pledgor under Section 16.

SECTION 14.

Remedies.

(a) *Transfer or Sequestration of Collateral after Potential Event of Default or Event of Default.* If any Potential Event of Default or Event of Default shall have occurred and be continuing, Secured Party may instruct Securities Intermediary to (i) sell or redeem any Investments, (ii) transfer any or all of the Collateral constituting cash to the Deposit Account or transfer any or all of the Collateral to any account designated by Secured Party, including account or accounts established in Secured Party's name (whether at Secured Party or Securities Intermediary or otherwise), (iii) register title to any Collateral in any name specified by Secured Party, including the name of Secured Party or any of its nominees or

agents, without reference to any interest of Pledgor, or (iv) otherwise deal with the Collateral as directed by Secured Party.

(b) *Rights of Secured Party after Event of Default.* If any Event of Default shall have occurred and be continuing, subject to any Nevada Gaming Laws and the receipt of any required Nevada Gaming Commission Approval, Secured Party may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it at law or in equity, all the rights and remedies of a secured party on default under the Uniform Commercial Code as in effect in any relevant jurisdiction (the "UCC") (whether or not the UCC applies to the affected Collateral), and Secured Party may also in its sole discretion sell the Collateral or any part thereof in one or more parcels at public or private sale, at any exchange or broker's board or at any of Secured Party's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as Secured Party may deem commercially reasonable, irrespective, of the impact of any such sales on the market price of the Collateral. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of Pledgor, and Pledgor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Secured Party shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. Secured Party may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(c) *Agreement as to Manner of Sale.* Pledgor hereby agrees that the Collateral is of a type customarily sold on recognized markets and, accordingly, that no notice to any Person is required before any sale of any of the Collateral pursuant to the terms of this Agreement; *provided that*, without prejudice to the foregoing, Pledgor agrees that, to the extent notice of any such sale shall be required by law, at least ten days' notice to Pledgor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification.

(d) *Deficiency.* If the proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Secured Obligations, Pledgor shall be liable for the deficiency and the fees of any attorneys employed by Secured Party to collect such deficiency.

(e) *Set-off.* Anything contained herein to the contrary notwithstanding, all sums in the Collateral Account shall be subject to Secured Party's or any FF&E Lender's rights of set-off.

SECTION 15.

Application of Proceeds. If any Event of Default shall have occurred and be continuing, all cash included as Collateral and all proceeds received by Secured Party in respect of any sale or redemption of, collection from, or other realization upon all or any part of the Collateral may, in the discretion of Secured Party, be held by or for Secured Party as Collateral for, or then, or at any other time thereafter, applied in full or in part by Secured Party against, the Secured Obligations in any order or priority as may be determined by the Secured Party.

SECTION 16.

Limitations on Duties; Exculpation; Indemnity, Expenses.

(a) *Securities Intermediary.*

(i) *Limitation on Duties.* Securities Intermediary's duties hereunder are only those specifically provided herein, and Securities Intermediary shall incur no liability whatsoever for any actions or omissions hereunder except for any such liability arising out of or in connection with Securities Intermediary's gross negligence or willful misconduct. Securities Intermediary has no obligation to inquire into, or to ensure, the sufficiency of this Agreement or the arrangements described hereunder to satisfy any objectives of Secured Party or Pledgor. Securities Intermediary shall have no duty to supervise or to provide investment counseling or advice to Pledgor or

Secured Party with respect to the purchase, sale, retention or other disposition of any Financial Assets held hereunder. Except as specifically otherwise provided in this Agreement, Securities Intermediary shall not be responsible for enforcing compliance by the other parties to this Agreement with their respective duties and obligations to each other under this or any other Agreement. Securities Intermediary shall have no liability in the event it is unable to perform its duties hereunder due to acts of war or other force majeure events outside its control, including court orders instructing the Securities Intermediary to take, or not to take, certain actions.

(ii) *Consultation with Counsel.* Securities Intermediary may consult with, and obtain advice from, legal counsel as to the construction of any of the provisions of this Agreement, and shall incur no liability in acting in good faith in accordance with the reasonable advice and opinion of such counsel.

(iii) *Indemnification.* Pledgor agrees to indemnify Securities Intermediary in accordance with Section 11.15.2 of the Disbursement Agreement and hereby agrees that Securities Intermediary shall be an indemnified party under such Section 11.15.2 of the Disbursement Agreement, which is hereby incorporated herein by reference.

(iv) *Reasonable Reliance.* Securities Intermediary shall be fully protected and shall suffer no liability in acting in accordance with any written instructions reasonably believed by it to have been given (i) by Secured Party with respect to any aspect of the operation of the Collateral Account (including any such instructions relating to any investment or transfer of any amounts held therein) or (ii) by Pledgor, to the extent provided in Section 4(b), with respect to the Collateral Account.

(b) *Secured Party.*

(i) *Exculpation.* The powers conferred on Secured Party hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, Secured Party shall have no duty as to any Collateral, it being understood that Secured Party shall have no responsibility for (a) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Collateral, whether or not Secured Party has or is deemed to have knowledge of such matters, (b) taking any necessary steps (other than steps taken in accordance with the standard of care set forth above to maintain possession of the Collateral) to preserve rights against any parties with respect to any Collateral, (c) taking any necessary steps to collect or realize upon the Secured Obligations or any guarantee therefor, or any part thereof, or any of the Collateral, (d) initiating any action to protect the Collateral against the possibility of a decline in market value, (e) any loss resulting from Investments made, held or sold pursuant to Section 4, except for a loss resulting from Secured Party's gross negligence (or negligence in the handling of funds) or willful misconduct in complying with Section 4, or (f) determining (i) the correctness of any statement or calculation made by Pledgor in any written or telex (tested or otherwise) instructions or (ii) whether any transfer to the Collateral Account is proper. Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that which Secured Party accords its own property of like kind. In addition to the foregoing and without limiting the generality thereof, Secured Party shall not be responsible for any actions or omissions of Securities Intermediary.

(ii) *Indemnification.* Pledgor agrees that its indemnity of Secured Party and each FF&E Lender set forth in the Disbursement Agreement and the FF&E Facility Agreement shall apply, subject to the terms thereof, to any and all claims, losses and liabilities in any way relating to, growing out of or resulting from this Agreement and the transactions contemplated hereby (including enforcement of this Agreement).

(iii) *Reasonable Reliance.* Secured Party shall be fully protected and shall suffer no liability in acting in accordance with any written instructions reasonably believed by it to have been given

by Pledgor, to the extent provided in Section 4(b), with respect to any investments of any amounts held for the credit of the Collateral Account.

(iv) *Expenses.* Pledgor shall pay to Secured Party upon demand the amount of any and all costs and expenses, including the reasonable fees and expenses of its counsel and of any experts and agents, that Secured Party may reasonably incur in connection with (i) the administration of this Agreement, (ii) the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, any of the Collateral, (iii) the exercise or enforcement of any of the rights of Secured Party hereunder, or (iv) the failure by Pledgor to perform or observe any of the provisions hereof.

SECTION 17.

Resignation and Removal of Securities Intermediary.

(a) *Removal.* Securities Intermediary may be removed at any time by written notice given by Secured Party to Securities Intermediary and Pledgor, but such removal shall not become effective until a successor Securities Intermediary shall have been appointed by Secured Party and shall have accepted such appointment in writing.

(b) *Resignation.* Securities Intermediary may resign at any time by giving not less than thirty days' written notice to Secured Party and Pledgor, but such removal shall not become effective until a successor Securities Intermediary shall have been appointed by Secured Party and shall have accepted such appointment in writing. If an instrument of acceptance by a successor Securities Intermediary shall not have been delivered to the resigning Securities Intermediary within thirty days after the giving of any such notice of resignation, the resigning Securities Intermediary may, at the expense of Pledgor, petition any court of competent jurisdiction for the appointment of a successor Securities Intermediary.

(c) *Successor Securities Intermediary.* Any successor Securities Intermediary shall be a corporation qualified to do business in, and located in, New York, which (A) is subject to supervision or examination by the applicable Governmental Authority, (B) has a combined capital and surplus of at least Five Hundred Million Dollars (US\$500,000,000), (C) has a long-term credit rating of not less than "A-" or "A3", respectively, by any Rating Agency; *and provided, that* any such bank with a long-term credit rating of "A-" or "A3" shall not cease to be eligible to act as Securities Intermediary upon a downward change in either such rating of no more than one category or grade of such minimum rating, as the case may be.

(d) *Process of Succession.* Upon the appointment of a successor Securities Intermediary and its acceptance of such appointment, the resigning or removed Securities Intermediary shall transfer all items of Collateral held by it to such successor (which items of Collateral shall be transferred to an appropriate new Collateral Account established and maintained by such successor). Following such appointment all references herein to Securities Intermediary shall be deemed a reference to such successor; *provided that* the provisions of Section 16(a) hereof shall continue to inure to the benefit of the resigning or removed Securities Intermediary with respect to any actions taken or omitted to be taken by it under this Agreement while it was Securities Intermediary hereunder.

SECTION 18.

Continuing Security Interest; Termination of Obligations of Securities Intermediary. This Agreement shall create a continuing security interest in the Collateral and shall (a) remain in full force and effect until the indefeasible payment in full of the Secured Obligations and (b) be binding upon Pledgor, its successors and assigns, and (c) inure, together with the rights and remedies of Secured Party hereunder, to the benefit of Secured Party and the FF&E Lenders and their respective successors, transferees and assigns. Upon the indefeasible payment in full of all Secured Obligations and the cancellation or termination of the commitments under the Loan Agreement, the security interest granted hereby shall terminate and all rights to the Collateral shall revert to Pledgor. Upon any such termination Secured Party shall, at Pledgor's expense, execute and deliver to Pledgor such documents,

instruments of transfer, certificates, termination statements and the like as Pledgor shall reasonably request to evidence such termination and Pledgor shall be entitled to the return, upon its request and at its expense, against receipt and without recourse to Secured Party, of such of the Collateral as shall not have been sold or otherwise applied pursuant to the terms hereof. Securities Intermediary shall not be released from its obligations hereunder, and shall continue to maintain any Collateral in accordance with this Agreement, until notified in writing by Secured Party that this Agreement has terminated and so long as Secured Party has not withdrawn such notification.

SECTION 19.

Secured Party as Collateral Agent.

(a) *Agency.* Secured Party has been appointed to act as Secured Party hereunder by the FF&E Lenders pursuant to the Loan Agreement. Secured Party shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including, without limitation, the release or substitution of Collateral), solely in accordance with this Agreement, the Disbursement Agreement and the Loan Agreement.

(b) *Identity of Agent.* Secured Party shall at all times be the same Person that is the Collateral Agent under the Loan Agreement. Written notice of resignations by the Collateral Agent pursuant to Section 11.9 of the Loan Agreement shall also constitute notice of resignation as Secured Party under this Agreement and substitution of a successor collateral agent pursuant to Section 11.9 of the Loan Agreement shall also constitute substitution of a successor Secured Party under this Agreement. Upon the acceptance of any appointment as Collateral Agent under Section 11.9 of the Loan Agreement by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Secured Party under this Agreement, and the retiring or removed Secured Party under this Agreement shall promptly (i) transfer to such successor Secured Party all items of Collateral held by Secured Party (which as appropriate shall be credited to, and held for the credit of, the new Collateral Account established and maintained by such successor Secured Party), together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Secured Party under this Agreement, and (ii) execute and deliver to such successor Secured Party such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Secured Party of the security interests created hereunder, whereupon such retiring or removed Secured Party shall be discharged from its duties and obligations under this Agreement. After any retiring or removed Collateral Agent's resignation or removal hereunder as Secured Party, the provisions of this Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was Secured Party hereunder.

SECTION 20.

Amendments, Etc. No amendment or waiver of any provision of this Agreement, or consent to any departure by any party herefrom, shall in any event be effective unless the same shall be in writing and signed by the other parties, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

SECTION 21.

Notices. Any communications between the parties hereto or notices provided herein to be given may be given to the address of the party as set forth under such party's name on the signature pages hereof. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by a reputable overnight delivery service, (c) in the event overnight delivery services are not readily available, if mailed by first class mail, postage prepaid, registered or certified with return receipt requested or (d) if sent by prepaid telex, or by telecopy with correct answer back received. Notice so given shall be effective upon

receipt by the addressee, except that communication or notice so transmitted by telecopy or other direct written electronic means shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the next following Business Day) on which it is validly transmitted if transmitted before 4 p.m., recipient's time, and if transmitted after that time, on the next following Business Day; *provided, however*, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location by giving of no less than twenty (20) days' notice to the other parties in the manner set forth hereinabove.

SECTION 22.

Failure or Indulgence Not Waiver, Remedies Cumulative. No failure or delay on the part of Secured Party in the exercise of any power, right or privilege hereunder shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude any other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

SECTION 23.

Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

SECTION 24.

Headings. Section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

SECTION 25.

Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES. Securities Intermediary's jurisdiction (within the meaning of Section 9-304 of the Code) shall be the State of New York and to the extent that notwithstanding the intention of the parties, the Collateral Account is a deposit account, the bank's jurisdiction (within the meaning of Section 8-110 of the Code) shall be the State of New York.

SECTION 26.

Consent to Jurisdiction and Service of Process. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST PLEDGOR ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF NEW YORK, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT PLEDGOR ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT. Pledgor hereby agrees that service of all process in any such

proceeding in any such court may be made by registered or certified mail, return receipt requested, to Pledgor at its address provided in Section 21, such service being hereby acknowledged by Pledgor to be sufficient for personal jurisdiction in any action against Pledgor in any such court and to be otherwise effective and binding service in every respect. Nothing herein shall affect the right to serve process in any other manner

permitted by law or shall limit the right of Secured Party to bring proceedings against Pledgor in the courts of any other jurisdiction.

SECTION 27.

Waiver of Jury Trial. PLEDGOR, SECURITIES INTERMEDIARY AND SECURED PARTY HEREBY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. Pledgor and Secured Party each acknowledge that this waiver is a material inducement for Pledgor and Secured Party to enter into a business relationship, that Pledgor and Secured Party have already relied on this waiver in entering into this Agreement and that each will continue to rely on this waiver in their related future dealings. Pledgor and Secured Party further warrant and represent that each has reviewed this waiver with its legal counsel, and that each knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. **THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT.** In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

SECTION 28.

Counterparts. This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

SECTION 29.

Secured Party's Representative. The Secured Party hereby authorizes the entity from time to time acting as the Disbursement Agent under the Disbursement Agreement to, from time to time, act on its behalf hereunder. Until the Secured Party notifies Securities Intermediary and Pledgor to the contrary, any such Disbursement Agent shall be a "representative" (as defined in Section 1-201(35) of the Code) of the Secured Party and, as such, any Entitlement Orders or other instructions or actions issued or taken by such Disbursement Agent hereunder shall be as effective as if issued or taken directly by the Secured Party.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

PLEDGOR:

WYNN LAS VEGAS, LLC,
a Nevada limited liability company

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its managing member

By: _____

Name: _____

Title: _____

Notice Address

Wynn Las Vegas, LLC
3145 Las Vegas Boulevard South

Las Vegas, Nevada 89109
Attn: Ron Kramer
Telephone No.: (702) 733-4123
Facsimile No.: (702) 791-0167

WYNN LAS VEGAS CAPITAL CORP.,
a Nevada limited liability company

By: _____

Name: _____

Title: _____

Notice Address: Wynn Las Vegas Capital Corp.
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Ron Kramer
Telephone No.: (702) 733-4123
Facsimile No.: (702) 791-0167

WYNN DESIGN & DEVELOPMENT, LLC,
a Nevada limited liability company

By: _____

Name: _____

Title: _____

Notice Address: Wynn Design & Development
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Kenneth Wynn
Attn: Todd Nisbet
Telephone No.: (702) 733-4497
Facsimile No.: (702) 733-4715

SECURED PARTY:

WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION,
not in its individual capacity, but solely as Collateral Agent under
the Loan Agreement

By: _____

Name: _____

Title: _____

Notice Address:

SECURITIES INTERMEDIARY:

Bank of America, N.A.
as Securities Intermediary

By: _____

Name: _____

Title: _____

Notice Address: _____

[Letterhead of Secured Party]

[date of notice]

TO: [Securities Intermediary]

CC: Wynn Las Vegas, LLC
c/o Wynn Resorts Holdings, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Ron Kramer
Facsimile No.: (702) 791-0167

Wynn Las Vegas Capital Corp.
c/o Wynn Resorts Holdings, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Ron Kramer
Facsimile No.: (702) 791-0167

Wynn Design & Development
c/o Wynn Resorts Holdings, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Kenneth Wynn
Attn: Todd Nisbet
Facsimile No.: (702) 733-4715

Re: Prohibition Notice under that Certain Local FF&E
Collateral Account Agreement/[]
Account Number []

Ladies and Gentlemen:

Pursuant to the Local FF&E Collateral Account Agreement dated as of October , 2002 ("Local FF&E Collateral Account Agreement") among Wells Fargo Bank Nevada, National Association, not in its individual capacity, but solely as Collateral Agent under the Loan Agreement, as Secured Party, certain Pledgors and Securities Intermediary, we hereby give you this Prohibition Notice and notify you of the commencement of a Suspension Period. Until further notice from the undersigned substantially in the form of Attachment 2 to the Local FF&E Collateral Account Agreement, Securities Intermediary shall not accept or follow instructions from Pledgor pursuant to Section 4(b) of the Local FF&E Collateral Account Agreement.

Capitalized terms used and not otherwise defined in this notice are used with their respective meanings in the Local FF&E Collateral Account Agreement.

Yours truly,
[Secured Party]

By:

Its:

ATTACHMENT 2

[Letterhead of Secured Party]

[date of notice]

TO: [Securities Intermediary]

CC: Wynn Las Vegas, LLC
c/o Wynn Resorts Holdings, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Ron Kramer
Facsimile No.: (702) 791-0167

Wynn Las Vegas Capital Corp.
c/o Wynn Resorts Holdings, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Ron Kramer
Facsimile No.: (702) 791-0167

Wynn Design & Development
c/o Wynn Resorts Holdings, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Kenneth Wynn
Attn: Todd Nisbet
Facsimile No.: (702) 733-4715

Re: *Rescission of Prohibition Notice under that Certain Local FF&E Collateral Account Agreement/[] Account Number []*

Ladies and Gentlemen:

Pursuant to the Local FF&E Collateral Account Agreement dated as of October , 2002 ("Local FF&E Collateral Account Agreement") among Wells Fargo Bank Nevada, National Association, not in its individual capacity, but solely as Collateral Agent under the Loan Agreement, as Secured Party, certain Pledgors and Securities Intermediary, we hereby notify you of the rescission by Secured Party of the Prohibition Notice dated [***date of Prohibition Notice***] and the end of the related Suspension Period. You are hereby instructed that, until receipt of a new Prohibition Notice, you shall accept and follow written instructions from Pledgor pursuant to Section 4(b) of the Local FF&E Collateral Account Agreement.

Capitalized terms used and not otherwise defined in this notice are used with their respective meanings in the Local FF&E Collateral Account Agreement.

Yours truly,
[Secured Party]

By: _____

Its: _____

EXHIBIT A
To Local FF&E Collateral Account Agreement

DEFINITIONS

[Attached]
end

QuickLinks

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[EXHIBITS](#)

[Exhibit 10.29](#)

[Exhibit J to Disbursement Agreement](#)

**AGREEMENT FOR GUARANTEED MAXIMUM PRICE CONSTRUCTION SERVICES
BETWEEN
WYNN LAS VEGAS, LLC
AND
MARNELL CORRAO ASSOCIATES, INC.
FOR LE RÊVE**

EXHIBIT Q

AMENDED AND RESTATED CONTINUING GUARANTY

This Amended and Restated Continuing Guaranty (hereinafter called the "Guaranty") is made this 22nd day of October, 2002 by AUSTI, INC., a Nevada corporation (hereinafter called "Guarantor") in favor of WYNN LAS VEGAS, LLC, a Nevada limited liability company (hereinafter called "Owner"), with regard to the following:

WITNESSETH:

WHEREAS, Owner and MARNELL CORRAO ASSOCIATES, INC. a Nevada corporation (hereinafter called "Contractor"), have entered into that certain Agreement for Guaranteed Maximum Price Construction Services dated June 4, 2002 for the construction of Project (as such may be amended, modified or restated from time to time, hereinafter called the "Agreement");

WHEREAS, Contractor is the wholly-owned subsidiary of Guarantor; and

WHEREAS, in consideration of Owner's entering into the Agreement with Contractor, and as a condition to any obligations of Owner to Contractor under the Agreement, the Guarantor has agreed, at the request of Contractor, to guarantee unconditionally any and all obligations of the Contractor to Owner as provided herein and Guarantor and Owner acknowledge and agree that without such unconditional guarantee from Guarantor as provided herein, Owner would not have entered into the Agreement;

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Guarantor, the Guarantor agrees with Owner as follows:

1. Guarantor hereby unconditionally and absolutely guarantees the due and punctual performance, payment and observance by Contractor of all Contractor's obligations under the Agreement, for the timely and lien free completion of the Work (as defined in the Agreement) and payment of all costs, expenses, charges and fees, including cost overruns, relating to the foregoing, and the payment of all amounts owing to Owner pursuant to the Agreement. This Guaranty shall take effect on the date hereof as an absolute, irrevocable and continuing Guaranty. Notwithstanding the provisions of this Section 1, Guarantor's guarantee obligations under this Guaranty shall terminate and be of no further legal force and effect upon Final Payment by Owner pursuant to the Agreement.

2. If Contractor fails to perform any of its obligations under the Agreement, or commits any breach thereof, Guarantor shall immediately, at its sole cost and expense: (i) take such steps as may be necessary to cause Contractor to perform all Contractor's obligations under the Agreement, or remedy any breach thereof; or (ii) take such steps as may be necessary, itself or through a third party other than Contractor, to perform all of Contractor's obligations under the Agreement, or to remedy any breach thereof.

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3. If Guarantor fails at any time to perform any obligations under this Guaranty after written demand having been made by Owner, Owner may, without the need to give further notice thereof to Guarantor, perform itself, or have any third party perform, any such obligations and Guarantor shall indemnify Owner from and against any and all losses, damages, costs and expenses which may be incurred by Owner by reason of or in connection with any such failure, including without limitation any and all costs incurred by Owner in so performing or so having performed, such obligations.

4. Subject to Section 1 hereof, Guarantor, shall not in any way be released from any of its obligations arising under this Guaranty, nor shall any such obligations be diminished, impaired or reduced by: (i) termination of the Agreement; (ii) alterations to the terms of the Agreement; (iii) forbearance or forgiveness in respect of any matter or thing concerning the Contractor on the part of Owner or Contractor; (iv) an exercise or election of remedies by Owner (including, without limitation, an exercise of remedies which in any manner impairs or affects any rights Guarantor may have against Contractor); or (v) the insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution, death, or lack of power of Contractor or Guarantor or any other person or entity at any time liable for the performance of all or part of the obligations guaranteed under this Guaranty or any changes in or reorganization of Contractor, or any discharge, avoidance or unenforceability of the Contractor's obligations under the Agreement. Guarantor agrees that it shall be responsible for keeping informed as to the status of the financial condition of, or the status of performance by, Contractor, and Guarantor agrees that its obligations hereunder shall not be diminished, impaired or reduced by Owner's failure to provide notice of any such matters.

5. The rights and remedies of Owner arising under this Guaranty shall operate independently of any rights and remedies Owner may have arising under any other agreement (including without limitation the Agreement) and Owner shall not be required to proceed first or at all against Contractor or any other person, or any Collateral of Contractor or any person, before enforcing the terms of the Guaranty.

6. Guarantor represents and warrants that: (a) Guarantor has the power and authority to execute, deliver and perform its obligations under this Guaranty, (b) the execution, delivery and performance by Guarantor of this Guaranty do not violate or conflict with, breach, or constitute a default under, or require consent under any agreement or document binding or covering Guarantor or any of its property, (c) this Guaranty constitutes a legal, valid and binding obligation of

Guarantor, enforceable against Guarantor in accordance with its terms, and (d) (i) this Guaranty is not given with actual intent to hinder, delay or defraud any entity to which Guarantor is, or will become on or after the date of this Guaranty, indebted, (ii) Guarantor has received at least a reasonably equivalent value in exchange for the giving of this Guaranty, (iii) Guarantor is not insolvent on the date of this Guaranty and will not become insolvent as a result of giving this Guaranty, and (iv) Guarantor does not intend to incur debts that will be beyond Guarantor's ability to pay as such debts become due.

7. In the event Owner brings an action to enforce this Guaranty, Guarantor will reimburse Owner for all expenses incurred by Owner, including, but not limited to, reasonable attorneys' fees and costs.

8. All notices, advices, demands, requests, consents, statements, satisfactions, waivers, designations, refusals, confirmations or denials that may be required or otherwise provided for or contemplated under the terms of this Guaranty for any party to serve upon or give to any other shall, whether or not so stated, be in writing, and if not so in writing shall not be deemed to have been given, and be either personally served, sent by electronic communication, whether by telex, telegram, or telecopying, sent by recognized overnight courier service, or sent with return receipt requested by

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registered or certified mail with postage prepaid (including registration or certification charges) in a securely enclosed and sealed envelope, to the following addresses:

To Owner:

Kenn Wynn, President
Wynn Design and Development LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Facsimile No. (702) 733-4738
Telephone No. (702) 733-4812

and

Todd Nisbet, Executive Vice President—Project Director
Wynn Design and Development LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Facsimile No. (702) 733-4715
Telephone No. (702) 733-4497

To Guarantor:

James A. Barrett, Jr., President
Austi, Inc.
4495 South Polaris Avenue
Las Vegas, Nevada 89103
Facsimile No. (702) 739-8521
Telephone No. (702) 703-9413

and

Christopher L. Kaempfer, Esq.
Kummer Kaempfer Bonner & Renshaw
3800 Howard Hughes Parkway
Seventh Floor
Las Vegas, Nevada 89109
Facsimile No: (702) 796-7181
Telephone No.: (702) 792-7000

9. Guarantor makes the following representations and warranties, which shall be continuing representations and warranties until such time as Owner makes Final Payment pursuant to the Agreement:

a. All financial statements and data that have been given to Owner by Guarantor with respect to Guarantor (A) are complete and correct in all material respects as of the date given; (B) accurately present in all material respects the financial condition of Guarantor on each date as of which the same have been furnished; and (C) have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered thereby.

b. There has been no material adverse change in the financial condition of Guarantor since (A) the date of the most recent financial statements given to Owner with respect to Guarantor, or (B) the date of the financial statements given to Owner immediately prior to the date hereof.

c. Guarantor is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions set forth in any agreement or instrument to which Guarantor

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APN: 162-16-510-001, 162-16-510-002,
162-16-510-003, 162-16-510-004, 162-16-510-005,
162-16-510-006, 162-16-511-008,
162-16-510-007, 162-16-510-008, 162-16-510-009
162-16-510-010, 162-16-510-011, 162-16-510-012,
162-16-510-013, 162-16-510-014, 162-16-510-015,
162-16-510-016, 162-16-510-017, 162-16-510-018,
162-16-510-021, 162-16-510-022, 162-16-510-024,
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162-16-610-011, 162-16-610-012, 162-16-610-013,
162-16-610-014, 162-16-610-015, 162-16-610-017,
162-16-610-018, 162-16-610-019, 160-16-610-021,
160-16-610-022, 160-16-610-028, 160-16-610-029,
160-16-610-030, 162-16-611-001, 162-16-611-002,
162-16-611-003, 162-16-611-004, 162-16-611-005,
162-16-611-006, 162-16-611-007, 162-16-611-008
162-16-611-009, 162-16-611-010, 162-16-611-012,
162-16-611-013, 162-16-611-014

Recording requested by and when recorded mail to:
Schreck Brignone
300 South Fourth Street, Suite 1200
Las Vegas, Nevada 89101
Attn: L.T. Jones, Esquire

Mail tax bills to:
Wynn Resorts Holdings, LLC &
Valvino Lamore, LLC
3145 Las Vegas Boulevard South,
Las Vegas, Nevada 89109
Attention: Legal Department

EASEMENT AGREEMENT

This Easement Agreement ("Agreement") made as of this 21st day of October, 2002 by and among **WYNN RESORTS HOLDINGS, LLC** a Nevada limited liability company ("Holdings") and **VALVINO LAMORE, LLC**, a Nevada limited liability company ("Valvino" and together with Holdings, "Grantors"), and **WYNN LAS VEGAS, LLC**, a Nevada limited liability company ("Grantee").

RECITALS

Holdings is the owner of the real property described in Exhibit "A" attached hereto ("Holdings' Property").

Valvino is the owner of the real property described in Exhibit "B" attached hereto ("Valvino's Property" and together with Holdings' Property, "Grantors' Property").

Grantee is the owner of approximately 55.17 acres of real property located adjacent to Grantors' Property, and identified as "Le Reve" on the Plan, which property is more particularly described on

Exhibit "C" attached hereto (the "Benefitted Property") and upon which Grantee intends to develop a large scale luxury resort hotel and related amenities (the "Hotel").

Grantee has requested that Grantors grant Grantee certain easements over the areas of Grantors' Property more particularly described and depicted in Exhibit "D" (the "Initial Access Area") and such other areas on Grantors' Property as may be necessary, from time to time, to permit a shuttle bus for Hotel employees, patrons, visitors and guests to traverse the Grantors' Property in order to travel between the Benefitted Property and the pedestrian crossing and improvements related thereto (the "Crossing") located or to be located at the southwest corner of the intersection of Paradise Road and the Desert Inn Arterial. Such areas together with the Initial Access Area are collectively referred to herein as the "Easement Area".

Grantors desire to grant such easements to Grantee, on the terms and conditions herein set forth.

AGREEMENT

NOW, THEREFORE, for consideration each to the other paid and in consideration of the actions and agreements set forth in this Agreement, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties hereto act and agree as follows:

1. *Temporary Construction Easement.* Grantors, by these presents, do hereby grant to Grantee, its successors, assigns, agents, employees, servants, contractors, licensees and invitees, a temporary, non-exclusive easement appurtenant to the Benefitted Property and a right-of-way in, upon, over and across the Easement Area (a) for the purpose of constructing a roadway which permits shuttle bus access across the Easement Area, including, without limitation, grading, paving, curbing, fencing, landscaping, lighting, and installing utilities (the "Improvements"); (b) to restore the Easement Area, Holdings' Lots and Valvino's Lots disturbed by the construction of the Improvements (the "Restoration Work"); and (c) for reasonable access, ingress, and egress reasonably necessary to accomplish the foregoing (the "Construction Easement"). It is anticipated that the Improvements shall be located on the Initial Access Area but all or portions of the Improvements may be located in other portions of the Easement Area. Prior to engaging in any construction activities, Grantee agrees to coordinate the schedule, design and construction of the Improvements with Grantors, obtain all necessary approvals from any governmental authorities and provide Grantors with five (5) days prior written notice of the date on which construction of the Improvements is to commence (the "Construction Commencement Date"). Grantee agrees to construct the Improvements and perform the Restoration Work (v) at Grantee's sole cost and expense, (w) in a good and workmanlike manner, (x) in accordance with all laws, ordinances, codes and regulations of governmental authorities having jurisdiction concerning the manner of construction of such facilities, (y) in a manner that minimizes disruption to Grantors, their employees and invitees; and (z) in conformance with a construction schedule agreed upon between Grantors and Grantee. This Construction Easement shall terminate upon the later of the completion of the construction of the Improvements or the completion of the Restoration Work, unless sooner agreed by Grantors and Grantee.

2. *Access Easement.* Grantors, by these presents, do hereby grant to Grantee, its successors, assigns, an easement and right-of-way appurtenant to the Benefitted Property and a right-of-way in, upon, over and across the Easement Area for conducting shuttle bus service for use by Grantee and its successors and assigns and their respective agents, employees, servants, contractors, licensees and invitees and for Hotel employees, patrons, visitors and guests to and from the Benefitted Property upon, over and across the Easement Area. Grantors, by these presents, do hereby grant to Grantee, its successors, assigns an easement and right-of-way appurtenant to the Benefitted Property in, upon, over and across the Easement Area to maintain the Easement Area and maintain, repair and replace the Improvements located thereon (the "Maintenance Easement" and together with the Access Easement, the "Access and Maintenance Easements" and together with the Construction Easement, the

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"Easements"). Upon termination of the Construction Easement, Grantee shall, at Grantee's sole cost and expense, provide to Grantors a legal description and survey for the "as-built" Improvements, including, without limitation, the portion of the roadway which permits vehicular access in the Easement Area (the "As-Built Legal Description and Survey"). Upon Grantors' receipt of such As-Built Legal Description and Survey, Grantors and Grantee shall then promptly record an amendment to this Agreement (the "Amendment") substituting the As-Built Legal Description and Survey for the legal description and depiction of the Easement Area currently set forth in Exhibit "E".

3. *Maintenance and Repair of Easement Area.* Grantee shall pay all costs and perform all maintenance, repair and replacement necessary to keep the Improvements in good and orderly condition. In addition, Grantee shall pay all costs of utilities furnished to the Improvements. Should maintenance, repair or replacement be necessary to any of the Easement Area as a result of any intentional or negligent act or omission of Grantors or their agents, employees, servants, contractors, licensees, customers or invitees, Grantors shall be solely responsible for the cost of said maintenance, repair or replacement.

4. *Easements Running with the Land.* The Easements shall run with the land, do touch and concern the same, are intended to and do burden Grantors' Property and benefit the Benefitted Property. The Easements, the restrictions hereby imposed and the agreements herein contained shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, including, without limitation, all subsequent owners of either Grantors' Property or the Benefitted Property, and all persons claiming under them. Each person or entity hereafter at any time granted or conveyed an interest in or to any part or portion of either Grantors' Property or the Benefitted Property shall be deemed to undertake performance and compliance with all the terms, covenants and conditions of this Agreement and the Easements granted hereby, and such persons or entities shall in like manner receive the benefits of the Easements and the terms, covenants and conditions of this Agreement, to the same extent as if such persons or entities were original parties hereto.

5. *Term.* This easement shall remain in effect until a termination is recorded, executed by the parties or their successors-in-interest. Provided, however, that the Easements may not be terminated prior to reconveyance of the deed(s) of trust. [Describe]

6. *No Dedication.* Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Easement Area to the general public or for any public use or purpose whatsoever, it being the intention of the parties hereto and their successors and assigns that nothing in this Agreement, expressed or implied, shall confer upon any person other than the parties hereto, and their successors and assigns, any rights or remedies under or by reason of this Agreement. No portion of the Easement Area shall be used for, or allowed to become, a public forum for expressive activity of any kind, and Grantee shall use all reasonable efforts to prevent the Easement Area from being used as a public forum by Grantee, or any of its agents, employees, servants, contractors, licensees, customers or invitees.

7. *Governing Law.* The laws of the State of Nevada applicable to contracts made in that State, without giving effect to its conflict of law rules, shall govern the validity, construction, performance and effect of this Agreement. Venue in any action to enforce this Agreement shall lie in a state or federal court of competent jurisdiction in Clark County, Nevada. Each party consents to the jurisdiction of such court.

8. *Attorneys' Fees.* Unless otherwise specifically provided for herein, each party hereto shall bear its own attorneys' fees incurred in the negotiation and preparation of this Agreement and any related documents. In the event that any action or proceeding is instituted to interpret or enforce the terms and provisions of this Agreement, however, the prevailing party shall be entitled to its costs and attorneys' fees, in addition to any other relief it may obtain or be entitled to.

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9. *Entire Agreement.* This Agreement sets forth the entire understanding of the parties, and supersedes all previous agreements, negotiations, memoranda, and understandings, whether written or oral, with respect to its subject matter.

10. *Authority to Execute/Record.* Each person executing this Agreement represents and warrants that it is duly authorized to execute this Agreement by the party on whose behalf it is so executing. Any party may record this Agreement against Grantors' Property and the Benefitted Property in the official public records of Clark County, Nevada.

11. *Additional Documents.* Each party covenants and agrees to execute and deliver to the other such further documents or instruments as may reasonably be required to fully effectuate the manifest intent of the parties and the transactions contemplated hereby.

12. *Modifications.* This Agreement shall not be modified, amended or changed in any manner unless in writing executed by the parties hereto.

13. *Waivers.* No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver, and no waiver shall be binding unless evidenced by an instrument in writing and executed by the party making the waiver.

14. *Severability.* If any term, provision, covenant or condition of this Agreement, or any application thereof, should be held by an arbitrator or a court of competent jurisdiction to be invalid, void or unenforceable, that provision shall be deemed severable and all provisions, covenants, and conditions of this Agreement, and all applications thereof not held invalid, void or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

15. *Section Headings.* The section headings herein are inserted only for convenience of reference and shall in no way define, limit or prescribe the scope or intent of any provisions of this Agreement.

16. *Exhibits.* Each exhibit referred to herein and attached hereto is an integral part of this Agreement and is incorporated herein by this reference.

17. *Counterparts.* This Agreement may be executed in multiple counterparts, which together shall constitute one and the same document.

[Signatures appear on following page.]

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IN WITNESS WHEREOF, the undersigned have hereunto affixed their signatures on the day and year set forth above.

"Grantor"

Wynn Resorts Holdings, LLC
a Nevada limited liability company

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein
Title: *Senior Vice President, General Counsel and Secretary*

"Grantor"

Valvino Lamore, LLC
a Nevada limited liability company

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein
Title: *Senior Vice President, General Counsel and Secretary*

"Grantee"

Wynn Las Vegas, LLC
a Nevada limited liability company

By: Wynn Resorts Holdings, LLC
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein
Title: *Senior Vice President, General Counsel and Secretary*

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QuickLinks

[EASEMENT AGREEMENT](#)

GUARANTY AGREEMENT

made by

VALVINO LAMORE, LLC,

WYNN LAS VEGAS CAPITAL CORP.,

PALO, LLC,

WYNN RESORTS HOLDINGS, LLC,

DESERT INN WATER COMPANY, LLC,

WYNN DESIGN & DEVELOPMENT, LLC,

WORLD TRAVEL LLC,

LAS VEGAS JET, LLC

and

THE OTHER GUARANTORS FROM TIME TO TIME PARTY HERETO

in favor of

SECURED PARTIES (as defined herein)

Dated as of October 30, 2002

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This GUARANTY AGREEMENT, dated as of October 30, 2002, is made by each of the signatories hereto (together with any other entity that may become a party hereto as provided herein, the "*Guarantors*"), in favor of the Secured Parties (as hereinafter defined).

RECITALS:

WHEREAS, pursuant to the Loan Agreement dated as of October 30, 2002 (as amended, supplemented or otherwise modified from time to time, the "*Loan Agreement*") by and among Wynn Las Vegas, LLC, a Nevada limited liability company (the "*Borrower*"), Wells Fargo Bank Nevada, National Association, not in its individual capacity but solely as Collateral Agent (the "*Collateral Agent*") and the Persons listed on Schedule IA thereto, as Lenders (the "*Lenders*"), the Lenders have severally agreed to make loans to the Borrower on each Advance Date upon the terms and subject to the conditions set forth therein;

WHEREAS, the Borrower is a member of an affiliated group of companies that includes each Guarantor;

WHEREAS, the Borrower and the other Guarantors are engaged in related businesses, and each Guarantor will derive substantial direct and indirect benefit from the making of the loans under the Loan Agreement; and

WHEREAS, it is a condition precedent to the obligation of the Lenders to make their respective loans to the Borrower under the Loan Agreement that the Guarantors shall have executed and delivered this Agreement (as hereinafter defined) to the Secured Parties (as hereinafter defined);

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent and the Lenders to enter into the Loan Agreement and to induce the Lenders to make their respective loans to the Borrower thereunder, each Guarantor hereby agrees with the Secured Parties (as hereinafter defined), as follows:

SECTION 1. DEFINED TERMS.

Section 1.1. Definitions. (a) Any capitalized terms used in this Agreement which are not otherwise defined herein shall have the meaning ascribed to such terms in the Disbursement Agreement (as defined below) and, if not defined therein, the meaning ascribed to such terms in the Loan Agreement; *provided*, that upon termination of the Disbursement Agreement, any defined terms used herein having meanings given to such terms in the Disbursement Agreement shall continue to have the meanings given to such terms in the Disbursement Agreement immediately prior to such termination.

(b) The following terms shall have the following meanings:

"*Agreement*": this Guaranty Agreement, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"*Borrower Obligations*": the collective reference to the Obligations (as defined in the Loan Agreement).

"*Disbursement Agreement*": that certain Master Disbursement Agreement dated as of October 30, 2002 among the Borrower, the Collateral Agent and the other parties signatory thereto, as the same may hereafter be amended or modified in accordance with its terms and the terms of the Loan Agreement.

"*Guarantor Obligations*": with respect to any Guarantor, all obligations and liabilities of such Guarantor which may arise under or in connection with this Agreement (including, without limitation, under **Section 2**) or any other Loan Document to which such Guarantor is a party, in each case whether on account of guarantee obligations, reimbursement obligations, fees,

indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to any Secured Party that are required to be paid by such Guarantor pursuant to the terms of this Agreement or any other Loan Document).

"*Obligations*": (i) in the case of the Borrower, the Borrower Obligations, and (ii) in the case of each Guarantor, its Guarantor Obligations.

"*Secured Parties*": collectively, the Arrangers, the Collateral Agent and the Lenders.

Section 1.2. Other Definitional Provisions. (a) The words "hereof", "herein", "hereto" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and Schedule references are to this Agreement unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(c) The expressions "payment in full," "paid in full" and any other similar terms or phrases when used herein with respect to the Borrower Obligations or the Guarantor Obligations shall mean the unconditional, final and irrevocable payment in full, in immediately available funds, of all of the Borrower Obligations or the Guarantor Obligations, as the case may be.

SECTION 2. GUARANTEE.

Section 2.1. Guarantee. (a) Each of the Guarantors hereby, jointly and severally, unconditionally and irrevocably, guarantees to the Secured Parties, and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by the Borrower when due (whether at the stated maturity, by acceleration or otherwise) of the Borrower Obligations.

(b) If and to the extent required in order for the Obligations of any Guarantor to be enforceable under applicable federal, state and other laws relating to the insolvency of debtors, the maximum liability of such Guarantor hereunder shall be limited to the greatest amount which can lawfully be guaranteed by such Guarantor under such laws, after giving effect to any rights of contribution, reimbursement and subrogation arising under **Section 2.2**. Each Guarantor acknowledges and agrees that, to the extent not prohibited by applicable law, (i) such Guarantor (as opposed to its creditors, representatives of creditors or bankruptcy trustee, including such Guarantor in its capacity as debtor in possession exercising any powers of a bankruptcy trustee) has no personal right under such laws to reduce, or request any judicial relief that has the effect of reducing, the amount of its liability under this Agreement, (ii) such Guarantor (as opposed to its creditors, representatives of creditors or bankruptcy trustee, including such Guarantor in its capacity as debtor in possession exercising any powers of a bankruptcy trustee) has no personal right to enforce the limitation set forth in this **Section 2.1** or to reduce, or request judicial relief reducing, the amount of its liability under this Agreement and (iii) the limitation set forth in this **Section 2.1** may be enforced only to the extent required under such laws in order for the obligations of such Guarantor under this Agreement to be enforceable under such laws and only by or for the benefit of a creditor, representative of creditors or bankruptcy trustee of such Guarantor or other Person entitled, under such laws, to enforce the provisions thereof.

(c) Each Guarantor agrees that the Borrower Obligations may at any time and from time to time be incurred or permitted in an amount exceeding the maximum liability of such Guarantor under **Section 2.1** without impairing the guarantee contained in this **Section 2** or affecting the rights and remedies of any Secured Party hereunder.

(d) The guarantee contained in this **Section 2** shall remain in full force and effect until payment in full of the Obligations, notwithstanding that from time to time during the term of the Loan Agreement the Borrower may be free from any Borrower Obligations.

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(e) No payment made by the Borrower, any of the Guarantors, any other guarantor or any other Person or received or collected by any Secured Party from the Borrower, any of the Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which Guarantor shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Obligations or any payment received or collected from such Guarantor in respect of the Obligations), remain liable for the Obligations up to the maximum liability of such Guarantor hereunder until the Guarantor Obligations are paid in full.

Section 2.2. Rights of Reimbursement, Contribution and Subrogation. In case any payment is made on account of the Obligations by any Guarantor or is received or collected on account of the Obligations from any Guarantor or its property:

(a) If such payment is made by a Guarantor or from its property, such Guarantor shall be entitled, subject to and upon payment in full of the Obligations, (A) to demand and enforce reimbursement for the full amount of such payment from the Borrower and (B) to demand and enforce contribution in respect of such payment from each other Guarantor which has not paid its fair share of such payment, as necessary to ensure that (after giving effect to any enforcement of reimbursement rights provided hereby) each Guarantor pays its fair share of the unreimbursed portion of such payment. For this purpose, the fair share of each Guarantor as to any unreimbursed payment shall be determined based on an equitable apportionment of such unreimbursed payment among all Guarantors based on the relative value of their assets and any other equitable considerations deemed appropriate by the court.

(b) All rights and claims arising under this **Section 2.2** or based upon or relating to any other right of reimbursement, indemnification, contribution or subrogation that may at any time arise or exist in favor of any Guarantor as to any payment on account of the Obligations made by it or received or collected from its property shall be fully subordinated in all respects to the prior payment in full of all of the Obligations. Until payment in full of the Obligations, no Guarantor shall demand or receive any payment or distribution whatsoever (whether in cash, property or securities or otherwise) on account of any such right or claim. If any such payment or distribution is made or becomes available to any Guarantor in any bankruptcy case or receivership, insolvency or liquidation proceeding, such payment or distribution shall be delivered by the person making such payment or distribution directly to the Secured Parties, for application to the payment of the Obligations. If any such payment or distribution is received by any Guarantor, it shall be held by such Guarantor in trust, as trustee of an express trust for the benefit of the Secured Parties, and shall forthwith be transferred and delivered by such Guarantor to the Secured Parties, in the exact form received and, if necessary, duly endorsed.

(c) The obligations of the Guarantors under the Loan Documents, including their liability for the Obligations and the enforceability of the security interests granted thereby, are not contingent upon the validity, legality, enforceability, collectibility or sufficiency of any right of reimbursement, contribution or subrogation arising under this **Section 2.2**. The invalidity, insufficiency, unenforceability or uncollectibility of any such right shall not in any respect diminish, affect or impair any such obligation or any other claim, interest, right or remedy at any time held by any Secured Party against any Guarantor or its property. The Secured Parties make no representations or warranties in respect of any such right and shall have no duty to assure, protect, enforce or ensure any such right or otherwise relating to any such right.

(d) Each Guarantor reserves any and all other rights of reimbursement, contribution or subrogation at any time available to it as against any other Guarantor, but (i) the exercise and enforcement of such rights shall be subject to this **Section 2.2** and (ii) no Secured Party shall ever have any duty or liability whatsoever in respect of any such right.

Section 2.3. Amendments, etc. with Respect to the Borrower Obligations. Each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, any demand for payment of any of the Borrower Obligations made by any Secured Party may be rescinded by such Secured Party and any of the Borrower Obligations continued, and the Borrower Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, increased, extended, amended, modified, accelerated, compromised, waived, surrendered or released by any Secured Party, and the Loan Agreement and the other Loan Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Collateral Agent (or the requisite Lenders under the Loan Agreement or all Lenders, as the case may be) may deem advisable from time to time, and any collateral security, guarantee or right of offset at any time held by any Secured Party for the payment of the Borrower Obligations may be sold, exchanged, waived, surrendered or released. No Secured Party shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Borrower Obligations or for the guarantee contained in this **Section 2** or any property subject thereto.

Section 2.4. Guarantee Absolute and Unconditional. Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Borrower Obligations and notice of or proof of reliance by any Secured Party upon the guarantee contained in this **Section 2** or acceptance of the guarantee contained in this **Section 2**; the Borrower Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this **Section 2**; and all dealings between the Borrower and any of the Guarantors, on the one hand, and the Secured Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this **Section 2**. Each Guarantor waives diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Borrower or any of the Guarantors with respect to the Borrower Obligations. Each Guarantor understands and agrees that the guarantee contained in this **Section 2** shall be construed as a continuing, absolute and unconditional guarantee of payment and performance without regard to (a) the validity or enforceability of the Loan Agreement or any other Loan Document, any of the Borrower Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by any Secured Party, (b) any defense, set-off or counterclaim (other than a defense of payment or performance hereunder) which may at any time be available to or be asserted by the Borrower or any other Person against any Secured Party, or (c) any other circumstance whatsoever (with or without notice to or knowledge of the Borrower or such Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrower for the Borrower Obligations, or of such Guarantor under the guarantee contained in this **Section 2**, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, any Secured Party may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against the Borrower, any other Guarantor or any other Person or against any collateral security or guarantee for the Borrower Obligations or any right of offset with respect thereto, and any failure by any Secured Party to make any such demand, to pursue such other rights or remedies or to collect any payments from the Borrower, any other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Borrower, any other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Guarantor of any obligation or

liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of any Secured Party against any Guarantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

Section 2.5. Reinstatement. The guarantee contained in this **Section 2** shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Obligations is rescinded or must otherwise be restored or returned by any Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payments had not been made.

Section 2.6. Payments. Each Guarantor hereby guarantees that payments pursuant to **Sections 2.1** and **6.4** hereof will be paid to the Collateral Agent without set-off or counterclaim in Dollars in immediately available funds at the office of the Collateral Agent specified in the Loan Agreement.

SECTION 3. REPRESENTATIONS AND WARRANTIES.

To induce the Collateral Agent and the Lenders to enter into the Loan Agreement and to induce the Lenders to make their respective loans to the Borrower thereunder, each Guarantor hereby represents and warrants to the Secured Parties that:

Section 3.1. Representations in Loan Agreement; Guarantor Representations. The representations and warranties set forth in Section 5 of the Loan Agreement as they relate to such Guarantor or to the Loan Documents to which such Guarantor is a party, each of which is hereby incorporated herein by reference and shall apply to each Guarantor *mutatis mutandis*, are true and correct, and the Secured Parties shall be entitled to rely on each of them as if they were fully set forth herein, provided that each reference in each such representation and warranty to the Borrower's knowledge shall, for the purposes of this **Section 3.1**, be deemed to be a reference to such Guarantor's knowledge.

SECTION 4. COVENANTS.

Each Guarantor covenants and agrees with the Secured Parties that, from and after the date of this Agreement until the Obligations shall have been paid in full:

Section 4.1. Covenants in Loan Agreement. Each Guarantor shall take, or shall refrain from taking, as the case may be, each action that is necessary to be taken or not taken, as the case may be, so that no Default or Event of Default is caused by the failure to take such action or to refrain from taking such action by such Guarantor or any of its Subsidiaries and each provision of the Loan Agreement that relates to such Guarantor (whether directly, indirectly, through the

Borrower's obligation to cause such Guarantor to take or not take actions or otherwise) is hereby incorporated herein by reference and shall apply to such Guarantor *mutatis mutandis* to the same extent as if the Loan Agreement had been executed by such Guarantor and such provisions had been made the direct obligations of such Guarantor.

Section 4.2. Further Documentation. At any time and from time to time, upon the written request of the Collateral Agent, and at the sole expense of such Guarantor, such Guarantor will promptly and duly execute and deliver such further instruments and documents and take such further actions as the Collateral Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted.

SECTION 5. THE COLLATERAL AGENT.

Section 5.1. Authority of Collateral Agent. Each Guarantor acknowledges that the rights and responsibilities of the Collateral Agent under this Agreement with respect to any action taken by the Collateral Agent or the exercise or non-exercise by the Collateral Agent of any request, judgment or

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other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Collateral Agent and the other Secured Parties, be governed by the Loan Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Collateral Agent and the Guarantors, the Collateral Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and no Guarantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

Section 5.2. Appointment of Co-Collateral Agents. At any time or from time to time, in order to comply with any Requirement of Law, the Collateral Agent may appoint another bank or trust company or one of more other persons, either to act as co-agent or agents on behalf of the Secured Parties with such power and authority as may be necessary for the effectual operation of the provisions hereof and which may be specified in the instrument of appointment (which may, in the discretion of the Collateral Agent, include provisions for indemnification and similar protections of such co-agent or separate agent).

SECTION 6. MISCELLANEOUS.

Section 6.1. Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 13.5 of the Loan Agreement.

Section 6.2. Notices. All notices, requests and demands to or upon the Secured Parties or any Guarantor hereunder shall be effected in the manner provided for in Section 13.6 of the Loan Agreement; *provided* that any such notice, request or demand to or upon any Guarantor shall be addressed to such Guarantor at its notice address set forth on **Schedule 1**.

Section 6.3. No Waiver by Course of Conduct; Cumulative Remedies. No Secured Party shall by any act (except by a written instrument pursuant to **Section 6.1**), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which such Secured Party would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

Section 6.4. Enforcement Expenses; Indemnification. (a) Each Guarantor agrees to pay or reimburse each Secured Party for all its costs and expenses incurred in collecting against such Guarantor under the guarantee contained in **Section 2** or otherwise enforcing or preserving any rights under this Agreement and the other Loan Documents to which such Guarantor is a party, including, without limitation, the fees and disbursements of counsel to each Secured Party.

(b) Each Guarantor agrees to pay, and to save the Secured Parties harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable in connection with any of the transactions contemplated by this Agreement.

(c) Each Guarantor agrees to pay, and to save the Secured Parties harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement to the extent the Borrower would be required to do so pursuant to Section 12 of the Loan Agreement.

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(d) The agreements in this Section shall survive repayment of the Borrower Obligations and all other amounts payable under the Loan Agreement and the other Loan Documents.

(e) Each Guarantor agrees that the provisions of Section 12.2 of the Loan Agreement are hereby incorporated herein by reference, *mutatis mutandis*, and each Secured Party shall be entitled to rely on each of them as if they were fully set forth herein.

Section 6.5. Successors and Assigns. This Agreement shall be binding upon the successors and assigns of each Guarantor and shall inure to the benefit of the Secured Parties and their successors and assigns; *provided* that no Guarantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Secured Parties.

Section 6.6. Set-Off. Each Guarantor hereby irrevocably authorizes each Secured Party at any time and from time to time while an Event of Default shall have occurred and be continuing, without notice to such Guarantor or any other Guarantor, any such notice being expressly waived by each Guarantor, to set-off and appropriate and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Secured Party to

or for the credit or the account of such Guarantor, or any part thereof in such amounts as such Secured Party may elect, against and on account of the obligations and liabilities of such Guarantor to such Secured Party hereunder and claims of every nature and description of such Secured Party against such Guarantor, in any currency, whether arising hereunder, under the Loan Agreement, any other Loan Document or otherwise, as such Secured Party may elect, whether or not any Secured Party has made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured. Each Secured Party shall notify such Guarantor promptly of any such set-off and the application made by such Secured Party of the proceeds thereof, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Secured Party under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which such Secured Party may have.

Section 6.7. Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

Section 6.8. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 6.9. Section Headings. The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

Section 6.10. Integration. This Agreement and the other Loan Documents represent the agreement of the Guarantors and the Secured Parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by any Secured Party relative to subject matter hereof and thereof not expressly set forth or referred to herein or in the other Loan Documents.

Section 6.11. Governing Law. SUBJECT TO COMPLIANCE WITH APPLICABLE NEVADA GAMING LAWS, THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

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Section 6.12. Submission to Jurisdiction; Waivers. Each Guarantor hereby irrevocably and unconditionally: (a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Guarantor at its address referred to in **Section 6.2** or at such other address of which the Secured Parties shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

Section 6.13. Acknowledgments. Each Guarantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(b) no Secured Party has any fiduciary relationship with or duty to any Guarantor arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Guarantors, on the one hand, and the Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Secured Parties or among the Guarantors and the Secured Parties.

Section 6.14. Additional Guarantors. Each Subsidiary of Valvino that is required to become a party to this Agreement pursuant to Section 6.11 of the Loan Agreement shall become a Guarantor for all purposes of this Agreement upon execution and delivery by such Subsidiary of an Assumption Agreement in the form of **Annex 1** hereto.

Section 6.15. Releases. (a) At such time as the Guarantor Obligations shall have been paid in full, this Agreement and all obligations (other than those expressly stated to survive such termination) of each Guarantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party.

(b) At the request and sole expense of the Borrower, a Guarantor shall be released from its obligations hereunder in the event that all the Capital Stock of such Guarantor shall be Disposed of in a transaction permitted by the Loan Agreement; *provided*, that the Borrower shall have delivered to the Secured Parties, at least ten Business Days prior to the date of the proposed release, a written request for release identifying the relevant Guarantor and the terms of the Disposition in reasonable detail, including the price thereof and any expenses in connection therewith, together with a certification by each Borrower stating that such transaction is in

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compliance with the Loan Agreement and the other Loan Documents and that the Proceeds of such Disposition will be applied in accordance therewith.

Section 6.16. WAIVER OF JURY TRIAL. (A) EACH GUARANTOR AND THE SECURED PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

Section 6.17. Regulatory Matters. Each Secured Party acknowledges and agrees that the approval by the applicable Nevada Gaming Authorities of this Agreement shall not act or be construed as the approval, either express or implied, for such Secured Party to take any actions or steps provided for in this Agreement for which prior approval of the Gaming Board is required, without first obtaining such prior and separate approval of the applicable Nevada Gaming Authorities to the extent then required applicable Nevada Gaming Laws.

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IN WITNESS WHEREOF, each of the undersigned has caused this Guarantee and Collateral Agreement to be duly executed and delivered as of the date first above written.

VALVINO LAMORE, LLC,
a Nevada limited liability company,

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: *Chief Executive Officer*

WYNN LAS VEGAS CAPITAL CORP.,
a Nevada corporation,

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: *President*

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PALO, LLC,
a Delaware limited liability company,

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: *Chief Executive Officer*

DESERT INN WATER COMPANY, LLC,
a Nevada limited liability company,

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

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WYNN RESORTS HOLDINGS, LLC,
a Nevada limited liability company,

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

WYNN DESIGN & DEVELOPMENT, LLC,
a Nevada limited liability company,

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

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WORLD TRAVEL, LLC,
a Nevada limited liability company,

By: Wynn Las Vegas, LLC,
a Nevada limited liability company,

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

LAS VEGAS JET, LLC,
a Nevada limited liability company,

By: Wynn Las Vegas, LLC,
a Nevada limited liability company,

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Chief Executive Officer

NOTICE ADDRESSES OF GUARANTORS

| Name of Guarantor | Notice Address |
|-------------------------------|---|
| Valvino Lamore, LLC | Valvino Lamore, LLC c/o Wynn Resorts Holdings, LLC 3145 Las Vegas Boulevard South Las Vegas, Nevada 89109 Attention: Marc Rubinstein Telecopy: (702) 733-4596 Telephone: (702) 733-4556 (with a copy to Irell & Manella LLP at its notice address first set forth below) |
| Wynn Las Vegas Capital Corp. | Wynn Las Vegas Capital Corp. c/o Wynn Resorts Holdings, LLC 3145 Las Vegas Boulevard South Las Vegas, Nevada 89109 Attention: Ron Kramer Telecopy: (702) 791-0167 Telephone: (702) 733-4123 (with a copy to Irell & Manella LLP at its notice address first set forth below) |
| Palo, LLC | Palo, LLC c/o Wynn Resorts Holdings, LLC 3145 Las Vegas Boulevard South Las Vegas, Nevada 89109 Attention: Marc Rubinstein Telecopy: (702) 733-4596 Telephone: (702) 733-4556 (with a copy to Irell & Manella LLP at its notice address first set forth below) |
| Wynn Resorts Holdings, LLC | Wynn Resorts Holdings, LLC 3145 Las Vegas Boulevard South Las Vegas, Nevada 89109 Attention: Ron Kramer Telecopy: (702) 791-0167 Telephone: (702) 733-4123 (with a copy to Irell & Manella LLP at its notice address first set forth below) |
| Desert Inn Water Company, LLC | Desert Inn Water Company, LLC c/o Wynn Resorts Holdings, LLC 3145 Las Vegas Boulevard South |

Las Vegas, Nevada 89109
Attention: Marc Rubinstein
Telecopy: (702) 733-4596
Telephone: (702) 733-4556

(with a copy to Irell & Manella LLP at its notice address first set forth below)

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Wynn Design & Development, LLC

Wynn Design & Development, LLC
c/o Wynn Resorts Holdings, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attention: Kenneth Wynn
Telecopy: (702) 733-4738
Telephone: (702) 733-4814 and
Attention: Todd Nisbet
Telecopy: (702) 733-4715
Telephone: (702) 733-4497

(with a copy to Irell & Manella LLP at its notice address first set forth below)

World Travel, LLC

World Travel, LLC
c/o Wynn Resorts Holdings, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attention: Marc Rubinstein
Telecopy: (702) 733-4596
Telephone: (702) 733-4556

(with a copy to Irell & Manella LLP at its notice address first set forth below)

Las Vegas Jet, LLC

Las Vegas Jet, LLC
c/o Wynn Resorts Holdings, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attention: Marc Rubinstein
Telecopy: (702) 733-4596
Telephone: (702) 733-4556

(with a copy to Irell & Manella LLP at its notice address first set forth below)

Notice Address of Irell & Manella LLP:

Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Attention: C. Kevin McGeehan, Esq.
Telecopy: (310) 282-5610
Telephone: (310) 203-7110

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ASSUMPTION AGREEMENT, dated as of _____, 200____, made by _____, a _____ (the "Additional Guarantor"), in favor of the Secured Parties (as defined below). All capitalized terms not defined herein shall have the meaning ascribed to them in such Loan Agreement.

RECITALS:

WHEREAS, Wynn Las Vegas, LLC (the "Borrower"), the Lenders and the Collateral Agent have entered into a Loan Agreement, dated as of October _____, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "Loan Agreement");

WHEREAS, in connection with the Loan Agreement, the Affiliates (other than the Additional Guarantor) have entered into the Guaranty Agreement, dated as of October _____, 2002 (as amended, supplemented or otherwise modified from time to time, the "FF&E Guaranty") in favor of the Secured Parties;

WHEREAS, the Loan Agreement requires the Additional Guarantor to become a party to the FF&E Guaranty; and

WHEREAS, the Additional Guarantor has agreed to execute and deliver this Assumption Agreement in order to become a party to the FF&E Guaranty;

NOW, THEREFORE, It Is Agreed:

Section 1. FF&E Guaranty. By executing and delivering this Assumption Agreement, the Additional Guarantor, as provided in Section 6.14 of the FF&E Guaranty hereby becomes a party to the FF&E Guaranty as a Guarantor thereunder with the same force and effect as if originally named therein as a Guarantor and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Guarantor thereunder. The information set forth in Annex 1-A hereto is hereby added to the information set forth in Schedules _____ to the FF&E Guaranty. The Additional Guarantor hereby represents

and warrants that each of the representations and warranties contained in Section 3 of the FF&E Guaranty is true and correct on and as the date hereof (after giving effect to this Assumption Agreement) as if made on and as of such date.

Section 2. GOVERNING LAW. SUBJECT TO COMPLIANCE WITH APPLICABLE NEVADA GAMING LAWS, THIS ASSUMPTION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, the undersigned has caused this Assumption Agreement to be duly executed and delivered as of the date first above written.

ANNEX I TO
FF&E Guaranty

[ADDITIONAL GUARANTOR]

By:

Name:
Title:

QuickLinks

[Exhibit 10.32](#)

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[RECITALS](#)

APNs: A portion of 162-16-511-004 and 162-16-510-001 through 006, inclusive

Recording requested by and recorded counterparts should be returned to:

Sony Ben-Moshe, Esq.
Latham & Watkins
701 B Street, Suite 2100
San Diego, California 92101

Mail Property Tax Statements to:

Valvino Lamore, LLC
Legal Department
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

MADE BY

**VALVINO LAMORE, LLC,
a Nevada limited liability company,
as Trustor,**

to

**Nevada Title Company,
a Nevada corporation,
as Trustee,
for the benefit of**

**DEUTSCHE BANK TRUST COMPANY AMERICAS,
IN ITS CAPACITY AS ADMINISTRATIVE AGENT FOR THE BENEFIT OF THE BANKS,
AS BENEFICIARY**

THIS INSTRUMENT IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS OF CLARK COUNTY, NEVADA UNDER THE NAMES OF VALVINO LAMORE, LLC AS "DEBTOR" AND DEUTSCHE BANK TRUST COMPANY AMERICAS AS "SECURED PARTY."

THIS INSTRUMENT IS A "CONSTRUCTION MORTGAGE" AS THAT TERM IS DEFINED IN SECTION 104.9334(8) OF THE NEVADA REVISED STATUTES AND SECURES AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT UPON LAND.

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SCHEDULE A DESCRIPTION OF THE LAND

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (hereinafter called "**Deed of Trust**") is made and effective as of July 2, 2002, by VALVINO LAMORE, LLC, a Nevada limited liability company (together with all successors and assigns of the Trust Estate (as hereinafter defined), "**Trustor**"), whose address is 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109, to Nevada Title Company, a Nevada corporation, whose address is 2500 North Buffalo, Suite 150, Las Vegas, Nevada 89128, as Trustee ("**Trustee**"), for the benefit of DEUTSCHE BANK TRUST COMPANY AMERICAS ("**Beneficiary**"), in its capacity as Administrative Agent under (i) that certain Amended and Restated Commitment Letter (as the same may be amended or modified from time to time, the "**Commitment Letter**") dated as of June 14, 2002, among Trustor, Beneficiary, Deutsche Bank Securities Inc., Bank of America, N.A., Banc of America Securities LLC, Bear Stearns Corporate Lending, Inc., Bear, Stearns & Co. Inc., Wynn Resorts Holdings, LLC, a Nevada limited liability company (formerly known as Wynn Resorts, LLC), and Wynn Las Vegas, LLC, a Nevada limited liability company ("**Borrower**"), and that certain Credit Agreement (as the same may be amended or modified from time to time, the "**Credit Agreement**") to be entered into in connection with and in furtherance of the Commitment Letter among Borrower, Beneficiary and the other parties signatory thereto (such other parties, together with Beneficiary and Deutsche Bank Securities Inc., the "**Banks**") pursuant to which the Banks have agreed to lend to Borrower an aggregate principal amount of \$1,000,000,000 and (ii) that certain Guaranty (as the same may be amended or modified from time to time, the "**Guaranty**") to be entered into in connection with and in furtherance of the Commitment Letter and the Credit Agreement by Trustor for the benefit of Beneficiary on behalf of the Banks pursuant to which Trustor will guaranty the payment and performance of all obligations of Borrower under the Credit Agreement and the other Loan Documents.

THIS INSTRUMENT SECURES FUTURE ADVANCES. THE MAXIMUM AMOUNT OF PRINCIPAL TO BE SECURED HEREBY IS \$1,000,000,000. THIS INSTRUMENT IS TO BE GOVERNED BY THE PROVISIONS OF NRS 106.300 THROUGH NRS 106.400 INCLUSIVE.

THE OBLIGATIONS SECURED HEREBY INCLUDE REVOLVING CREDIT OBLIGATIONS WHICH PERMIT BORROWING, REPAYMENT AND REBORROWING. INTEREST ON OBLIGATIONS SECURED HEREBY ACCRUES AT A RATE WHICH MAY FLUCTUATE FROM TIME TO TIME.

DEFINITIONS—As used in this Deed of Trust, the following terms have the meanings hereinafter set forth:

"**Accounts Receivable**" shall have the meaning set forth in Section 9-102 (NRS 104.9102) of the UCC for the term "account."

"**Appurtenant Rights**" means all and singular tenements, hereditaments, rights, reversions, remainders, development rights, privileges, benefits, easements (in gross or appurtenant), rights-of-way, gores or strips of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, and all appurtenances whatsoever and claims or demands of Trustor at law or in equity in any way belonging, benefiting, relating or appertaining to the Land, the airspace over the Land, the Improvements or any of the Trust Estate encumbered by this Deed of Trust, or which hereinafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Trustor.

"**Bankruptcy**" means, with respect to any Person, that (i) a court having jurisdiction in the Trust Estate shall have entered a decree or order for relief in respect of such Person in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order has not been stayed; or any other similar relief shall have

been granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against such Person, under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the Trust Estate for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over such Person, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of such Person, for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of

such Person, and any such event described in this clause (ii) shall continue for 60 days unless dismissed, bonded or discharged; or (iii) such Person shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or such Person shall make any assignment for the benefit of creditors, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable or if the fair market value of its assets does not exceed its aggregate liabilities; or (iv) such Person shall, or the Board of Directors of such Person (or any committee thereof) shall, adopt any resolution or otherwise authorize any action to approve any of the actions referred to in clause (iii) above.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute thereto.

"Business Day" means any day that is not a Saturday, a Sunday or a day on which banking institutions in the State of Nevada or the City of New York are not required to be open.

"Deed of Trust" means this Deed of Trust as it may be amended, increased or modified from time to time.

"Disbursement and Administration Agreement" means that certain Master Disbursement and Administration Agreement to be entered into on even date with the Credit Agreement, among Borrower, Beneficiary, the trustee for holders of mortgage notes to be issued in connection with the financing of the Project, a disbursement agent to be named therein and the other parties signatory thereto, as the same may hereafter be amended or modified in accordance with its terms and the terms of the Credit Agreement.

"Event of Default" has the meaning set forth in *Section 3.1* hereof.

"FF&E" means all furniture, fixtures, equipment, appurtenances and personal property now or in the future contained in, used in connection with, attached to, or otherwise useful or convenient to the use, operation, or occupancy of, or placed on, but unattached to, any part of the Land or Improvements whether or not the same constitutes real property or fixtures in the State of Nevada, including all removable window and floor coverings, all furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator and escalator plants, cooking facilities, vacuum cleaning systems, public address and communications systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings, fixtures, and building materials, all gaming and financial equipment, computer equipment, calculators, adding machines, gaming tables, video game and slot machines, and any other electronic equipment of every nature used or located on any part of the Land or Improvements, together with all Venetian blinds, shades, draperies, drapery and curtain rods, brackets, bulbs, cleaning apparatus, mirrors, lamps, ornaments, cooling apparatus and equipment, ranges and ovens, garbage disposals, dishwashers, mantels, and any and all such property which is at any time installed in, affixed to or placed upon the Land or Improvements.

"FF&E Financing Agreement" means any financing agreement entered into by Trustor (i) the proceeds of which are used by Trustor for the acquisition or lease of FF&E, (ii) pursuant to which Trustor grants to the lender or lessor thereunder a security interest in the FF&E so acquired or leased and (iii) which is permitted by the Credit Agreement and the Guaranty.

"Governmental Authority" means any agency, authority, board, bureau, commission, department, office, public entity, or instrumentality of any nature whatsoever of the United States federal or foreign government, any state, province or any city or other political subdivision or otherwise, whether now or hereafter in existence, or any officer or official thereof, including, without limitation, any Nevada Gaming Authority.

"Imposition" means any taxes, assessments, water rates, sewer rates, maintenance charges, other governmental impositions and other charges now or hereafter levied or assessed or imposed against the Trust Estate or any part thereof.

"Improvements" means (1) all the buildings, structures, facilities and improvements of every nature whatsoever now or hereafter situated on the Land or any real property encumbered hereby, and (2) all fixtures, machinery, appliances, goods, building or other materials, equipment, including without limitation all gaming equipment and devices, and all machinery, equipment, engines, appliances and fixtures for generating or distributing air, water, heat, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse or garbage; all wall-beds, wall-safes, built-in furniture and installations, shelving, lockers, partitions, doorstops, vaults, motors, elevators, dumb-waiters, awnings, window shades, Venetian blinds, light fixtures, fire hoses and brackets and boxes for the same, fire sprinklers, alarm, surveillance and security systems, computers, drapes, drapery rods and brackets, mirrors, mantels, screens, linoleum, carpets and carpeting, plumbing, bathtubs, sinks, basins, pipes, faucets, water closets, laundry equipment, washers, dryers, ice-boxes and heating units; all kitchen and restaurant equipment, including but not limited to silverware, dishes, menus, cooking utensils, stoves, refrigerators, ovens, ranges, dishwashers, disposals, water heaters, incinerators, furniture, fixtures and furnishings, communication systems, and equipment; all cocktail lounge supplies, including but not limited to bars, glassware, bottles and tables used in connection with the Land; all chaise lounges, hot tubs, swimming pool heaters and equipment and all other recreational equipment (computerized and otherwise), beauty and barber equipment, and maintenance supplies used in connection with the Land; all amusement rides and attractions attached to the Land, all specifically designed installations and furnishings, and all furniture, furnishings and personal property of every nature whatsoever now or hereafter owned or leased by Trustor or in which Trustor has any rights or interest and located in or on, or attached to, or used or intended to be used or which are now or may hereafter be appropriated for use on or in connection with the operation of the Land or any real or personal property encumbered hereby or any other Improvements, or in connection with any construction being conducted or which may be conducted thereon, and all extensions, additions, accessions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing, and all of the right, title and interest of Trustor in and to any such property, which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and improvements and a part of the real property hereby encumbered.

"Insolvent" means with respect to any person or entity, that such person or entity shall be deemed to be insolvent if it shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable and/or if the fair market value of its assets does not exceed its aggregate liabilities.

"Intangible Collateral" means (a) the rights to use all names and all derivations thereof now or hereafter used by Trustor in connection with the Land or Improvements, including, without limitation, the name "Le Reve", including any variations thereon, together with the goodwill associated therewith, and all names, logos, and designs used by Trustor, or in connection with the Land or in which Trustor

has rights, with the exclusive right to use such names, logos and designs wherever they are now or hereafter used in connection with the Project (or in connection with the marketing of the Project), and any and all other trade names, trademarks or service marks, whether or not registered, now or hereafter used in the operation of the Project, including, without limitation, any interest as a lessee, licensee or franchisee, and, in each case, together with the goodwill associated therewith; (b) subject to the absolute assignment contained herein, the Rents; (c) any and all books, records, customer lists, concession agreements, supply or service contracts, licenses, permits, governmental approvals (to the extent such licenses, permits and approvals may be pledged under applicable law), signs, goodwill, casino and hotel credit and charge records, supplier lists, checking accounts, safe deposit boxes (excluding the contents of such deposit boxes owned by persons other than Trustor and its subsidiaries), cash, instruments, chattel papers, including inter-company notes and pledges, documents, unearned premiums, deposits, refunds, including but not limited to income tax refunds, prepaid expenses, rebates, tax and insurance escrow and impound accounts, if any, actions and rights in action, and all other claims, including without limitation condemnation awards and insurance proceeds, and all other contract rights and general intangibles resulting from or used in connection with the operation and occupancy of the Trust Estate and the Improvements and in which Trustor now or hereafter has rights; and (d) general intangibles, vacation license resort agreements or other time share license or right to use agreements, including without limitation all rents, issues, profits, income and maintenance fees resulting therefrom, whether any of the foregoing is now owned or hereafter acquired.

"Land" means the real property situated in the County of Clark, State of Nevada, more specifically described in *Schedule A* attached hereto and incorporated herein by reference, including any after acquired title thereto.

"Legal Requirements" means all applicable restrictive covenants, applicable zoning and subdivision ordinances and building codes, all applicable health and Environmental Laws and regulations, all applicable gaming laws and regulations, and all other applicable laws, ordinances, rules, regulations, judicial decisions, administrative orders, and other requirements of any Governmental Authority having jurisdiction over Trustor, the Trust Estate and/or any Affiliate of Trustor, in effect either at the time of execution of this Deed of Trust or at any time during the term hereof, including, without limitation, all Environmental Laws and Nevada Gaming Laws.

"Notes" means, collectively, those certain Promissory Note(s) to be issued pursuant to the Credit Agreement, as the same may be amended or replaced from time to time in accordance with its terms.

"NRS" means the Nevada Revised Statutes as in effect from time to time.

"Obligations" means (i) the payment and performance by Borrower of each covenant and agreement of Borrower contained in the Commitment Letter, the Credit Agreement, the Notes and the other Loan Documents (including the Security Documents) and (ii) the payment and performance by Trustor of each covenant and agreement of Trustor contained in the Guaranty, this Deed of Trust and the other Loan Documents.

"Permitted Dispositions" means (a) the sale, transfer, lease or other disposition of assets in the Trust Estate, in the ordinary course of business, of inventory held in the ordinary course of business (b) the dispositions set forth in *Section 1.10* hereof and (c) other sales, transfers, leases or other dispositions of assets in the Trust Estate, including entering into Space Leases; *provided* that all applicable provisions of the Loan Documents, including the Guaranty, are complied with.

"Personal Property" has the meaning set forth in *Section 1.12* hereof.

"Proceeds" has the meaning assigned to it under the UCC and, in any event, shall include but not be limited to (i) any and all proceeds of any insurance (including without limitation property casualty and title insurance), indemnity, warranty or guaranty payable from time to time with respect to any of the Trust Estate; (ii) any and all proceeds in the form of accounts, security deposits, tax escrows (if

any), down payments (to the extent the same may be pledged under applicable law), collections, contract rights, documents, instruments, chattel paper, liens and security instruments, guarantees or general intangibles relating in whole or in part to the Project and all rights and remedies of whatever kind or nature Trustor may hold or acquire for the purpose of securing or enforcing any obligation due Trustor thereunder; (iii) any and all payments in any form whatsoever made or due and payable from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Trust Estate by any Governmental Authority; (iv) subject to the absolute assignment contained herein, the Rents or other benefits arising out of, in connection with or pursuant to any Space Lease of the Trust Estate; and (v) any and all other amounts from time to time paid or payable in connection with any of the Trust Estate; *provided, however*, that the Trustor is not authorized to dispose of any of the Trust Estate unless such disposition is a Permitted Disposition.

"Project" means the resort-hotel-casino-mall complex proposed to be constructed in Clark County, Nevada as described in the Plans and Specifications and as applicable to the Land and the Improvements, as such Plans and Specifications may be amended pursuant to the Disbursement and Administration Agreement.

"Rents" means all rents, room revenues, income, receipts, issues, profits, revenues and maintenance fees, room, food and beverage revenues, license and concession fees, income, proceeds and other benefits to which Trustor may now or hereafter be entitled from the Land, the Improvements, the Space Leases or any property encumbered hereby or any business or other activity conducted by Trustor at the Land or the Improvements.

"Space Leases" means any and all leases, subleases, lettings, licenses, concessions, operating agreements, management agreements, and all other agreements affecting the Trust Estate that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, that give any person the right to conduct its business on, or otherwise use, operate or occupy, all or any portion of the Land or Improvements and any leases, agreements or arrangements permitting anyone to enter upon or use any of the Trust Estate to extract or remove natural resources of any kind, together with all amendments, extensions, and renewals of the foregoing entered into in compliance with this Deed of Trust, together with all rental, occupancy, service, maintenance or any other similar agreements pertaining to use or occupation of, or the rendering of services at the Land, the Improvements or any part thereof.

"Space Lessee(s)" means any and all tenants, licensees, or other grantees of the Space Leases and any and all guarantors, sureties, endorsers or others having primary or secondary liability with respect to such Space Leases.

"Tangible Collateral" means all personal property, goods, equipment, supplies, building and other materials of every nature whatsoever and all other tangible personal property constituting a part or portion of the Project and/or used in the operation of the hotel, casino, restaurants, stores, parking facilities, observation tower and all other commercial operations on the Land or Improvements, including but not limited to communication systems, visual and electronic surveillance systems and transportation systems and not constituting a part of the real property subject to the real property lien of this Deed of Trust and including all property and materials stored therein in which Trustor has an interest and all tools, utensils, food and beverage, liquor, uniforms, linens, housekeeping and maintenance supplies, vehicles, fuel, advertising and promotional material, blueprints, surveys, plans and other documents relating to the Land or Improvements, and all construction materials and all furnishings, fixtures and equipment, including, but not limited to, all FF&E and all equipment and devices which are or are to be installed and used in connection with the operation of the Project, those items of furniture, fixtures and equipment which are to be purchased or leased by Trustor, machinery and any other item of personal property in which Trustor now or hereafter own or acquire an interest or right, and which are used or useful in the construction, operation, use and occupancy of the Project

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and all present and future right and interest of Trustor in and to any casino operator's agreement, license agreement or sublease agreement used in connection with the Land or the Improvements.

"Title Insurer" means Commonwealth Land Title Company.

"Trust Estate" means all of the property described in Granting Clauses (A) through (O) below, inclusive, and each item of property therein described, provided, however, that such term shall not include the property described in Granting Clause (P) below.

"UCC" means the Uniform Commercial Code in effect in the State of Nevada from time to time, NRS chapters 104 and 104A.

The following terms shall have the meaning assigned to such terms in the Disbursement and Administration Agreement:

Environmental Laws
Financing Agreements
Funding Agents
Plans and Specifications

The following terms shall have the meaning assigned to such terms in the Credit Agreement:

Affiliate
Closing Date
Lien
Loan Documents
Nevada Gaming Authority
Nevada Gaming Laws
Nevada Gaming License
Permitted Encumbrance
Permitted Liens
Person
Security Documents
VL Security Agreement

In addition, any capitalized terms used in this Deed of Trust which are not otherwise defined herein shall have the meaning ascribed to such terms in the Disbursement and Administration Agreement and, if not defined therein, the meaning ascribed to such terms in the Credit Agreement and, if not defined therein, the meaning ascribed to such terms in the Guaranty.

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W I T N E S E T H:

IN CONSIDERATION OF TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION; THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, AND FOR THE PURPOSE OF SECURING in favor of Beneficiary (1) the Obligations; (2) the payment of such additional loans or advances as hereafter may be made to Trustor (individually or jointly and severally with any other Person) or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; *provided, however*, that any and all future advances by Beneficiary to Trustor made for the improvement, protection or preservation of the Trust Estate, together with interest at the rate applicable to overdue principal set forth in the Credit Agreement, shall be automatically secured hereby unless such a note or instrument evidencing such advances specifically recites that it is not intended to be secured hereby and (3) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof or to protect the security hereof (including Protective Advances as such term is defined in *Section 4.2* hereof), together with interest thereon as herein provided, Trustor, in consideration of the premises, and for the purposes aforesaid, does hereby ASSIGN, BARGAIN, CONVEY, PLEDGE, RELEASE, HYPOTHECATE, WARRANT, AND TRANSFER WITH POWER OF SALE UNTO TRUSTEE IN TRUST FOR THE BENEFIT OF BENEFICIARY AND THE BANKS each of the following:

- (A) The Land;
- (B) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Improvements;
- (C) TOGETHER WITH all Appurtenant Rights;
- (D) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Tangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(E) TOGETHER WITH the Intangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(F) TOGETHER WITH (i) all the estate, right, title and interest of Trustor of, in and to all judgments and decrees, insurance proceeds, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of any of the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof, or to any Appurtenant Rights thereto, and Beneficiary is (subject to the terms hereof) hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittance therefor, and (subject to the terms hereof) to apply the same toward the payment of the indebtedness and other sums secured hereby, notwithstanding the fact that the amount owing thereon may not then be due and payable; (ii) all proceeds of any sales or other dispositions of the property or rights described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof whether voluntary or involuntary, provided, however, that the foregoing shall not be deemed to permit such sales, transfers, or other dispositions except as specifically permitted herein; and (iii) whether arising from any voluntary or involuntary disposition of the property described in Granting Clauses (A), (B), (C), (D) and (E), all Proceeds, products, replacements, additions, substitutions, renewals and accessions, remainders, reversions and after-acquired interest in, of and to such property;

(G) TOGETHER WITH the absolute assignment of any Space Leases or any part thereof that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, together with all of the following (including all "Cash Collateral" within the meaning of the Bankruptcy Law) arising from the Space Leases: (a) Rents (subject, however,

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to the aforesaid absolute assignment to Trustee for the benefit of Beneficiary and the conditional permission hereinbelow given to Trustor to collect the Rents), (b) all guarantees, letters of credit, security deposits, collateral, cash deposits, and other credit enhancement documents, arrangements and other measures with respect to the Space Leases, (c) all of Trustor's right, title, and interest under the Space Leases, including the following: (i) the right to receive and collect the Rents from the lessee, sublessee or licensee, or their successor(s), under any Space Lease(s) and (ii) the right to enforce against any tenants thereunder and otherwise any and all remedies under the Space Leases, including Trustor's right to evict from possession any tenant thereunder or to retain, apply, use, draw upon, pursue, enforce or realize upon any guaranty of any Space Lease; to terminate, modify, or amend the Space Leases; to obtain possession of, use, or occupy, any of the real or personal property subject to the Space Leases; and to enforce or exercise, whether at law or in equity or by any other means, all provisions of the Space Leases and all obligations of the tenants thereunder based upon (A) any breach by such tenant under the applicable Space Lease (including any claim that Trustor may have by reason of a termination, rejection, or disaffirmance of such Space Lease pursuant to any Bankruptcy Law) and (B) the use and occupancy of the premises demised, whether or not pursuant to the applicable Space Lease (including any claim for use and occupancy arising under landlord-tenant law of the State of Nevada or any Bankruptcy Law). Permission is hereby given to Trustor, so long as no Event of Default has occurred and is continuing hereunder, to collect and use the Rents, as they become due and payable, but not more than one (1) month in advance thereof. Upon the occurrence of an Event of Default, the permission hereby given to Trustor to collect the Rents shall automatically terminate, but such permission shall be reinstated upon a cure or waiver of such Event of Default. Beneficiary shall have the right, at any time and from time to time, to notify any Space Lessee of the rights of Beneficiary as provided by this section;

Notwithstanding anything to the contrary contained herein, the foregoing provisions of this Paragraph (G) shall not constitute an assignment for purposes of security but shall constitute an absolute and present assignment of the Rents to Beneficiary, subject, however, to the conditional license given to Trustor to collect and use the Rents as hereinabove provided; and the existence or exercise of such right of Trustor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Trustor;

(H) TOGETHER WITH all of Trustor's right, title and interest in and to any and all Plans and Specifications and all maps, plans, specifications, surveys, studies, tests, reports, data and drawings relating to the development of the Land or the Project and the construction of the Improvements, including, without limitation, all marketing plans, feasibility studies, soils tests, design contracts and all contracts and agreements of Trustor relating thereto including, without limitation, architectural, structural, mechanical and engineering plans and specifications, studies, data and drawings prepared for or relating to the development of the Land or the Project or the construction, renovation or restoration of any of the Improvements or the extraction of minerals, sand, gravel or other valuable substances from the Land and purchase contracts or any agreement granting Trustor a right to acquire any land situated within Clark County, Nevada;

(I) TOGETHER WITH, to the extent permitted by applicable law, all of Trustor's right, title, and interest in and to any and all licenses, permits, variances, special permits, franchises, certificates, rulings, certifications, validations, exemptions, filings, registrations, authorizations, consents, approvals, waivers, orders, rights and agreements (including, without limitation, options, option rights, contract rights now or hereafter obtained by Trustor from any Governmental Authority having or claiming jurisdiction over the Land, the FF&E, the Project, or any other element of the Trust Estate or providing access thereto, or the operation of any business on, at, or from the Land including, without limitation, any liquor or Nevada Gaming Licenses (except for any registrations, licenses, findings of suitability or approvals issued by the Nevada Nevada Gaming Authorities or any other liquor or gaming licenses which are non-assignable); *provided*, that upon an Event of Default hereunder or under the

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Credit Agreement or under the Guaranty, if Beneficiary is not qualified under the Nevada Gaming Laws to hold such Nevada Gaming Licenses, then Beneficiary may designate an appropriately qualified third party to which an assignment of such Nevada Gaming Licenses can be made in compliance with the Nevada Gaming Laws;

(J) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to all water stock, water permits and other water rights relating to the Land;

(K) TOGETHER WITH all oil and gas and other mineral rights, if any, in or pertaining to the Land and all royalty, leasehold and other rights of Trustor pertaining thereto;

(L) TOGETHER WITH any and all monies and other property, real or personal, which may from time to time be subjected to the lien hereof by Trustor or by anyone on its behalf or with its consent, or which may come into the possession or be subject to the control of Trustee or Beneficiary pursuant to this Deed of Trust, the Commitment Letter, the Credit Agreement, the Guaranty or any other Loan Document (including any Security Document), including, without limitation, any Protective Advances (as defined in *Section 4.2* hereof) under this Deed of Trust; and all of Trustor's right, title, and interest in and to all extensions,

improvements, betterments, renewals, substitutes for and replacements of, and all additions, accessions, and appurtenances to, any of the foregoing that Trustor may subsequently acquire or obtain by any means, or construct, assemble, or otherwise place on any of the Trust Estate, and all conversions of any of the foregoing; it being the intention of Trustor that all property hereafter acquired by Trustor and required by the Commitment Letter, the Credit Agreement, the Guaranty, any other Loan Document (including any Security Document) or this Deed of Trust to be subject to the lien of this Deed of Trust or intended so to be shall forthwith upon the acquisition thereof by Trustor be subject to the lien of this Deed of Trust as if such property were now owned by Trustor and were specifically described in this Deed of Trust and granted hereby or pursuant hereto, and Trustee and Beneficiary are hereby authorized, subject to Nevada Gaming Laws and other applicable laws, to receive any and all such property as and for additional security for the obligations secured or intended to be secured hereby. Trustor agrees to take any action as may reasonably be necessary to evidence and perfect such liens or security interests, including, without limitation, the execution of any documents necessary to evidence and perfect such liens or security interests;

(M) TOGETHER WITH, to the extent permitted by applicable laws, any and all Accounts Receivable and all royalties, earnings, income, proceeds, products, rents, revenues, reversions, remainders, issues, profits, avails, production payments, and other benefits directly or indirectly derived or otherwise arising from any of the foregoing, all of which are hereby assigned to Beneficiary, who, except as otherwise expressly provided in this Deed of Trust (including the provisions of Section 1.13 hereof), is authorized to collect and receive the same, to give receipts and acquittances therefor and to apply the same to the Obligations secured hereunder, whether or not then due and payable;

(N) TOGETHER WITH Proceeds of the foregoing property described in Granting Clauses (A) through (M);

(O) TOGETHER WITH Trustor's rights further to assign, sell, lease, encumber or otherwise transfer or dispose of the property described in Granting Clauses (A) through (N) inclusive, above, for debt or otherwise; and

(P) EXPRESSLY EXCLUDING, HOWEVER, any assets expressly excluded from the definition of "VL Collateral" in the Guaranty.

Trustor, for itself and its successors and assigns, covenants and agrees to and with Trustee that, at the time or times of the execution of and delivery of these presents or any instrument of further assurance with respect thereto, Trustor has good right, full power and lawful authority to assign, grant, convey, warrant, transfer, bargain or sell its interests in the Trust Estate in the manner and form as aforesaid, and that the Trust Estate is free and clear of all liens and encumbrances whatsoever, except

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Permitted Liens, and Trustor shall warrant and forever defend the above-bargained property in the quiet and peaceable possession of Trustee and its successors and assigns against all and every person or persons lawfully or otherwise claiming or to claim the whole or any part thereof, except for Permitted Liens. Trustor agrees that any greater title to the Trust Estate hereafter acquired by Trustor during the term hereof shall be automatically subject hereto.

ARTICLE ONE

COVENANTS OF TRUSTOR

The Beneficiary and the Banks have been induced to enter into the Commitment Letter, the Credit Agreement, the Guaranty and the other Loan Documents and to make advances of loans thereunder to Borrower on the basis of the following material covenants, all agreed to by Trustor:

1.1 **Performance of Financing Agreements.** Trustor shall perform, observe and comply with each and every provision hereof, and with each and every provision contained in the Guaranty and the other Financing Agreements and shall promptly pay to the respective Funding Agents, when payment shall become due, the principal with interest thereon and all other sums required to be paid by Trustor under this Deed of Trust, the Guaranty and the other Financing Agreements.

1.2 **General Representations, Covenants and Warranties.** Trustor represents, covenants and warrants that: (a) Trustor has good and marketable title to an indefeasible fee estate in the Land, free and clear of all encumbrances except Permitted Encumbrances, and that it has the right to hold, occupy and enjoy its interest in the Trust Estate, and has good right, full power and lawful authority to subject the Trust Estate to the Lien of this Deed of Trust and pledge the same as provided herein and Beneficiary may at all times peaceably and quietly enter upon, hold, occupy and enjoy the entire Trust Estate in accordance with the terms hereof; (b) Trustor is not Insolvent and no bankruptcy or insolvency proceedings are pending or contemplated by or, to the best of Trustor's knowledge, threatened against Trustor; (c) all costs arising from construction of any Improvements, the performance of any labor and the purchase of all Tangible Collateral and Improvements have been or shall be paid when due (subject to the provisions of the Disbursement and Administration Agreement, the Credit Agreement, the Guaranty and this Deed of Trust); (d) the Land has direct access for ingress and egress to dedicated street(s); (e) Trustor shall at all times conduct and operate the Trust Estate in a manner so as not to lose, or permit its affiliate to lose, the right to conduct gaming activities at the Project; (f) no material part of the Trust Estate has been damaged, destroyed, condemned or abandoned, other than those portions of the Trust Estate that have been the subject of condemnation proceedings that have resulted in the conveyance of such portion of the Trust Estate to the Trustor; (g) no part of the Trust Estate is the subject of condemnation proceedings, other than condemnation proceedings to convey Land to the Trustor, and Trustor has no knowledge of any contemplated or pending condemnation proceeding with respect to any portion of the Trust Estate other than condemnation proceedings to convey Land to the Trustor; and (h) Trustor acknowledges and agrees that it presently may use, and in the past may have used, one or more of the trade or fictitious names, "Le Reve", "Wynn Collection", "Wynn Resorts" and "Desert Inn" and in each case variations thereof (collectively, the "**Enumerated Names**") in connection with the operation of the business at the Trust Estate, and Trustor further represents and warrants that the Enumerated Names are the only such trade or fictitious names Trustor has so used. For all purposes under this Deed of Trust it shall be deemed that the term "Trustor" includes all trade or fictitious names that Valvino Lamore, LLC (or any successor or assign thereof) now or hereafter uses, or has in the past used, including, without limitation, the Enumerated Names, with the same force and effect as if this Deed of Trust had been executed in all such names (in addition to "Valvino Lamore, LLC").

1.3 **Compliance with Legal Requirements.** Except as provided in the Guaranty, Trustor shall promptly, fully, and faithfully comply in all material respects with all Legal Requirements and shall

cause all portions of the Trust Estate and its use and occupancy to fully comply in all material respects with Legal Requirements at all times, whether or not such compliance requires work or remedial measures that are ordinary or extraordinary, foreseen or unforeseen, structural or nonstructural, or that interfere with the use or enjoyment of the Trust Estate.

1.4 **Taxes.** Except as otherwise permitted by the Guaranty, (a) Trustor shall pay all Impositions as they become due and payable and shall deliver to Beneficiary promptly upon Beneficiary's request, evidence satisfactory to Beneficiary that the Impositions have been paid or are not delinquent; (b) Trustor shall not suffer to exist, permit or initiate the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Land as a single lien, except as may be required by law; and (c) in the event of the passage of any law deducting from the value of real property for the purposes of taxation any lien thereon, or changing in any way the taxation of deeds of trust or obligations secured thereby for state or local purposes, or the manner of collecting such taxes and imposing a tax, either directly or indirectly, on this Deed of Trust, the Guaranty or the other Loan Documents to which Trustor is a party, Trustor shall pay all such taxes.

1.5 **Insurance.**

(a) **Hazard Insurance Requirements and Proceeds.**

(1) *Hazard Insurance.* Trustor shall at its sole expense obtain for, deliver to, assign and maintain for the benefit of Beneficiary, during the term of this Deed of Trust, insurance policies insuring the Trust Estate and liability insurance policies, all in accordance with the requirements of the Guaranty. Trustor shall pay promptly when due any premiums on such insurance policies and on any renewals thereof. In the event of the foreclosure of this Deed of Trust or any other transfer of title to the Trust Estate in partial or complete extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of Beneficiary in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

(2) *Handling of Proceeds.* All Proceeds from any insurance policies shall be collected, held, handled and disbursed in accordance with the provisions of the Credit Agreement, the Guaranty and the Disbursement and Administration Agreement (while in effect). All proceeds of insurance allocable to Trustor, as owner of the Land, and attributable to business interruption insurance shall be collected, held, handled and disbursed in accordance with the provisions of the Credit Agreement, the Guaranty and the Disbursement and Administration Agreement. Any such proceeds disbursed to Beneficiary shall be applied to pay amounts then due and payable under this Deed of Trust. The balance shall be retained by Beneficiary or its designee in an interest bearing or other investment account approved by Beneficiary, which account Trustor hereby pledges to Beneficiary to secure the Obligations. Disbursements shall be permitted from such account to pay expenses reasonably incurred by Trustor in owning and operating the Trust Estate, as reasonably approved by Beneficiary.

(b) **Compliance with Insurance Policies.** Trustor shall not violate or permit to be violated any of the conditions or provisions of any policy of insurance required by the Guaranty or this Deed of Trust and Trustor shall so perform and satisfy the requirements of the companies writing such policies that, at all times, companies of good standing shall be willing to write and/or continue such insurance. Trustor further covenants to promptly send to Beneficiary all notices relating to any violation of such policies or otherwise affecting Trustor's insurance coverage or ability to obtain and maintain such insurance coverage.

1.6 **Condemnation.** Beneficiary is hereby authorized, at its option, to commence, appear in and prosecute in its own or Trustor's name any action or proceeding relating to any condemnation and to

settle or compromise any claim in connection therewith, and Trustor hereby appoints Beneficiary as its attorney-in-fact to take any action in Trustor's name pursuant to Beneficiary's rights hereunder. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Trust Estate or any portion thereof, Trustor shall notify the Trustee and Beneficiary of the pendency of such proceedings. Trustor from time to time shall execute and deliver to Beneficiary all instruments requested by it to permit such participation; provided, however, that such instruments shall be deemed as supplemental to the foregoing grant of permission to Trustee and Beneficiary, and unless otherwise required, the foregoing permission shall, without more, be deemed sufficient to permit Trustee and/or Beneficiary to participate in such proceedings on behalf of Trustor. All such compensation awards, damages, claims, rights of action and Proceeds, and any other payments or relief, and the right thereto, are, whether paid to Beneficiary or Trustor or a third party trustee, included in the Trust Estate. Beneficiary, after deducting therefrom all its expenses, including reasonable attorneys fees, shall apply all Proceeds paid directly to it in accordance with the provisions of the Credit Agreement and the Guaranty. All Proceeds paid directly to the Trustor shall be applied in accordance with the Guaranty and the Disbursement and Administration Agreement. To the extent that any condemnation proceeds are not required to be applied towards restoration of the improvements upon the Land, then Beneficiary shall have the right to apply said condemnation proceeds towards repayment of the Obligations. Trustor hereby waives any rights it may have under NRS 37.115, as amended or recodified from time to time.

1.7 **Care of Trust Estate.**

(a) Trustor shall preserve and maintain the Trust Estate in good condition and repair. Trustor shall not permit, commit or suffer to exist any waste, impairment or deterioration of the Trust Estate or of any part thereof that in any manner materially impairs Beneficiary's security hereunder and shall not take any action which will increase the risk of fire or other hazard to the Trust Estate or to any part thereof.

(b) Except for Permitted Dispositions, no material part of the Improvements or Tangible Collateral that are part of the Trust Estate shall be removed, demolished or materially altered, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld or delayed. Trustor shall have the right, without such consent, to remove and dispose of free from the lien of this Deed of Trust any part of the Improvements or Tangible Collateral that are part of the Trust Estate as from time to time may become worn out or obsolete or otherwise not useful in connection with the operation of the Trust Estate, provided that either (i) such removal or disposition does not materially affect the value of the Trust Estate or (ii) prior to or promptly following such removal, any such property shall be replaced with other property of substantially equal utility and of a value at least substantially equal to that of the replaced property when first acquired and free from any security interest of any other person (subject only to Permitted Liens), and by such removal and replacement Trustor shall be deemed to have subjected such replacement property to the lien of this Deed of Trust.

(c) Notwithstanding the foregoing provisions of this Section 1.7, the Trustor may develop the Project in the manner contemplated by the Disbursement and Administration Agreement, the Credit Agreement, the Guaranty and the other Financing Agreements.

1.8 **Leases.**

(a) Trustor represents, warrants and covenants that:

(i) except for the assignment effected hereby and in the other Financing Agreements, Trustor has not executed any assignment or pledge of any of Space Leases, the Rents, or of Trustor's right, title and interest in the same; and

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(ii) this Deed of Trust does not and will not constitute a violation or default under any Space Lease, and is and shall at all times constitute a valid lien on Trustor's interests in the Space Leases.

(b) Trustor shall not enter into any Space Lease or any modifications or amendments to any Space Lease, either orally or in writing, unless such Space Lease complies with the requirements of the Credit Agreement and the Guaranty.

(c) After an Event of Default, upon the request of Administrative Agent Trustor shall deliver to Beneficiary executed copies of all Space Leases.

1.9 *Further Encumbrance.*

(a) Trustor covenants that at all times prior to the discharge of the Obligations, except for Permitted Liens and Permitted Dispositions, Trustor shall neither make nor suffer to exist, nor enter into any agreement for, any sale, assignment, exchange, mortgage, transfer, Lien, hypothecation or encumbrance of all or any part of the Trust Estate, including, without limitation, the Rents. As used herein, "transfer" includes the actual transfer or other disposition, whether voluntary or involuntary, by law, or otherwise, except those transfers specifically permitted herein, provided, however, that "transfer" shall not include the granting of utility or other beneficial easements with respect to the Trust Estate which have been or are granted by Trustor and are reasonably necessary to the construction, maintenance or operation of the Project.

(b) Any Permitted Lien consisting of the lien of a deed of trust which is junior to the lien of the Loan Documents (including the Security Documents) (a "Subordinate Deed of Trust") shall be permitted hereunder so long as there shall have been delivered to Beneficiary, not less than thirty (30) days prior to the date thereof, a copy thereof which shall contain express covenants in form and substance satisfactory to Beneficiary to the effect that: (i) the Subordinate Deed of Trust is in all respects subject and subordinate to this Deed of Trust; (ii) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Trust Estate shall be named as a party defendant nor shall any action be taken with respect to the Trust Estate which would terminate any occupancy or tenancy of the Trust Estate, or any portion thereof, without the consent of Beneficiary; (iii) any Rents, if collected through a receiver or by the holder of the Subordinate Deed of Trust, shall be applied first to the obligations secured by this Deed of Trust, including principal and interest due and owing on or to become due and owing on the Notes, the Guaranty or the other Loan Documents, and then to the payment of maintenance expenses, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operation, and maintenance of the Trust Estate; and (iv) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust, prompt notice of the commencement thereof shall be given to Beneficiary.

(c) Trustor agrees that in the event the ownership of the Trust Estate or any part thereof becomes vested in a person other than Trustor, Beneficiary may, without notice to Trustor, deal in any way with such successor or successors in interest with reference to this Deed of Trust, the Notes, the Guaranty, the other Loan Documents and other Obligations hereby secured without in any way vitiating or discharging Trustor's or any guarantor's, surety's or endorser's liability hereunder or upon the obligations hereby secured. No sale of the Trust Estate and no forbearance to any person with respect to this Deed of Trust and no extension to any person of the time for payment of the Obligations, and other sums hereby secured given by Beneficiary shall operate to release, discharge, modify, change or affect the original liability of Trustor, or such guarantor, surety or endorser either in whole or in part.

(d) Trustor covenants and agrees to comply with all of the terms and conditions set forth in any FF&E Financing Agreement. If Trustor shall fail to make any payment required to be made by it under any FF&E Financing Agreement, except where Trustor is contesting such payment in good faith, then

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the Beneficiary shall be entitled to make such payment on Trustor's behalf and any and all sums so expended by the Beneficiary shall be secured by this Deed of Trust and shall be repaid by Trustor upon demand, together with interest thereon at the interest at the rate applicable to overdue principal set forth in the Credit Agreement from the date of advance.

1.10 *Partial Releases of Trust Estate.*

(a) Trustor may from time to time make a Permitted Disposition including, but not limited to, (i) transferring a portion of the Trust Estate (including any temporary taking) to any person legally empowered to exercise the power of eminent domain, or pursuant to dedication agreements that are now in effect or entered into in the future in connection with the development of the Project, (ii) granting utility easements reasonably necessary or desirable for the construction and/or operation of the Project, which grant or transfer is for the benefit of the Trust Estate, or (iii) transferring a portion of the Trust Estate as permitted pursuant to the Disbursement and Administration Agreement. In each such case, Beneficiary shall execute and deliver any instruments necessary or appropriate to effectuate or confirm any such transfer or grant, free from the lien of this Deed of Trust, *provided, however*, that Beneficiary shall execute a lien release or subordination agreement, as appropriate, for matters described in clauses (i) and (iii) above only if:

(A) Such transfer, grant or release is not prohibited by the Credit Agreement or the Guaranty and all conditions precedent contained in the Credit Agreement and the Guaranty for such transfer, grant or release, if any, shall have been satisfied;

(B) Beneficiary and Trustee shall have received a counterpart of the instrument pursuant to which such transfer, grant or release is to be made, and each instrument which Beneficiary or Trustee is requested to execute in order to effectuate or confirm such transfer, grant or release;

(C) In the case of a transfer to a person legally empowered to exercise the power of eminent domain, which transfer involves property whose value is greater than \$5,000,000, Beneficiary and Trustee shall have received an opinion of counsel, who may be counsel to Trustor, to the effect that the assignee or grantee of the portion of the Trust Estate being transferred is legally empowered to take such portion under the power of eminent domain; and

(D) Beneficiary and Trustee shall have received such other instruments, certificates (including evidence of authority) and opinions as Beneficiary or Trustee may reasonably request, including, but not limited to, opinions that the proposed release is permitted by this *Section 1.10*.

(b) Any consideration received for a transfer to any person empowered to exercise the right of eminent domain shall be subject to *Section 1.6* hereof.

1.11 **Further Assurances.**

(a) At its sole cost and without expense to Trustee or Beneficiary, and subject in all events to compliance with the Nevada Gaming Laws and other applicable Legal Requirements, Trustor shall do, execute, acknowledge and deliver any and all such further acts, deeds, conveyances, notices, requests for notices, financing statements, continuation statements, certificates, assignments, notices of assignments, agreements, instruments and further assurances, and shall mark any chattel paper, deliver any chattel paper or instruments to Beneficiary and take any other actions that are necessary, prudent, or reasonably requested by Beneficiary or Trustee to perfect or continue the perfection and first priority of Beneficiary's security interest in the Trust Estate, to protect the Trust Estate against the rights, claims, or interests of third persons other than holders of Permitted Liens or to effect the purposes of this Deed of Trust, including the security agreement and the absolute assignment of Rents contained herein, or for the filing, registering or recording thereof.

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(b) Trustor shall forthwith upon the execution and delivery of this Deed of Trust, and thereafter from time to time, cause this Deed of Trust and each instrument of further assurance to be filed, indexed, registered, recorded, given or delivered in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the title of Trustee and/or Beneficiary to, the Trust Estate.

1.12 **Security Agreement and Financing Statements.** Trustor (as debtor) hereby grants to Beneficiary (as creditor and secured party) a present and future security interest in all Tangible Collateral, Intangible Collateral, FF&E, Improvements, all other personal property now or hereafter owned or leased by Trustor or in which Trustor has or will have any interest, to the extent that such property constitutes a part of the Trust Estate (whether or not such items are stored on the premises or elsewhere), Proceeds of the foregoing comprising a portion of the Trust Estate and all proceeds of insurance policies and consideration awards arising therefrom and all proceeds, products, substitutions, and accessions therefor and thereto, subject to Beneficiary's rights to treat such property as real property as herein provided (collectively, the "**Personal Property**"). Trustor shall execute and/or deliver any and all documents and writings, including without limitation financing statements pursuant to the UCC, as may be necessary or prudent to preserve and maintain the priority of the security interest granted hereby on property which may be deemed subject to the foregoing security agreement or as Beneficiary may reasonably request, and shall pay to Beneficiary on demand any reasonable expenses incurred by Beneficiary in connection with the preparation, execution and filing of any such documents. Trustor hereby authorizes and empowers Beneficiary to file, on Trustor's behalf, all financing statements and refiling and continuations thereof as advisable to create, preserve and protect said security interest. Trustor acknowledges and agrees that it is not authorized to, and will not, authenticate or file, or authorize the filing of, any financing statements or other record with respect to the Personal Property (including any amendments thereto, or continuation or termination statements thereof), except as permitted by the Guaranty. Trustor approves and ratifies any filing or recording of records made by or on behalf of Beneficiary in connection with the perfection of the security interest in favor of Beneficiary hereunder. This Deed of Trust constitutes both a real property deed of trust and a "security agreement," within the meaning of the UCC, and the Trust Estate includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Trust Estate. Trustor by executing and delivering this Deed of Trust has granted to Beneficiary, as security of the Obligations, a security interest in the Trust Estate.

(a) **Fixture Filing.** Without in any way limiting the generality of the immediately preceding paragraph or of the definition of the Trust Estate, this Deed of Trust constitutes a fixture filing under Sections 9-334 and 9-502 of the UCC (NRS 104.9334 and 104.9502). For such purposes, (i) the "debtor" is Trustor and its address is the address given for it in the initial paragraph of this Deed of Trust; (ii) the "secured party" is Beneficiary, and its address for the purpose of obtaining information is the address given for it in the initial paragraph of this Deed of Trust; (iii) the real estate to which the fixtures are or are to become attached is Trustor's interest in the Land; and (iv) the record owner of such real estate is Trustor.

(b) **Remedies.** This Deed of Trust shall be deemed a security agreement as defined in the UCC and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall include any or all of (i) those prescribed herein, and (ii) those available under applicable law, and (iii) those available under the UCC, all at Beneficiary's sole election. In addition, a photographic or other reproduction of this Deed of Trust shall be sufficient as a financing statement for filing wherever filing may be necessary to perfect or continue the security interest granted herein.

(c) **Derogation of Real Property.** It is the intention of the parties that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in anyway derogating from or impairing the express declaration and intention of the

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parties hereto as hereinabove stated that everything used in connection with the production of income from the Trust Estate and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real property encumbered by this Deed of Trust irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. It is the intention of the parties that the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Trustor's interest as lessors in any present or future Space Lease or rights to Rents, shall never be construed as in anyway altering any of the rights of Beneficiary as determined by this Deed of Trust or impugning the priority of Beneficiary's real property lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of Beneficiary in the event any court or judge shall at any time hold with respect to the matters set forth in the foregoing clauses (1), (2) and (3) that notice of Beneficiary's priority of interest to be effective against a particular class of persons, including but not limited to, the federal government and any subdivisions or entity of the federal government, must be filed in the UCC records.

(d) **Priority; Permitted Financing of Tangible Collateral.** All Personal Property of any nature whatsoever which is subject to the provisions of this security agreement shall be purchased or obtained by Trustor in its name and free and clear of any lien or encumbrance, except for Permitted Liens

and the lien hereof, for use only in connection with the business and operation of the Project, and shall be and at all times remain free and clear of any lease or similar arrangement, chattel financing, installment sale agreement, security agreement and any encumbrance of like kind, so that Beneficiary's security interest shall attach to and vest in Trustor for the benefit of Beneficiary, with the priority herein specified, immediately upon the installation or use of the Personal Property at the Land and Trustor warrants and represents that Beneficiary's security interest in the Personal Property is a validly attached and binding security interest, properly perfected and prior to all other security interests therein except as otherwise permitted in this Deed of Trust. The foregoing shall not be construed as limiting Trustor's rights to transfer Personal Property pursuant to Permitted Dispositions or to obtain releases of Personal Property from the Lien of this Deed of Trust pursuant to *Section 1.10* hereof.

(e) **Preservation of Contractual Rights of Collateral.** Trustor shall, prior to delinquency, default, or forfeiture, perform all obligations and satisfy all material conditions required on its part to be satisfied to preserve its rights and privileges under any contract, lease, license, permit, or other authorization (i) under which it holds any Tangible Collateral or (ii) which constitutes part of the Intangible Collateral, except where Trustor is contesting such obligations in good faith.

(f) **Removal of Collateral.** Except for damaged or obsolete Tangible Collateral which is either no longer usable or which is removed temporarily for repair or improvement or removed for replacement on the Trust Estate with Tangible Collateral of similar function or as otherwise permitted herein, none of the Tangible Collateral shall be removed from the Trust Estate without Beneficiary's prior written consent.

(g) **Change of Name.** Trustor shall not change its corporate (or other entity) or business name, or do business within the State of Nevada under any name other than such name, or any trade name(s) other than those as to which Trustor gives prior written notice to Beneficiary of its intent to use such trade names, or any other business names (if any) specified in the financing statements delivered to Beneficiary for filing in connection with the execution hereof, without, in each case, providing Beneficiary with the additional financing statement(s) and any other similar

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documents deemed reasonably necessary by Beneficiary to assure that its security interest remains perfected and of undiminished priority in all such Personal Property notwithstanding such name change.

1.13 **Assignment of Leases and Rents.** Subject to Nevada Gaming Laws and other applicable Legal Requirements, the assignment of Leases and Rents set out above in Granting Clause (G) shall constitute an absolute and present assignment to Beneficiary, subject to the license herein given to Trustor to collect the Rents, and shall be fully operative without any further action on the part of any party, and specifically Beneficiary shall be entitled upon the occurrence of an Event of Default hereunder to all Rents and to enter upon the Land and the Improvements to collect such Rents, provided, however, that Beneficiary shall not be obligated to take possession of the Trust Estate, or any portion thereof. The absolute assignment contained in Granting Clause (G) shall not be deemed to impose upon Beneficiary any of the obligations or duties of Trustor provided in any such Space Lease (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease in the event that any lessee shall have been joined as a party defendant in any action to foreclose this Deed of Trust and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Trust Estate or any part thereof).

1.14 **Expenses.**

(a) Trustor shall pay when due and payable all out-of-pocket costs, including without limitation, those reasonable appraisal fees, recording fees, taxes, abstract fees, title policy fees, escrow fees, attorneys' and paralegal fees, travel expenses, fees for inspecting architect(s) and engineer(s) and all other costs and expenses of every character which may hereafter be incurred by Beneficiary or any assignee of Beneficiary in connection with the preparation and execution of the Guaranty and the other Loan Documents (including the Security Documents) to which Trustor is a party or instruments, agreements or documents of further assurance, the funding of the indebtedness secured hereby, and the enforcement of the Guaranty or any other Loan Document (including any Security Document) to which Trustor is a party. Other than costs associated with the enforcement of any Loan Document, all such costs shall be itemized in reasonable detail; and

(b) Trustor shall, upon demand by Beneficiary, reimburse Beneficiary or any assignee of Beneficiary for all such reasonable expenses which have been incurred or which shall be incurred by it; and

(c) Trustor shall indemnify Beneficiary with respect to any transaction or matter in any way connected with any portion of the Trust Estate, this Deed of Trust, including any occurrence at, in, on, upon or about the Trust Estate (including any personal injury, loss of life, or property damage), or Trustor's use, occupancy, or operation of the Trust Estate, or the filing or enforcement of any mechanic's lien, or otherwise caused in whole or in part by any act, omission or negligence occurring on or at the Trust Estate, including failure to comply with any Legal Requirement or with any requirement of this Deed of Trust that applies to Trustor, except to the extent resulting from the gross negligence, fraud or willful misconduct of Trustee or Beneficiary. If Beneficiary is a party to any litigation as to which either Trustor is required to indemnify Beneficiary (or is made a defendant in any action of any kind against Trustor or relating directly or indirectly to any portion of the Trust Estate) then, at Beneficiary's option, Trustor shall undertake Beneficiary's defense, using counsel reasonably satisfactory to Beneficiary (and any settlement shall be subject to Beneficiary's consent, which consent shall not be unreasonably withheld), and in any case shall indemnify Beneficiary against such litigation. Trustor shall pay all reasonable costs and expenses, including reasonable legal costs, that Beneficiary pays or incurs in connection with any such litigation. Any amount payable under any indemnity in this Deed of Trust shall be a demand obligation, shall be added to, and become a part of, the secured obligations under this Deed of Trust, shall be secured by this Deed of Trust and, if not paid promptly following demand therefor (which demand shall, unless associated with Loan Document enforcement

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actions, set forth in reasonable detail an itemization of the amount so demanded) shall bear interest at the interest rate specified in the Credit Agreement. Such indemnity shall survive any release of this Deed of Trust and any foreclosure.

1.15 **Beneficiary's Cure of Trustor's Default.** If Trustor defaults hereunder in the payment of any tax, assessment, lien, encumbrance or other Imposition, in its obligation to furnish insurance hereunder, or in the performance or observance of any other covenant, condition or term of this Deed of Trust or any other Financing Agreement or any FF&E Financing Agreement, Beneficiary may, but is not obligated to, to preserve its interest in the Trust Estate, perform or observe the same, and all payments made (whether such payments are regular or accelerated payments) and reasonable costs and expenses incurred or paid by

Beneficiary in connection therewith shall become due and payable immediately. The amounts so incurred or paid by Beneficiary, together with interest thereon at the interest rate applicable to overdue principal set forth in the Credit Agreement, from the date incurred until paid by Trustor, shall be added to the indebtedness and secured by the lien of this Deed of Trust. Beneficiary, is hereby empowered to enter and to authorize others to enter upon the Land or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Trustor or any person in possession holding under Trustor. No exercise of any rights under this Section 1.15 by Beneficiary shall cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

1.16 **Use of Land.** Trustor covenants that the Trust Estate shall be used and operated in a manner consistent with the requirements of the Loan Documents.

1.17 **Compliance with Permitted Lien Agreements.** Trustor shall comply with each and every material obligation contained in any agreement pertaining to a Permitted Lien.

1.18 **Defense of Actions.** Trustor shall appear in and defend any action or proceeding affecting or purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and shall pay all costs and expenses, including cost of title search and insurance or other evidence of title, preparation of survey, and reasonable attorneys' fees in any such action or proceeding in which Beneficiary or Trustee may appear or may be joined as a party and in any suit brought by Beneficiary based upon or in connection with this Deed of Trust, the Guaranty or any other Loan Document to which Trustor is a party. Nothing contained in this section shall, however, limit the right of Beneficiary to appear in such action or proceeding with counsel of its own choice, either on its own behalf or on behalf of Trustor.

1.19 **Affiliates.**

(a) **Subject to Trust Deed.** Subject to compliance with the requirements of applicable Nevada Gaming Laws, Trustor shall cause all of its Affiliates in any way involved with the operation of the Trust Estate or the Project to observe the covenants and conditions of this Deed of Trust to the extent necessary to give the full intended effect to such covenants and conditions and to protect and preserve the security of Beneficiary hereunder. Trustor shall, at Beneficiary's request, cause any such Affiliate to execute and deliver to Beneficiary or Trustee such further instruments or documents as Beneficiary may reasonably deem necessary to effectuate the terms of this Section 1.19.

(b) **Restriction on Use of Subsidiary or Affiliate.** Except as permitted under the Credit Agreement, the Notes, the Guaranty or the other Loan Documents (including any Security Document), Trustor shall not use any Affiliate in the operation of the Trust Estate or the Project if such use would in any way impair the security for the Obligations or circumvent any covenant or condition of this Deed of Trust, the Guaranty or of any other Loan Document.

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1.20 **Title Insurance.** On the Closing Date, Trustor shall cause to be delivered to Trustee at Trustor's expense, one or more ALTA extended coverage Lender's Policies of Title Insurance showing fee title to the real property situated in the County of Clark, State of Nevada, more specifically described in Schedule A attached hereto, vested in Trustor and the lien of this Deed of Trust to be a perfected lien, prior to any and all encumbrances other than Permitted Encumbrances (excluding, however, any such non-Permitted Encumbrances for which the Title Insurer has agreed to provide an endorsement or affirmative coverage protecting the lien of this Deed of Trust against such non-Permitted Encumbrances).

ARTICLE TWO

GUARANTY PROVISIONS

2.1 **Interaction with Guaranty**

(a) **Incorporation by Reference.** All terms, covenants, conditions, provisions and requirements of the Guaranty are incorporated by reference in this Deed of Trust.

(b) **Conflicts.** In the event of any conflict or inconsistency between the provisions of this Deed of Trust and those of the Guaranty, Credit Agreement or the Disbursement and Administration Agreement, the provisions of the Guaranty, Credit Agreement or the Disbursement and Administration Agreement, as applicable, shall govern.

2.2 **Other Collateral.** This Deed of Trust is one of a number of security agreements delivered by or on behalf of Trustor and other Persons pursuant to the Credit Agreement and the other Loan Documents (including the Security Documents) and securing the Obligations secured hereunder. All potential junior Lien claimants are placed on notice that, under any of the Loan Documents (including the Security Documents) (including a separate future unrecorded agreement between Trustor and Beneficiary), other collateral for the Obligations secured hereunder (*i.e.*, collateral other than the Trust Estate) may, under certain circumstances, be released without a corresponding reduction in the total principal amount secured by this Deed of Trust. Such a release would decrease the amount of collateral securing the same indebtedness, thereby increasing the burden on the remaining Trust Estate created and continued by this Deed of Trust. No such release shall impair the priority of the lien of this Deed of Trust. By accepting its interest in the Trust Estate, each and every junior Lien claimant shall be deemed to have acknowledged the possibility of, and consented to, any such release. Nothing in this paragraph shall impose any obligation upon Beneficiary.

ARTICLE THREE

DEFAULTS

3.1 **Event of Default.** The term "Event of Default," wherever used in this Deed of Trust, shall mean any of (i) one or more of the events of default listed in the Credit Agreement or the Guaranty or (ii) so long as the Disbursement and Administration Agreement is in effect, one or more of the events of default listed in the Disbursement and Administration Agreement (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body).

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ARTICLE FOUR

REMEDIES

4.1 **Acceleration of Maturity.** If an Event of Default occurs, Beneficiary may (except that such acceleration shall be automatic if the Event of Default is caused by Borrower's or Trustor's Bankruptcy), in accordance with the Loan Documents, declare the Obligations to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become due and payable without demand, presentment, notice or other requirements of any kind (all of which Trustor waives) notwithstanding anything in this Deed of Trust or any Loan Document or applicable law to the contrary.

4.2 **Protective Advances.** If Borrower or Trustor fails to make any payment or perform any other obligation under the Notes, Credit Agreement, Guaranty or any other Financing Agreement, then without thereby limiting Beneficiary's other rights or remedies, waiving or releasing any of Trustor's obligations, or imposing any obligation on Beneficiary, Beneficiary may either advance any amount owing or perform any or all actions that Beneficiary considers necessary or appropriate to cure such default. All such advances shall constitute "Protective Advances." No sums advanced or performance rendered by Beneficiary shall cure, or be deemed a waiver of any Event of Default.

4.3 **Institution of Equity Proceedings.** If an Event of Default occurs, Beneficiary may institute an action, suit or proceeding in equity for specific performance of this Deed of Trust, the Notes, the Guaranty or any other Loan Document (including any Security Document), all of which shall be specifically enforceable by injunction or other equitable remedy. Trustor waives any defense based on laches or any applicable statute of limitations.

4.4 **Beneficiary's Power of Enforcement.**

(a) If an Event of Default occurs, Beneficiary shall be entitled, at its option and in its sole and absolute discretion, to prepare and record on its own behalf, or to deliver to Trustee for recording, if appropriate, written declaration of default and demand for sale and written Notice of Breach and Election to Sell (NRS 107.080(3)) (or other statutory notice) to cause the Trust Estate to be sold to satisfy the obligations hereof, and in the case of delivery to Trustee, Trustee shall cause said notice to be filed for record.

(b) After the lapse of such time as may then be required by law following the recordation of said Notice of Breach and Election to Sell, and notice of sale having been given as then required by law, including compliance with all applicable Nevada Gaming Laws, Trustee without demand on Trustor, shall sell the Trust Estate or any portion thereof at the time and place fixed by it in said notice, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder, of cash in lawful money of the United States payable at the time of sale. Trustee may, for any cause it deems expedient, postpone the sale of all or any portion of said property until it shall be completed and, in every case, notice of postponement shall be given by public announcement thereof at the time and place last appointed for the sale and from time to time thereafter Trustee may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall execute and deliver to the purchaser its Deed, Bill of Sale, or other instrument conveying said property so sold, but without any covenant or warranty, express or implied. The recitals in such instrument of conveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale.

(c) After deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including, without limitation, costs of evidence of title and reasonable attorneys' fees and other legal expenses of Trustee or Beneficiary in connection with a sale, Trustee shall apply the proceeds of such sale to payment of all sums expended under the terms hereof not then repaid, with accrued interest at the rate

applicable to overdue principal set forth in the Credit Agreement to the payment of all other sums then secured hereby and the remainder, if any, to the person or persons legally entitled thereto as provided in NRS 40.462.

(d) Subject to compliance with applicable Nevada Gaming Laws, if any Event of Default occurs, Beneficiary may, either with or without entry or taking possession of the Trust Estate, and without regard to whether or not the indebtedness and other sums secured hereby shall be due and without prejudice to the right of Beneficiary thereafter to bring an action or proceeding to foreclose or any other action for any default existing at the time such earlier action was commenced, proceed by any appropriate action or proceeding: (1) to enforce payment of the Obligations, to the extent permitted by law, or the performance of any term hereof or any other right; (2) to foreclose this Deed of Trust in any manner provided by law for the foreclosure of mortgages or deeds of trust on real property and to sell, as an entirety or in separate lots or parcels, the Trust Estate or any portion thereof pursuant to the laws of the State of Nevada or under the judgment or decree of a court or courts of competent jurisdiction, and Beneficiary shall be entitled to recover in any such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees in such amount as shall be awarded by the court; (3) to exercise any or all of the rights and remedies available to it under the Loan Documents; and (4) to pursue any other remedy available to it. Beneficiary shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Beneficiary may determine.

(e) The remedies described in this Section 4.4 may be exercised with respect to all or any portion of the Personal Property, either simultaneously with the sale of any real property encumbered hereby or independent thereof. Beneficiary shall at any time be permitted to proceed with respect to all or any portion of the Personal Property in any manner permitted by the UCC. Trustor agrees that Beneficiary's inclusion of all or any portion of the Personal Property (and all personal property that is subject to a security interest in favor, or for the benefit, of Beneficiary) in a sale or other remedy exercised with respect to the real property encumbered hereby, as permitted by the UCC, is a commercially reasonable disposition of such property.

4.5 **Beneficiary's Right to Enter and Take Possession, Operate and Apply Income.**

(a) Subject to compliance with applicable Nevada Gaming Laws, if an Event of Default occurs, (i) Trustor, upon demand of Beneficiary, shall forthwith surrender to Beneficiary the actual possession and, if and to the extent permitted by law, Beneficiary itself, or by such officers or agents as it may appoint, may enter and take possession of all the Trust Estate including the Personal Property, without liability for trespass, damages or otherwise, and may exclude Trustor and its agents and employees wholly therefrom and may have joint access with Trustor to the books, papers and accounts of Trustor; and (ii) Trustor shall pay monthly in advance to Beneficiary on Beneficiary's entry into possession, or to any receiver appointed to collect the Rents, all Rents then due and payable.

(b) If Trustor shall for any reason fail to surrender or deliver the Trust Estate, the Personal Property or any part thereof after Beneficiary's demand, Beneficiary may obtain a judgment or decree conferring on Beneficiary or Trustee the right to immediate possession or requiring Trustor to deliver immediate possession of all or part of such property to Beneficiary or Trustee and Trustor hereby specifically consents to the entry of such judgment or decree. Trustor shall pay to Beneficiary or Trustee, upon demand, all reasonable costs and expenses of obtaining such judgment or decree and reasonable compensation to Beneficiary or Trustee, their attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Deed of Trust.

(c) Subject to compliance with applicable Nevada Gaming Laws, upon every such entering upon or taking of possession, Beneficiary or Trustee may hold, store, use, operate, manage and control the

Trust Estate and conduct the business thereof, and, from time to time in its sole and absolute discretion and without being under any duty to so act:

- (1) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;
- (2) insure or keep the Trust Estate insured;
- (3) manage and operate the Trust Estate and exercise all the rights and powers of Trustor in their name or otherwise with respect to the same;
- (4) enter into agreements with others to exercise the powers herein granted Beneficiary or Trustee, all as Beneficiary or Trustee from time to time may determine; and, subject to the absolute assignment of the Leases and Rents to Beneficiary, Beneficiary or Trustee may collect and receive all the Rents, including those past due as well as those accruing thereafter; and shall apply the monies so received by Beneficiary or Trustee in such priority as Beneficiary may determine to (1) the payment of interest and principal due and payable on the Notes or the other Loan Documents, (2) the deposits for taxes and assessments and insurance premiums due, (3) the cost of insurance, taxes, assessments and other proper charges upon the Trust Estate or any part thereof; (4) the compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary or Trustee; and (5) any other charges or costs required to be paid by Trustor under the terms hereof; and
- (5) rent or sublet the Trust Estate or any portion thereof for any purpose permitted by this Deed of Trust.

Beneficiary or Trustee shall surrender possession of the Trust Estate and the Personal Property to Trustor only when all that is due upon such interest and principal, tax and insurance deposits, and all amounts under any of the terms of the Credit Agreement or this Deed of Trust, shall have been paid and all defaults made good. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.6 Leases. Beneficiary is authorized to foreclose this Deed of Trust subject to the rights of any tenants of the Trust Estate, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights shall not be, nor be asserted by Trustor to be, a defense to any proceedings instituted by Beneficiary to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Trust Estate, or any portion thereof. Unless otherwise agreed by Beneficiary in writing, all Space Leases executed subsequent to the date hereof, or any part thereof, shall be subordinate and inferior to the lien of this Deed of Trust; provided, however that (i) in accordance with the terms of the Loan Documents, Beneficiary may be required to execute a non-disturbance and attornment agreement in connection with certain Space Leases; and (ii) from time to time Beneficiary may execute and record among the land records of the jurisdiction where this Deed of Trust is recorded, subordination statements with respect to such of said Space Leases as Beneficiary may designate in its sole discretion, whereby the Space Leases so designated by Beneficiary shall be made superior to the lien of this Deed of Trust for the term set forth in such subordination statement. From and after the recordation of such subordination statements, and for the respective periods as may be set forth therein, the Space Leases therein referred to shall be superior to the lien of this Deed of Trust and shall not be affected by any foreclosure hereof. All such Space Leases shall contain a provision to the effect that the Trustor and Space Lessee recognize the right of Beneficiary to elect and to effect such subordination of this Deed of Trust and consents thereto.

4.7 Purchase by Beneficiary. Upon any foreclosure sale (whether judicial or nonjudicial), Beneficiary may bid for and purchase the property subject to such sale and, upon compliance with the

terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

4.8 Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws. Trustor agrees to the full extent permitted by law that if an Event of Default occurs, neither Trustor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust or the absolute sale of the Trust Estate or any portion thereof or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof, and Trustor for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Trust Estate marshalled upon any foreclosure of the lien hereof and agrees that Trustee or any court having jurisdiction to foreclose such lien may sell the Trust Estate in part or as an entirety.

4.9 Receiver. If an Event of Default occurs, Beneficiary, to the extent permitted by law and subject to compliance with all applicable Nevada Gaming Laws, and without regard to the value, adequacy or occupancy of the security for the indebtedness and other sums secured hereby, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Trust Estate and to collect all Rents and apply the same as the court may direct, and such receiver may be appointed by any court of competent jurisdiction upon application by Beneficiary. Beneficiary may have a receiver appointed without notice to Trustor or any third party, and Beneficiary may waive any requirement that the receiver post a bond. Beneficiary shall have the power to designate and select the Person who shall serve as the receiver and to negotiate all terms and conditions under which such receiver shall serve. Any receiver appointed on Beneficiary's behalf may be an Affiliate of Beneficiary. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Deed of Trust. The right to enter and take possession of and to manage and operate the Trust Estate and to collect all Rents, whether by a receiver or otherwise, shall be cumulative to any other right or remedy available to Beneficiary under this Deed

of Trust, the Guaranty or the other Loan Documents or otherwise available to Beneficiary and may be exercised concurrently therewith or independently thereof. Beneficiary shall be liable to account only for such Rents (including, without limitation, security deposits) actually received by Beneficiary, whether received pursuant to this section or any other provision hereof. Notwithstanding the appointment of any receiver or other custodian, Beneficiary shall be entitled as pledgee to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Deed of Trust to, Beneficiary.

4.10 Suits to Protect the Trust Estate. Beneficiary shall have the power and authority to institute and maintain any suits and proceedings as Beneficiary, in its sole and absolute discretion, may deem advisable (a) to prevent any impairment of the Trust Estate by any acts which may be unlawful or in violation of this Deed of Trust, (b) to preserve or protect its interest in the Trust Estate, or (c) to restrain the enforcement of or compliance with any legislation or other Legal Requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Beneficiary's interest.

4.11 Proofs of Claim. In the case of any receivership, Insolvency, Bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Trustor, or, to the extent the same would result in an Event of Default hereunder, any Subsidiary, or any guarantor, co-maker or endorser of any of Trustor's obligations, its creditors or its property, Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim or other documents as it may deem to be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Trustor under the Loan Documents, at the date of the institution of such

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proceedings, and for any additional amounts which may become due and payable by Trustor after such date.

4.12 Application of Monies by Beneficiary.

(a) Any monies collected or received by Beneficiary under this *Section 4.12* shall be first applied to the payment of reasonable compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary, and the balance remaining shall be applied to the Obligations.

(b) The provisions of this section shall not be deemed to limit or otherwise modify the provisions of any guaranty of the indebtedness evidenced by the Notes or the other Loan Documents.

4.13 Delay or Omission; No Waiver. No delay or omission of Beneficiary or any Bank to exercise any right, power or remedy upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Beneficiary whether contained herein or in the other Loan Documents or otherwise available to Beneficiary may be exercised from time to time and as often as may be deemed expedient by Beneficiary.

4.14 No Waiver of One Default to Affect Another. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If Beneficiary or the required percentage of the Banks (as determined pursuant to the Credit Agreement), to the extent applicable under the Credit Agreement, (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Notes, the Credit Agreement, this Deed of Trust, the Guaranty, the Disbursement and Administration Agreement or any other Loan Document (including any Security Document); (d) releases any part of the Trust Estate from the lien or security interest of this Deed of Trust or any other instrument securing the Obligations; (e) consents to the filing of any map, plat or replat of the Land (to the extent such consent is required); (f) consents to the granting of any easement on the Land (to the extent such consent is required); or (g) makes or consents to any agreement changing the terms of this Deed of Trust or any other Loan Document subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability of Trustor under the Guaranty or any other Loan Document (including any Security Document) or otherwise, or any subsequent purchaser of the Trust Estate or any part thereof or any maker, co-signer, surety or guarantor. No such act or omission shall preclude Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by Beneficiary, shall the lien or security interest of this Deed of Trust be altered thereby, except to the extent expressly provided in any releases, maps, easements or subordinations described in clause (d), (e), (f) or (g) above of this Section 4.14. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Trust Estate, Beneficiary, without notice to any person, firm or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Trust Estate or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder, or waiving its right to declare such sale or transfer an Event of Default as provided herein. Notwithstanding anything to the contrary contained in this Deed of Trust or any other Loan Document (including any Security Document), (i) in the case of any non-monetary Event of Default, Beneficiary may continue to accept payments secured hereunder without thereby waiving the existence of such or any other Event of Default and (ii) in the case of any monetary Event of Default, Beneficiary may accept partial payments of any sums secured hereunder without thereby

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waiving the existence of such Event of Default if the partial payment is not sufficient to completely cure such Event of Default.

4.15 Discontinuance of Proceedings; Position of Parties Restored. If Beneficiary shall have proceeded to enforce any right or remedy under this Deed of Trust by foreclosure, entry of judgment or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Beneficiary, then and in every such case Trustor and Beneficiary shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Beneficiary shall continue as if no such proceedings had occurred or had been taken.

4.16 Remedies Cumulative. No right, power or remedy, including without limitation remedies with respect to any security for Obligations, conferred upon or reserved to Beneficiary by this Deed of Trust or any other Loan Document (including any Security Document) is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or any other Loan Document (including any Security Document), now or hereafter existing at law, in equity or by statute, and Beneficiary shall be entitled to resort to such rights, powers, remedies or security as Beneficiary shall in its sole and absolute discretion deem advisable.

4.17 **Interest After Event of Default.** If an Event of Default shall have occurred and is continuing, all sums outstanding and unpaid under the Obligations shall, at Beneficiary's option, bear interest at the rate applicable to overdue principal set forth in the Credit Agreement until such Event of Default has been cured. Trustor's obligation to pay such interest shall be secured by this Deed of Trust.

4.18 **Foreclosure; Expenses of Litigation.** If Trustee forecloses, reasonable attorneys' fees for services in the supervision of said foreclosure proceeding shall be allowed to the Trustee and Beneficiary as part of the foreclosure costs. In the event of foreclosure of the lien hereof, there shall be allowed and included as additional indebtedness all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after foreclosure sale or entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and guarantees, and similar data and assurances with respect to title as Beneficiary may deem reasonably advisable either to prosecute such suit or to evidence to a bidder at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Trust Estate or any portion thereof. All expenditures and expenses of the nature in this section mentioned, and such expenses and fees as may be incurred in the protection of the Trust Estate and the maintenance of the lien and security interest of this Deed of Trust, including the fees of any attorney employed by Beneficiary in any litigation or proceeding affecting this Deed of Trust, the Guaranty or any other Loan Document (including any Security Document), the Trust Estate or any portion thereof, including, without limitation, civil, probate, appellate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Trustor, with interest thereon at the rate applicable to overdue principal set forth in the Credit Agreement, and shall be secured by this Deed of Trust. Trustee waives its right to any statutory fee in connection with any judicial or nonjudicial foreclosure of the lien hereof and agrees to accept a reasonable fee for such services.

4.19 **Intentionally Omitted.**

4.20 **Waiver of Jury Trial.** Beneficiary and Trustor each waive any right to have a jury participate in resolving any dispute whether sounding in contract, tort or otherwise arising out of, connected with, related to or incidental to the relationship established between them in connection with the Obligations. Any such disputes shall be resolved in a bench trial without a jury.

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4.21 **Exculpation of Beneficiary.** The acceptance by Beneficiary of the assignment contained herein with all of the rights, powers, privileges and authority created hereby shall not, prior to entry upon and taking possession of the Trust Estate by Beneficiary, be deemed or construed to make Beneficiary a "mortgagee in possession"; nor thereafter or at any time or in any event obligate Beneficiary to appear in or defend any action or proceeding relating to the Space Leases, the Rents or the Trust Estate, or to take any action hereunder or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under any Space Lease or to assume any obligation or responsibility for any security deposits or other deposits except to the extent such deposits are actually received by Beneficiary, nor shall Beneficiary, prior to such entry and taking, be liable in any way for any injury or damage to person or property sustained by any Person in or about the Trust Estate.

ARTICLE FIVE

RIGHTS AND RESPONSIBILITIES OF TRUSTEE; OTHER PROVISIONS RELATING TO TRUSTEE

Notwithstanding anything to the contrary in this Deed of Trust, Trustor and Beneficiary agree as follows.

5.1 **Exercise of Remedies by Trustee.** To the extent that this Deed of Trust or applicable law, including all applicable Nevada Gaming Laws, authorizes or empowers, or does not require approval for, Beneficiary to exercise any remedies set forth in Article Four hereof or otherwise, or perform any acts in connection therewith, Trustee (but not to the exclusion of Beneficiary unless so required under the law of the State of Nevada) shall have the power to exercise any or all such remedies, and to perform any acts provided for in this Deed of Trust in connection therewith, all for the benefit of Beneficiary and on Beneficiary's behalf in accordance with applicable law of the State of Nevada. In connection therewith, Trustee: (a) shall not exercise, or waive the exercise of, any Beneficiary's remedies (other than any rights of Trustee to any indemnity or reimbursement), except at Beneficiary's request, and (b) shall exercise, or waive the exercise of, any or all of Beneficiary's remedies at Beneficiary's request, and in accordance with Beneficiary's directions as to the manner of such exercise or waiver. Trustee may, however, decline to follow Beneficiary's request or direction if Trustee shall be advised by counsel that the action or proceeding, or manner thereof, so directed may not lawfully be taken or waived.

5.2 **Rights and Privileges of Trustee.** To the extent that this Deed of Trust requires Trustor to indemnify Beneficiary or reimburse Beneficiary for any expenditures Beneficiary may incur, Trustee shall be entitled to the same indemnity and the same rights to reimbursement of expenses as Beneficiary, subject to such limitations and conditions as would apply in the case of Beneficiary. To the extent that this Deed of Trust negates or limits Beneficiary's liability as to any matter, Trustee shall be entitled to the same negation or limitation of liability. To the extent that Trustor, pursuant to this Deed of Trust, appoints Beneficiary as Trustor's attorney in fact for any purpose, Beneficiary or (when so instructed by Beneficiary) Trustee shall be entitled to act on Trustor's behalf without joinder or confirmation by the other.

5.3 **Resignation or Replacement of Trustee.** Trustee may resign by an instrument in writing addressed to Beneficiary, and Trustee may be removed at any time with or without cause (i.e., in Beneficiary's sole and absolute discretion) by an instrument in writing executed by Beneficiary. In case of the death, resignation, removal or disqualification of Trustee or if for any reason Beneficiary shall deem it desirable to appoint a substitute, successor or replacement Trustee to act instead of Trustee originally named (or in place of any substitute, successor or replacement Trustee), then Beneficiary shall have the right and is hereby authorized and empowered to appoint a successor, substitute or replacement Trustee, without any formality other than appointment and designation in writing executed

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by Beneficiary, which instrument shall be recorded if required by the law of the State of Nevada. The law of the State of Nevada (including, without limitation, the Nevada Gaming Laws) shall govern the qualifications of any Trustee. The authority conferred upon Trustee by this Deed of Trust shall automatically extend to any and all other successor, substitute and replacement Trustee(s) successively until the obligations secured hereunder have been paid in full or the Trust Estate

has been sold hereunder or released in accordance with the provisions of the Guaranty and the other Loan Documents (including the Security Documents). Beneficiary's written appointment and designation of any Trustee shall be full evidence of Beneficiary's right and authority to make the same and of all facts therein recited. No confirmation, authorization, approval or other action by Trustor shall be required in connection with any resignation or other replacement of Trustee.

5.4 **Authority of Beneficiary.** If Beneficiary is a banking corporation, state banking corporation or a national banking association and the instrument of appointment of any successor or replacement Trustee is executed on Beneficiary's behalf by an officer of such corporation, state banking corporation or national banking association, then such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of Beneficiary.

5.5 **Effect of Appointment of Successor Trustee.** Upon the appointment and designation of any successor, substitute or replacement Trustee, and subject to compliance with applicable Nevada Gaming Laws and other applicable laws, Trustee's entire estate and title in the Trust Estate shall vest in the designated successor, substitute or replacement Trustee. Such successor, substitute or replacement Trustee shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon Trustee. All references herein to Trustee shall be deemed to refer to Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder.

5.6 **Confirmation of Transfer and Succession.** Upon the written request of Beneficiary or of any successor, substitute or replacement Trustee, any former Trustee ceasing to act shall execute and deliver an instrument transferring to such successor, substitute or replacement Trustee all of the right, title, estate and interest in the Trust Estate of Trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon Trustee, and shall duly assign, transfer and deliver all properties and moneys held by said Trustee hereunder to said successor, substitute or replacement Trustee.

5.7 **Exculpation.** Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or otherwise be responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence, willful misconduct or knowing violation of law. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law). Trustee shall be under no liability for interest on any moneys received by it hereunder.

5.8 **Endorsement and Execution of Documents.** Upon Beneficiary's written request, Trustee shall, without liability or notice to Trustor, execute, consent to, or join in any instrument or agreement in connection with or necessary to effectuate the purposes of the Guaranty and the other Loan Documents (including the Security Documents). Trustor hereby irrevocably designates Trustee as its attorney in fact to execute, acknowledge and deliver, on Trustor's behalf and in Trustor's name, all instruments or agreements necessary to implement any provision(s) of this Deed of Trust or to further perfect the lien created by this Deed of Trust on the Trust Estate. This power of attorney shall be deemed to be coupled with an interest and shall survive any disability of Trustor.

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5.9 **Multiple Trustees.** If Beneficiary appoints multiple trustees, then any Trustee, individually, may exercise all powers granted to Trustee under this instrument, without the need for action by any other Trustee(s).

5.10 **Terms of Trustee's Acceptance.** Trustee accepts the trust created by this Deed of Trust upon the following terms and conditions:

- (a) **Delegation.** Trustee may exercise any of its powers through appointment of attorney(s) in fact or agents.
- (b) **Counsel.** Trustee may select and employ legal counsel (including any law firm representing Beneficiary). Trustor shall reimburse all reasonable legal fees and expenses that Trustee may thereby incur.
- (c) **Security.** Trustee shall be under no obligation to take any action upon any Event of Default unless furnished security or indemnity, in form satisfactory to Trustee, against costs, expenses, and liabilities that Trustee may incur.
- (d) **Costs and Expenses.** Trustor shall reimburse Trustee, as part of the Obligations secured hereunder, for all reasonable disbursements and expenses (including reasonable legal fees and expenses) incurred by reason of and as provided for in this Deed of Trust, including any of the foregoing incurred in Trustee's administering and executing the trust created by this Deed of Trust, in complying with all applicable Nevada Gaming Laws and performing Trustee's duties and exercising Trustee's powers under this Deed of Trust.
- (e) **Release.** Upon full and indefeasible payment and performance of the Obligations secured hereunder, Beneficiary shall request that Trustee release this Deed of Trust. Upon receipt of such request Trustee shall release this Deed of Trust to Trustor. Trustor shall pay all costs of recordation, if any.

ARTICLE SIX

MISCELLANEOUS PROVISIONS

6.1 **Heirs, Successors and Assigns Included in Parties.** Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included, and subject to the limitations set forth in Section 1.9, all covenants and agreements contained in this Deed of Trust, by or on behalf of Trustor or Beneficiary shall bind and inure to the benefit of its heirs, successors and assigns, whether so expressed or not.

6.2 **Addresses for Notices, Etc.** Any notice, report, demand or other instrument authorized or required to be given or furnished under this Deed of Trust to Trustor or Beneficiary shall be deemed given or furnished (i) when addressed to the party intended to receive the same, at the address of such party set forth below, and delivered by hand at such address or (ii) three (3) days after the same is

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deposited in the United States mail as first class certified mail, return receipt requested, postage paid, whether or not the same is actually received by such party:

Beneficiary: Deutsche Bank Trust Company Americas
31 West 52nd Street, 7th Floor
New York, New York 10019
Attn: Jeff Baevsky

With a copy to: Latham & Watkins
701 B. Street, Suite 2100
San Diego, California 92101
Attn: Sony Ben-Moshe, Esq.

Trustor: Valvino Lamore, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Legal Department

With a copy to: Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Attn: C. Kevin McGeehan

Trustee: Nevada Title Company
2500 North Buffalo, Suite 150
Las Vegas, Nevada 89128
Attn: Robbie Graham

6.3 **Change of Notice Address.** Any Person may change the address to which any such notice, report, demand or other instrument is to be delivered or mailed to that person, by furnishing written notice of such change to the other parties, but no such notice of change shall be effective unless and until received by such other parties.

6.4 **Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Deed of Trust are for convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

6.5 **Invalid Provisions to Affect No Others.** In the event that any of the covenants, agreements, terms or provisions contained herein or in the Notes, the Credit Agreement, the Guaranty or any other Loan Document (including the Security Documents) shall be invalid, illegal or unenforceable in any respect, the validity of the lien hereof and the remaining covenants, agreements, terms or provisions contained herein or in the Notes, the Credit Agreement, the Guaranty or any other Loan Document (including the Security Documents) shall be in no way affected, prejudiced or disturbed thereby. To the extent permitted by law, Trustor waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

6.6 **Changes and Priority Over Intervening Liens.** Neither this Deed of Trust nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Trustor and Beneficiary relating to this Deed of Trust shall be superior to the rights of the holder of any intervening lien or encumbrance.

6.7 **Estoppel Certificates.** Within ten (10) Business Days after Beneficiary's written request, Trustor shall from time to time execute a certificate, in recordable form (an "Estoppel Certificate"), stating, except to the extent it would be inaccurate to so state: (a) the current amount of the

Obligations secured hereunder and all elements thereof, including principal, interest, and all other elements; (b) that Trustor has no defense, offset, claim, counterclaim, right of recoupment, deduction, or reduction against any of the Obligations secured hereunder; (c) that neither the Guaranty, this Deed of Trust nor any other Loan Documents (including the Security Documents) to which it is a party have been amended, whether orally or in writing; (d) that Trustor has no claims against Beneficiary of any kind; (e) that any power of attorney granted to Beneficiary is in full force and effect; and (f) such other matters relating to this Deed of Trust, the Guaranty or any other Loan Document (including any Security Document) to which it is a party and the relationship of Trustor and Beneficiary as Beneficiary shall request. In addition, the Estoppel Certificate shall set forth the reasons why it would be inaccurate to make any of the foregoing assurances.

6.8 **Waiver of Setoff and Counterclaim.** All Obligations shall be payable without setoff, counterclaim or any deduction whatsoever. Trustor hereby waives the right to assert a counterclaim (other than a compulsory counterclaim) in any action or proceeding brought against it by Beneficiary and/or any Bank under the Loan Documents, or arising out of or in any way connected with this Deed of Trust or the other Loan Documents (including the Security Documents) or the Obligations.

6.9 **Governing Law.** The Credit Agreement, the Notes and the Guaranty provide that they are governed by, and construed and enforced in accordance with, the laws of the State of New York. This Deed of Trust shall also be construed under and governed by the laws of the State of New York; provided, however, that the terms and provisions of this Deed of Trust pertaining to the priority, perfection, enforcement or realization by Beneficiary of its respective rights and remedies under this Deed of Trust with respect to the Trust Estate shall be governed and construed and enforced in accordance with the internal laws of the State of Nevada (the "State") without giving effect to the conflicts-of-law rules and principles of the State.

6.10 **Required Notices.** Trustor shall notify Beneficiary promptly of the occurrence of any of the following and shall immediately provide Beneficiary a copy of the notice or documents referred to: (i) receipt of notice from any Governmental Authority relating to all or any material part of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (ii) receipt of any notice from any tenant leasing all or any material portion of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iii) receipt of notice from the holder of any Permitted Lien relating to a default or act, omission or circumstance which

would result in a default after notice or passage of time or both; (iv) the commencement of any proceedings or the entry of any judgment, decree or order materially affecting all or any portion of the Trust Estate or which involve the potential liability of Trustor or its Affiliates in an amount in excess of \$25,000,000 (other than for personal injury actions and related property damage suits which are covered by such insurance); or (v) commencement of any judicial or administrative proceedings or the entry of any judgment, decree or order by or against or otherwise affecting Trustor or any Affiliate of Trustor, a material portion of the Trust Estate, or a material portion of the Personal Property, or any other action by any creditor or lessor thereof as a result of any default under the terms of any lease.

6.11 **Reconveyance.** Upon written request of Trustor when the Obligations secured hereby have been satisfied in full, Beneficiary shall cause Trustee to reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

6.12 **Attorneys' Fees.** Without limiting any other provision contained herein, Trustor agrees to pay all costs of Beneficiary or Trustee incurred in connection with the enforcement of this Deed of Trust, the Guaranty or the other Loan Documents to which it is a party, including without limitation all reasonable attorneys' fees whether or not suit is commenced, and including, without limitation, fees

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incurred in connection with any probate, appellate, bankruptcy, deficiency or any other litigation proceedings, all of which sums shall be secured hereby.

6.13 **Late Charges.** By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to collect any late charge thereon or interest thereon at the interest rate on the Notes or as otherwise specified in the Credit Agreement, if so provided, not then paid or its right either to require prompt payment when due of all other sums so secured or to declare default for failure to pay any amounts not so paid.

6.14 **Cost of Accounting.** Trustor shall pay to Beneficiary, for and on account of the preparation and rendition of any accounting, which Trustor may be entitled to require under any law or statute now or hereafter providing therefor, the reasonable costs thereof.

6.15 **Right of Entry.** Subject to compliance with applicable Nevada Gaming Laws, Beneficiary may at any reasonable time or times and on reasonable prior written notice to Trustor make or cause to be made entry upon and inspections of the Trust Estate or any part thereof in person or by agent.

6.16 **Corrections.** Trustor shall, upon request of Beneficiary or Trustee, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust (including, but not limited to, in the exhibits and schedules attached hereto) or in the execution or acknowledgement hereof, and shall execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Trustee to carry out more effectively the purposes of this Deed of Trust, to subject to the lien and security interest hereby created any of Trustor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.

6.17 **Statute of Limitations.** To the fullest extent allowed by the law, the right to plead, use or assert any statute of limitations as a plea or defense or bar of any kind, or for any purpose, to any debt, demand or obligation secured or to be secured hereby, or to any complaint or other pleading or proceeding filed, instituted or maintained for the purpose of enforcing this Deed of Trust or any rights hereunder, is hereby waived by Trustor.

6.18 **Subrogation.** Should the proceeds of any loan or advance made by Beneficiary or any Bank under the Credit Agreement, repayment of which is hereby secured, or any part thereof, or any amount paid out or advanced by Beneficiary or any Bank under the Credit Agreement, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior or superior lien or encumbrance upon the Trust Estate, or any part thereof, then, as additional security hereunder, Trustee, on behalf of Beneficiary, shall be subrogated to any and all rights, superior titles, liens, and equities owned or claimed by any owner or holder of said outstanding liens, charges, and indebtedness, however remote, regardless of whether said liens, charges, and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

6.19 **Joint and Several Liability.** All obligations of Trustor hereunder, if more than one, are joint and several. Recourse for deficiency after sale hereunder may be had against the property of Trustor, without, however, creating a present or other lien or charge thereon.

6.20 **Homestead.** Trustor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Trust Estate as against the collection of the Obligations, or any part hereof.

6.21 **Context.** In this Deed of Trust, whenever the context so requires, the neuter includes the masculine and feminine, and the singular including the plural, and vice versa.

6.22 **Time.** Time is of the essence of each and every term, covenant and condition hereof. Unless otherwise specified herein, any reference to "days" in this Deed of Trust shall be deemed to mean "calendar days."

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6.23 **Interpretation.** As used in this Deed of Trust unless the context clearly requires otherwise: The terms "herein" or "hereunder" and similar terms without reference to a particular section shall refer to the entire Deed of Trust and not just to the section in which such terms appear; the term "lien" shall also mean a security interest, and the term "security interest" shall also mean a lien.

6.24 **Effect of NRS 107.030.** To the extent not inconsistent herewith, the provisions of NRS 107.030 (1), (3), (5), (6), (8) and (9) are included herein by reference.

6.25 **Amendments.** This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought and only as permitted by the provisions of the Guaranty.

6.26 **No Conflicts.** In the event that any of the provisions contained here conflict with the VL Security Agreement, the provisions contained in the VL Security Agreement shall prevail.

ARTICLE SEVEN

POWER OF ATTORNEY

7.1 **Grant of Power.** Subject to compliance with applicable Nevada Gaming Laws, Trustor irrevocably appoints Beneficiary and any successor thereto as its attorney-in-fact, with full power and authority, including the power of substitution, exercisable only during the continuance of an Event of Default to act for Trustor in its name, place and stead as hereinafter provided:

7.1.1 **Possession and Completion.** To take possession of the Land and the Project, remove all employees, contractors and agents of Trustor therefrom, complete or attempt to complete the work of construction, and market, sell or lease the Land and the Project.

7.1.2 **Plans.** To make such additions, changes and corrections in the current Plans and Specifications as may be necessary or desirable, in Beneficiary's reasonable discretion, or as it deems proper to complete the Project.

7.1.3 **Employment of Others.** To employ such contractors, subcontractors, suppliers, architects, inspectors, consultants, property managers and other agents as Beneficiary, in its discretion, deems proper for the completion of the Project, for the protection or clearance of title to the Land or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.4 **Security Guards.** To employ watchmen to protect the Land and the Project from injury.

7.1.5 **Compromise Claims.** To pay, settle or compromise all bills and claims then existing or thereafter arising against Trustor, which Beneficiary, in its discretion, deems proper for the protection or clearance of title to the Land or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.6 **Legal Proceedings.** To prosecute and defend all actions and proceedings in connection with the Land or the Project.

7.2 **Other Acts.** To execute, acknowledge and deliver all other instruments and documents in the name of Trustor that are necessary or desirable, to exercise Trustor's rights under all contracts concerning the Land or the Project, including, without limitation, under any Space Leases, and to do all other acts with respect to the Land or the Project that Trustor might do on its own behalf, as Beneficiary, in its reasonable discretion, deems proper.

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ARTICLE EIGHT

GUARANTOR PROVISIONS

8.1 **Absolute and Unconditional Obligations.** All rights of Administrative Agent and all obligations of Trustor hereunder shall be absolute and unconditional irrespective of (i) any lack of validity, legality or enforceability of the Credit Agreement, any Note, or any other Loan Document, (ii) the failure of any Bank or any holder of any of the Obligations to assert any claim or demand or to enforce any right or remedy against Borrower, Trustor or any other Person (including any other guarantor of the Obligations) under the provisions of the Credit Agreement, any Note, any other Loan Document or otherwise or to exercise any right or remedy against any other guarantor of, or collateral securing, any of the Obligations, (iii) any change in the time, manner or place of payment of, or in any other term of, all of the Obligations, or any other extension or renewal of any Obligation, (iv) any reduction, limitation, impairment or termination of any of the Obligations for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to, and Trustor hereby waives any right to or claim of, any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, nongenuineness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, any Obligation, (v) any amendment to, rescission, waiver, or other modification of, or any consent to departure from, any of the terms of the Credit Agreement, any Note or any other Loan Document, (vi) any sale, exchange, release or surrender of, realization upon or other manner or order of dealing with any property by whomsoever pledged or mortgaged to secure or howsoever securing the Obligations or any liabilities or obligations (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof and/or any offset there against, (vii) the application of any sums by whomsoever paid or howsoever realized to any obligations and liabilities of Borrower or any other Person to the Banks under the Loan Documents in the manner provided therein regardless of what obligations and liabilities remain unpaid, (viii) any action or failure to act in any manner referred to in this Deed of Trust which may deprive Trustor of its right to subrogation against Borrower or any other Person to recover full indemnity for any payments or performances made pursuant to this Deed of Trust or of its right of contribution against any other party and (ix) any other circumstance which might otherwise constitute a defense available to, or a legal or equitable discharge of, Borrower, any other Person, Trustor, any surety or any guarantor.

8.2 **Waiver.** Trustor hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including (i) any right to require Administrative Agent or any other Bank to proceed against Borrower or any other Person or to proceed against or exhaust any security held by Administrative Agent or any other Bank at any time or to pursue any other remedy in Administrative Agent's or any other Bank's power before proceeding against Trustor, (ii) any defense that may arise by reason of the incapacity, lack of power or authority, death, dissolution, merger, termination or disability of Borrower or any other Person or the failure of Administrative Agent or any other Bank to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of Borrower or any other Person, (iii) demand, presentment, protest and notice of any kind except as provided herein, including notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Borrower, Administrative Agent, any other Bank, any endorser or creditor of Borrower, Trustor or on the part of any other Person under this or any other instrument in connection with any obligation or evidence of indebtedness held by Administrative Agent or any other Bank as collateral or in connection with any Obligation, (iv) any defense based upon an election of remedies by Administrative Agent or any other Bank, including an election to proceed by non-judicial rather than judicial foreclosure, which destroys or otherwise impairs the subrogation rights of Trustor, the right of Trustor to proceed against Borrower or any other Person for reimbursement, or both, (v) any defense based on any offset against any amounts which may be owed by any Person to Trustor for any reason whatsoever, (vi) any defense based on any act, failure to act, delay or omission

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whatsoever on the part of Borrower or any other Person of the failure by Borrower or any other Person to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the Loan Documents, (vii) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal, provided, that, upon payment or performance in full of the Obligations, this Deed of Trust shall no longer be of any force or effect, (viii) any defense, setoff or counterclaim which may at any time be available to or asserted by Borrower or any other Person against Administrative Agent, any other Bank or any other Person under the Loan Documents, (ix) any duty on the part of Administrative Agent or any other Bank to disclose to Trustor any facts Administrative Agent or any other Bank may now or hereafter know about Borrower or any other Person, regardless of whether Administrative Agent or such Bank have reason to believe that any such facts materially increase the risk beyond that which Trustor intends to assume, or have reason to believe that such facts are unknown to Trustor, or have a reasonable opportunity to communicate such facts to Trustor, since Trustor acknowledges that Trustor is fully responsible for being and keeping informed of the financial condition of Borrower and any other Person liable for the Obligations and of all circumstances bearing on the risk of non-payment or non-performance of any obligations and liabilities hereby guaranteed, (x) the fact that Trustor may at any time in the future dispose of all or part of its direct or indirect interest in Borrower or any other Person or otherwise cease to be an Affiliate of Borrower or any other Person, as the case may be, (xi) any defense based on any change in the time, manner or place of any payment or performance under, or in any other term of, the Loan Documents or any other amendment, renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of the Loan Documents, (xii) any defense arising because of Administrative Agent's or any other Bank's election, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code, and (xiii) any defense based upon any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code. To the fullest extent permitted by NRS 40.485 (1) and (2), the provisions of NRS 40.430 are waived.

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IN WITNESS WHEREOF, Trustor has executed this Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing as of the day and year first above written.

TRUSTOR:

VALVINO LAMORE, LLC,
a Nevada limited liability company,

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn
Title: *Managing Member*

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SCHEDULE A

DESCRIPTION OF LAND

QuickLinks

[DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING](#)

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[SCHEDULE A DESCRIPTION OF LAND](#)

APNs: A portion of 162-16-113-001
and a portion of 162-16-511-004

Recording requested by and recorded
counterparts should be returned to:

Sony Ben-Moshe, Esq.
Latham & Watkins
701 B Street, Suite 2100
San Diego, California 92101

Mail Property Tax Statements to:

Wynn Las Vegas, LLC
Legal Department
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

MADE BY

**WYNN LAS VEGAS, LLC,
a Nevada limited liability company,
as Trustor,**

to

**Nevada Title Company,
a Nevada corporation,
as Trustee,
for the benefit of**

**DEUTSCHE BANK TRUST COMPANY AMERICAS,
IN ITS CAPACITY AS ADMINISTRATIVE AGENT FOR THE BENEFIT OF THE BANKS,
AS BENEFICIARY**

THIS INSTRUMENT IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS OF CLARK COUNTY, NEVADA UNDER THE NAMES OF WYNN LAS VEGAS, LLC AS "DEBTOR" AND DEUTSCHE BANK TRUST COMPANY AMERICAS AS "SECURED PARTY."

THIS INSTRUMENT IS A "CONSTRUCTION MORTGAGE" AS THAT TERM IS DEFINED IN SECTION 104.9334(8) OF THE NEVADA REVISED STATUTES AND SECURES AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT UPON LAND.

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SCHEDULE A DESCRIPTION OF THE LAND

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (hereinafter called "**Deed of Trust**") is made and effective as of July 2, 2002, by WYNN LAS VEGAS, LLC, a Nevada limited liability company (together with all successors and assigns of the Trust Estate (as hereinafter defined), "**Trustor**"), whose address is 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109, to Nevada Title Company, a Nevada corporation, whose address is 2500 North Buffalo, Suite 150, Las Vegas, Nevada 89128, as Trustee ("**Trustee**"), for the benefit of DEUTSCHE BANK TRUST COMPANY AMERICAS ("**Beneficiary**"), in its capacity as Administrative Agent under (i) that certain Amended and Restated Commitment Letter (as the same may be amended or modified from time to time, the "**Commitment Letter**") dated as of June 14, 2002, among Trustor, Beneficiary, Deutsche Bank Securities Inc., Bank of America, N.A., Banc of America Securities LLC, Bear Stearns Corporate Lending, Inc., Bear, Stearns & Co. Inc., Wynn Resorts Holdings, LLC, a Nevada limited liability company (formerly known as Wynn Resorts, LLC), and Valvino Lamore, LLC, a Nevada limited liability company, and (ii) that certain Credit Agreement (as the same may be amended or modified from time to time, the "**Credit Agreement**") to be entered into in connection with and in furtherance of the Commitment Letter among Trustor, Beneficiary and the other parties signatory thereto (such other parties, together with Beneficiary and Deutsche Bank Securities Inc., the "**Banks**") pursuant to which the Banks have agreed to lend to Trustor an aggregate principal amount of \$1,000,000,000.

THIS INSTRUMENT SECURES FUTURE ADVANCES. THE MAXIMUM AMOUNT OF PRINCIPAL TO BE SECURED HEREBY IS \$1,000,000,000. THIS INSTRUMENT IS TO BE GOVERNED BY THE PROVISIONS OF NRS 106.300 THROUGH NRS 106.400 INCLUSIVE.

THE OBLIGATIONS SECURED HEREBY INCLUDE REVOLVING CREDIT OBLIGATIONS WHICH PERMIT BORROWING, REPAYMENT AND REBORROWING. INTEREST ON OBLIGATIONS SECURED HEREBY ACCRUES AT A RATE WHICH MAY FLUCTUATE FROM TIME TO TIME.

DEFINITIONS—As used in this Deed of Trust, the following terms have the meanings hereinafter set forth:

"**Accounts Receivable**" shall have the meaning set forth in Section 9-102 (NRS 104.9102) of the UCC for the term "account."

"**Appurtenant Rights**" means all and singular tenements, hereditaments, rights, reversions, remainders, development rights, privileges, benefits, easements (in gross or appurtenant), rights-of-way, gores or strips of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, and all appurtenances whatsoever and claims or demands of Trustor at law or in equity in any way belonging, benefiting, relating or appertaining to the Land, the airspace over the Land, the Improvements or any of the Trust Estate encumbered by this Deed of Trust, or which hereinafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Trustor.

"**Bankruptcy**" means, with respect to any Person, that (i) a court having jurisdiction in the Trust Estate shall have entered a decree or order for relief in respect of such Person in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order has not been stayed; or any other similar relief shall have been granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against such Person, under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the Trust Estate for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over such Person, or over all or a substantial part of its property, shall have been

entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of such Person, for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of such Person, and any such event described in this clause (ii) shall continue for 60 days unless dismissed, bonded or discharged; or (iii) such Person shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or such Person shall make any assignment for the benefit of creditors, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts

become due and payable or if the fair market value of its assets does not exceed its aggregate liabilities; or (iv) such Person shall, or the Board of Directors of such Person (or any committee thereof) shall, adopt any resolution or otherwise authorize any action to approve any of the actions referred to in clause (iii) above.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute thereto.

"**Business Day**" means any day that is not a Saturday, a Sunday or a day on which banking institutions in the State of Nevada or the City of New York are not required to be open.

"**Deed of Trust**" means this Deed of Trust as it may be amended, increased or modified from time to time.

"**Disbursement and Administration Agreement**" means that certain Master Disbursement and Administration Agreement to be entered into on even date with the Credit Agreement, among Trustor, Beneficiary, the trustee for holders of mortgage notes to be issued in connection with the financing of the Project, a disbursement agent to be named therein and the other parties signatory thereto, as the same may hereafter be amended or modified in accordance with its terms and the terms of the Credit Agreement.

"**Event of Default**" has the meaning set forth in Section 3.1 hereof.

"**FF&E**" means all furniture, fixtures, equipment, appurtenances and personal property now or in the future contained in, used in connection with, attached to, or otherwise useful or convenient to the use, operation, or occupancy of, or placed on, but unattached to, any part of the Land or Improvements whether or not the same constitutes real property or fixtures in the State of Nevada, including all removable window and floor coverings, all furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator and escalator plants, cooking facilities, vacuum cleaning systems, public address and communications systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings, fixtures, and building materials, all gaming and financial equipment, computer equipment, calculators, adding machines, gaming tables, video game and slot machines, and any other electronic equipment of every nature used or located on any part of the Land or Improvements, together with all Venetian blinds, shades, draperies, drapery and curtain rods, brackets, bulbs, cleaning apparatus, mirrors, lamps, ornaments, cooling apparatus and equipment, ranges and ovens, garbage disposals, dishwashers, mantels, and any and all such property which is at any time installed in, affixed to or placed upon the Land or Improvements.

"**FF&E Financing Agreement**" means any financing agreement entered into by Trustor (i) the proceeds of which are used by Trustor for the acquisition or lease of FF&E, (ii) pursuant to which Trustor grants to the lender or lessor thereunder a security interest in the FF&E so acquired or leased and (iii) which is permitted by the Credit Agreement.

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"**Governmental Authority**" means any agency, authority, board, bureau, commission, department, office, public entity, or instrumentality of any nature whatsoever of the United States federal or foreign government, any state, province or any city or other political subdivision or otherwise, whether now or hereafter in existence, or any officer or official thereof, including, without limitation, any Nevada Gaming Authority.

"**Imposition**" means any taxes, assessments, water rates, sewer rates, maintenance charges, other governmental impositions and other charges now or hereafter levied or assessed or imposed against the Trust Estate or any part thereof.

"**Improvements**" means (1) all the buildings, structures, facilities and improvements of every nature whatsoever now or hereafter situated on the Land or any real property encumbered hereby, and (2) all fixtures, machinery, appliances, goods, building or other materials, equipment, including without limitation all gaming equipment and devices, and all machinery, equipment, engines, appliances and fixtures for generating or distributing air, water, heat, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse or garbage; all wall-beds, wall-safes, built-in furniture and installations, shelving, lockers, partitions, doorstops, vaults, motors, elevators, dumb-waiters, awnings, window shades, Venetian blinds, light fixtures, fire hoses and brackets and boxes for the same, fire sprinklers, alarm, surveillance and security systems, computers, drapes, drapery rods and brackets, mirrors, mantels, screens, linoleum, carpets and carpeting, plumbing, bathtubs, sinks, basins, pipes, faucets, water closets, laundry equipment, washers, dryers, ice-boxes and heating units; all kitchen and restaurant equipment, including but not limited to silverware, dishes, menus, cooking utensils, stoves, refrigerators, ovens, ranges, dishwashers, disposals, water heaters, incinerators, furniture, fixtures and furnishings, communication systems, and equipment; all cocktail lounge supplies, including but not limited to bars, glassware, bottles and tables used in connection with the Land; all chaise lounges, hot tubs, swimming pool heaters and equipment and all other recreational equipment (computerized and otherwise), beauty and barber equipment, and maintenance supplies used in connection with the Land; all amusement rides and attractions attached to the Land, all specifically designed installations and furnishings, and all furniture, furnishings and personal property of every nature whatsoever now or hereafter owned or leased by Trustor or in which Trustor has any rights or interest and located in or on, or attached to, or used or intended to be used or which are now or may hereafter be appropriated for use on or in connection with the operation of the Land or any real or personal property encumbered hereby or any other Improvements, or in connection with any construction being conducted or which may be conducted thereon, and all extensions, additions, accessions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing, and all of the right, title and interest of Trustor in and to any such property, which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and improvements and a part of the real property hereby encumbered.

"**Insolvent**" means with respect to any person or entity, that such person or entity shall be deemed to be insolvent if it shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable and/or if the fair market value of its assets does not exceed its aggregate liabilities.

"**Intangible Collateral**" means (a) the rights to use all names and all derivations thereof now or hereafter used by Trustor in connection with the Land or Improvements, including, without limitation, the name "Le Reve", including any variations thereon, together with the goodwill associated therewith, and all names, logos, and designs used by Trustor, or in connection with the Land or in which Trustor has rights, with the exclusive right to use such names, logos and designs wherever they are now or hereafter used in connection with the Project (or in connection with the marketing of the Project), and any and all other trade names, trademarks or service marks, whether or not registered, now or hereafter used in the operation of the Project, including, without limitation, any interest as a lessee, licensee or franchisee, and, in each case, together with the goodwill associated therewith; (b) subject to

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the absolute assignment contained herein, the Rents; (c) any and all books, records, customer lists, concession agreements, supply or service contracts, licenses, permits, governmental approvals (to the extent such licenses, permits and approvals may be pledged under applicable law), signs, goodwill, casino and hotel credit and charge records, supplier lists, checking accounts, safe deposit boxes (excluding the contents of such deposit boxes owned by persons other than Trustor and its subsidiaries), cash, instruments, chattel papers, including inter-company notes and pledges, documents, unearned premiums, deposits, refunds, including but not limited to income tax refunds, prepaid expenses, rebates, tax and insurance escrow and impound accounts, if any, actions and rights in action, and all other claims, including without limitation condemnation awards and insurance proceeds, and all other contract rights and general intangibles resulting from or used in connection with the operation and occupancy of the Trust Estate and the Improvements and in which Trustor now or hereafter has rights; and (d) general intangibles, vacation license resort agreements or other time share license or right to use agreements, including without limitation all rents, issues, profits, income and maintenance fees resulting therefrom, whether any of the foregoing is now owned or hereafter acquired.

"**Land**" means the real property situated in the County of Clark, State of Nevada, more specifically described in *Schedule A* attached hereto and incorporated herein by reference, including any after acquired title thereto.

"**Legal Requirements**" means all applicable restrictive covenants, applicable zoning and subdivision ordinances and building codes, all applicable health and Environmental Laws and regulations, all applicable gaming laws and regulations, and all other applicable laws, ordinances, rules, regulations, judicial decisions, administrative orders, and other requirements of any Governmental Authority having jurisdiction over Trustor, the Trust Estate and/or any Affiliate of Trustor, in effect either at the time of execution of this Deed of Trust or at any time during the term hereof, including, without limitation, all Environmental Laws and Nevada Gaming Laws.

"**Notes**" means, collectively, those certain Promissory Note(s) to be issued pursuant to the Credit Agreement, as the same may be amended or replaced from time to time in accordance with its terms.

"**NRS**" means the Nevada Revised Statutes as in effect from time to time.

"**Obligations**" means the payment and performance of each covenant and agreement of Trustor contained in this Deed of Trust, the Commitment Letter, the Credit Agreement, the Notes and the other Loan Documents (including the Security Documents).

"**Permitted Dispositions**" means (a) the sale, transfer, lease or other disposition of assets in the Trust Estate, in the ordinary course of business, of inventory held in the ordinary course of business (b) the dispositions set forth in *Section 1.10* hereof and (c) other sales, transfers, leases or other dispositions of assets in the Trust Estate, including entering into Space Leases; *provided* that all applicable provisions of the Loan Documents are complied with.

"**Personal Property**" has the meaning set forth in *Section 1.12* hereof.

"**Proceeds**" has the meaning assigned to it under the UCC and, in any event, shall include but not be limited to (i) any and all proceeds of any insurance (including without limitation property casualty and title insurance), indemnity, warranty or guaranty payable from time to time with respect to any of the Trust Estate; (ii) any and all proceeds in the form of accounts, security deposits, tax escrows (if any), down payments (to the extent the same may be pledged under applicable law), collections, contract rights, documents, instruments, chattel paper, liens and security instruments, guarantees or general intangibles relating in whole or in part to the Project and all rights and remedies of whatever kind or nature Trustor may hold or acquire for the purpose of securing or enforcing any obligation due Trustor thereunder; (iii) any and all payments in any form whatsoever made or due and payable from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Trust Estate by any Governmental Authority; (iv) subject to the absolute assignment

contained herein, the Rents or other benefits arising out of, in connection with or pursuant to any Space Lease of the Trust Estate; and (v) any and all other amounts from time to time paid or payable in connection with any of the Trust Estate; *provided, however*, that the Trustor is not authorized to dispose of any of the Trust Estate unless such disposition is a Permitted Disposition.

"**Project**" means the resort-hotel-casino-mall complex proposed to be constructed in Clark County, Nevada as described in the Plans and Specifications, as such Plans and Specifications may be amended pursuant to the Disbursement and Administration Agreement.

"**Rents**" means all rents, room revenues, income, receipts, issues, profits, revenues and maintenance fees, room, food and beverage revenues, license and concession fees, income, proceeds and other benefits to which Trustor may now or hereafter be entitled from the Land, the Improvements, the Space Leases or any property encumbered hereby or any business or other activity conducted by Trustor at the Land or the Improvements.

"**Space Leases**" means any and all leases, subleases, lettings, licenses, concessions, operating agreements, management agreements, and all other agreements affecting the Trust Estate that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, that give any person the right to conduct its business on, or otherwise use, operate or occupy, all or any portion of the Land or Improvements and any leases, agreements or arrangements permitting anyone to enter upon or use any of the Trust Estate to extract or remove natural resources of any kind, together with all amendments, extensions, and renewals of the foregoing entered into in compliance with this Deed of Trust, together with all rental, occupancy, service, maintenance or any other similar agreements pertaining to use or occupation of, or the rendering of services at the Land, the Improvements or any part thereof.

"**Space Lessee(s)**" means any and all tenants, licensees, or other grantees of the Space Leases and any and all guarantors, sureties, endorsers or others having primary or secondary liability with respect to such Space Leases.

"**Tangible Collateral**" means all personal property, goods, equipment, supplies, building and other materials of every nature whatsoever and all other tangible personal property constituting a part or portion of the Project and/or used in the operation of the hotel, casino, restaurants, stores, parking facilities, observation tower and all other commercial operations on the Land or Improvements, including but not limited to communication systems, visual and electronic surveillance systems and transportation systems and not constituting a part of the real property subject to the real property lien of this Deed of Trust and including all property and materials stored therein in which Trustor has an interest and all tools, utensils, food and beverage, liquor, uniforms, linens, housekeeping and maintenance supplies, vehicles, fuel, advertising and promotional material, blueprints, surveys, plans and other documents relating to the Land or Improvements, and all construction materials and all furnishings, fixtures and equipment, including, but not limited to, all FF&E and all equipment and devices which are or are to be installed and used in connection with the operation of the Project, those items of furniture, fixtures and equipment which are to be purchased or leased by Trustor,

machinery and any other item of personal property in which Trustor now or hereafter own or acquire an interest or right, and which are used or useful in the construction, operation, use and occupancy of the Project and all present and future right and interest of Trustor in and to any casino operator's agreement, license agreement or sublease agreement used in connection with the Land or the Improvements.

"**Title Insurer**" means Commonwealth Land Title Company.

"**Trust Estate**" means all of the property described in Granting Clauses (A) through (O) below, inclusive, and each item of property therein described, provided, however, that such term shall not include the property described in Granting Clause (P) below.

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"**UCC**" means the Uniform Commercial Code in effect in the State of Nevada from time to time, NRS chapters 104 and 104A.

The following terms shall have the meaning assigned to such terms in the Disbursement and Administration Agreement:

Environmental Laws
Financing Agreements
Funding Agents
Plans and Specifications

The following terms shall have the meaning assigned to such terms in the Credit Agreement:

Affiliate
Borrower Security Agreement
Closing Date
Lien
Loan Documents
Nevada Gaming Authority
Nevada Gaming Laws
Nevada Gaming License
Permitted Encumbrance
Permitted Liens
Person
Security Documents

In addition, any capitalized terms used in this Deed of Trust which are not otherwise defined herein shall have the meaning ascribed to such terms in the Disbursement and Administration Agreement and, if not defined therein, the meaning ascribed to such terms in the Credit Agreement.

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W I T N E S E T H:

IN CONSIDERATION OF TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION; THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, AND FOR THE PURPOSE OF SECURING in favor of Beneficiary (1) the due and punctual payment of the indebtedness evidenced by the Notes and the other Loan Documents; (2) the performance of each covenant and agreement of Trustor contained in the Commitment Letter and the Credit Agreement, herein, in the other Loan Documents (including the Security Documents) and the Disbursement and Administration Agreement; (3) the payment of such additional loans or advances as hereafter may be made to Trustor (individually or jointly and severally with any other Person) or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; *provided, however,* that any and all future advances by Beneficiary to Trustor made for the improvement, protection or preservation of the Trust Estate, together with interest at the rate applicable to overdue principal set forth in the Credit Agreement, shall be automatically secured hereby unless such a note or instrument evidencing such advances specifically recites that it is not intended to be secured hereby and (4) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof or to protect the security hereof (including Protective Advances as such term is defined in *Section 4.2* hereof), together with interest thereon as herein provided, Trustor, in consideration of the premises, and for the purposes aforesaid, does hereby ASSIGN, BARGAIN, CONVEY, PLEDGE, RELEASE, HYPOTHECATE, WARRANT, AND TRANSFER WITH POWER OF SALE UNTO TRUSTEE IN TRUST FOR THE BENEFIT OF BENEFICIARY AND THE BANKS each of the following:

(A) The Land;

(B) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Improvements;

(C) TOGETHER WITH all Appurtenant Rights;

(D) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Tangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(E) TOGETHER WITH the Intangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(F) TOGETHER WITH (i) all the estate, right, title and interest of Trustor of, in and to all judgments and decrees, insurance proceeds, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of any of the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof, or to any Appurtenant Rights thereto, and Beneficiary is (subject to the terms hereof) hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittance therefor, and (subject to the terms hereof) to apply

the same toward the payment of the indebtedness and other sums secured hereby, notwithstanding the fact that the amount owing thereon may not then be due and payable; (ii) all proceeds of any sales or other dispositions of the property or rights described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof whether voluntary or involuntary, provided, however, that the foregoing shall not be deemed to permit such sales, transfers, or other dispositions except as specifically permitted herein; and (iii) whether arising from any voluntary or involuntary disposition of the property described in Granting Clauses (A), (B), (C), (D) and (E), all Proceeds, products, replacements, additions, substitutions, renewals and accessions, remainders, reversions and after-acquired interest in, of and to such property;

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(G) TOGETHER WITH the absolute assignment of any Space Leases or any part thereof that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, together with all of the following (including all "Cash Collateral" within the meaning of the Bankruptcy Law) arising from the Space Leases: (a) Rents (subject, however, to the aforesaid absolute assignment to Trustee for the benefit of Beneficiary and the conditional permission hereinbelow given to Trustor to collect the Rents), (b) all guarantees, letters of credit, security deposits, collateral, cash deposits, and other credit enhancement documents, arrangements and other measures with respect to the Space Leases, (c) all of Trustor's right, title, and interest under the Space Leases, including the following: (i) the right to receive and collect the Rents from the lessee, sublessee or licensee, or their successor(s), under any Space Lease(s) and (ii) the right to enforce against any tenants thereunder and otherwise any and all remedies under the Space Leases, including Trustor's right to evict from possession any tenant thereunder or to retain, apply, use, draw upon, pursue, enforce or realize upon any guaranty of any Space Lease; to terminate, modify, or amend the Space Leases; to obtain possession of, use, or occupy, any of the real or personal property subject to the Space Leases; and to enforce or exercise, whether at law or in equity or by any other means, all provisions of the Space Leases and all obligations of the tenants thereunder based upon (A) any breach by such tenant under the applicable Space Lease (including any claim that Trustor may have by reason of a termination, rejection, or disaffirmance of such Space Lease pursuant to any Bankruptcy Law) and (B) the use and occupancy of the premises demised, whether or not pursuant to the applicable Space Lease (including any claim for use and occupancy arising under landlord-tenant law of the State of Nevada or any Bankruptcy Law). Permission is hereby given to Trustor, so long as no Event of Default has occurred and is continuing hereunder, to collect and use the Rents, as they become due and payable, but not more than one (1) month in advance thereof. Upon the occurrence of an Event of Default, the permission hereby given to Trustor to collect the Rents shall automatically terminate, but such permission shall be reinstated upon a cure or waiver of such Event of Default. Beneficiary shall have the right, at any time and from time to time, to notify any Space Lessee of the rights of Beneficiary as provided by this section;

Notwithstanding anything to the contrary contained herein, the foregoing provisions of this Paragraph (G) shall not constitute an assignment for purposes of security but shall constitute an absolute and present assignment of the Rents to Beneficiary, subject, however, to the conditional license given to Trustor to collect and use the Rents as hereinabove provided; and the existence or exercise of such right of Trustor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Trustor;

(H) TOGETHER WITH all of Trustor's right, title and interest in and to any and all Plans and Specifications and all maps, plans, specifications, surveys, studies, tests, reports, data and drawings relating to the development of the Land or the Project and the construction of the Improvements, including, without limitation, all marketing plans, feasibility studies, soils tests, design contracts and all contracts and agreements of Trustor relating thereto including, without limitation, architectural, structural, mechanical and engineering plans and specifications, studies, data and drawings prepared for or relating to the development of the Land or the Project or the construction, renovation or restoration of any of the Improvements or the extraction of minerals, sand, gravel or other valuable substances from the Land and purchase contracts or any agreement granting Trustor a right to acquire any land situated within Clark County, Nevada;

(I) TOGETHER WITH, to the extent permitted by applicable law, all of Trustor's right, title, and interest in and to any and all licenses, permits, variances, special permits, franchises, certificates, rulings, certifications, validations, exemptions, filings, registrations, authorizations, consents, approvals, waivers, orders, rights and agreements (including, without limitation, options, option rights, contract rights now or hereafter obtained by Trustor from any Governmental Authority having or claiming jurisdiction over the Land, the FF&E, the Project, or any other element of the Trust Estate or

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providing access thereto, or the operation of any business on, at, or from the Land including, without limitation, any liquor or Nevada Gaming Licenses (except for any registrations, licenses, findings of suitability or approvals issued by the Nevada Gaming Authorities or any other liquor or gaming licenses which are non-assignable); *provided*, that upon an Event of Default hereunder or under the Credit Agreement, if Beneficiary is not qualified under the Nevada Gaming Laws to hold such Nevada Gaming Licenses, then Beneficiary may designate an appropriately qualified third party to which an assignment of such Nevada Gaming Licenses can be made in compliance with the Nevada Gaming Laws;

(J) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to all water stock, water permits and other water rights relating to the Land;

(K) TOGETHER WITH all oil and gas and other mineral rights, if any, in or pertaining to the Land and all royalty, leasehold and other rights of Trustor pertaining thereto;

(L) TOGETHER WITH any and all monies and other property, real or personal, which may from time to time be subjected to the lien hereof by Trustor or by anyone on its behalf or with its consent, or which may come into the possession or be subject to the control of Trustee or Beneficiary pursuant to this Deed of Trust, the Commitment Letter, the Credit Agreement or any other Loan Document (including any Security Document), including, without limitation, any Protective Advances (as defined in *Section 4.2* hereof) under this Deed of Trust; and all of Trustor's right, title, and interest in and to all extensions, improvements, betterments, renewals, substitutes for and replacements of, and all additions, accessions, and appurtenances to, any of the foregoing that Trustor may subsequently acquire or obtain by any means, or construct, assemble, or otherwise place on any of the Trust Estate, and all conversions of any of the foregoing; it being the intention of Trustor that all property hereafter acquired by Trustor and required by the Commitment Letter, the Credit Agreement, any other Loan Document (including any Security Document) or this Deed of Trust to be subject to the lien of this Deed of Trust or intended so to be shall forthwith upon the acquisition thereof by Trustor be subject to the lien of this Deed of Trust as if such property were now owned by Trustor and were specifically described in this Deed of Trust and granted hereby or pursuant hereto, and Trustee and Beneficiary are hereby authorized, subject to Nevada Gaming Laws and other applicable laws, to receive any and all such property as and for additional security for the obligations secured or intended to be secured hereby. Trustor agrees to take any action as may reasonably be necessary to evidence and perfect such liens or security interests, including, without limitation, the execution of any documents necessary to evidence and perfect such liens or security interests;

(M) TOGETHER WITH, to the extent permitted by applicable laws, any and all Accounts Receivable and all royalties, earnings, income, proceeds, products, rents, revenues, reversions, remainders, issues, profits, avails, production payments, and other benefits directly or indirectly derived or otherwise arising from any of the foregoing, all of which are hereby assigned to Beneficiary, who, except as otherwise expressly provided in this Deed of Trust (including the provisions of Section 1.13 hereof), is authorized to collect and receive the same, to give receipts and acquittances therefor and to apply the same to the Obligations secured hereunder, whether or not then due and payable;

(N) TOGETHER WITH Proceeds of the foregoing property described in Granting Clauses (A) through (M);

(O) TOGETHER WITH Trustor's rights further to assign, sell, lease, encumber or otherwise transfer or dispose of the property described in Granting Clauses (A) through (N) inclusive, above, for debt or otherwise; and

(P) EXPRESSLY EXCLUDING, HOWEVER, any assets expressly excluded from the definition of "Collateral" in the Credit Agreement.

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Trustor, for itself and its successors and assigns, covenants and agrees to and with Trustee that, at the time or times of the execution of and delivery of these presents or any instrument of further assurance with respect thereto, Trustor has good right, full power and lawful authority to assign, grant, convey, warrant, transfer, bargain or sell its interests in the Trust Estate in the manner and form as aforesaid, and that the Trust Estate is free and clear of all liens and encumbrances whatsoever, except Permitted Liens, and Trustor shall warrant and forever defend the above-bargained property in the quiet and peaceable possession of Trustee and its successors and assigns against all and every person or persons lawfully or otherwise claiming or to claim the whole or any part thereof, except for Permitted Liens. Trustor agrees that any greater title to the Trust Estate hereafter acquired by Trustor during the term hereof shall be automatically subject hereto.

ARTICLE ONE

COVENANTS OF TRUSTOR

The Beneficiary and the Banks have been induced to enter into the Commitment Letter, the Credit Agreement and the other Loan Documents and to make advances of loans thereunder on the basis of the following material covenants, all agreed to by Trustor:

1.1 Performance of Financing Agreements. Trustor shall perform, observe and comply with each and every provision hereof, and with each and every provision contained in the Financing Agreements and shall promptly pay to the respective Funding Agents, when payment shall become due, the principal with interest thereon and all other sums required to be paid by Trustor under this Deed of Trust and the other Financing Agreements.

1.2 General Representations, Covenants and Warranties. Trustor represents, covenants and warrants that: (a) Trustor has good and marketable title to an indefeasible fee estate in the Land, free and clear of all encumbrances except Permitted Encumbrances, and that it has the right to hold, occupy and enjoy its interest in the Trust Estate, and has good right, full power and lawful authority to subject the Trust Estate to the Lien of this Deed of Trust and pledge the same as provided herein and Beneficiary may at all times peaceably and quietly enter upon, hold, occupy and enjoy the entire Trust Estate in accordance with the terms hereof; (b) Trustor is not Insolvent and no bankruptcy or insolvency proceedings are pending or contemplated by or, to the best of Trustor's knowledge, threatened against Trustor; (c) all costs arising from construction of any Improvements, the performance of any labor and the purchase of all Tangible Collateral and Improvements have been or shall be paid when due (subject to the provisions of the Disbursement and Administration Agreement, the Credit Agreement and this Deed of Trust); (d) the Land has frontage on, and direct access for ingress and egress to dedicated street(s); (e) Trustor shall at all times conduct and operate the Trust Estate in a manner so as not to lose, or permit its affiliate to lose, the right to conduct gaming activities at the Project; (f) no material part of the Trust Estate has been damaged, destroyed, condemned or abandoned, other than those portions of the Trust Estate that have been the subject of condemnation proceedings that have resulted in the conveyance of such portion of the Trust Estate to the Trustor; (g) no part of the Trust Estate is the subject of condemnation proceedings, other than condemnation proceedings to convey Land to the Trustor, and Trustor has no knowledge of any contemplated or pending condemnation proceeding with respect to any portion of the Trust Estate other than condemnation proceedings to convey Land to the Trustor; and (h) Trustor acknowledges and agrees that it presently may use, and in the past may have used, one or more of the trade or fictitious names, "Le Reve", "Wynn Collection", "Wynn Resorts" and "Desert Inn" and in each case variations thereof (collectively, the "**Enumerated Names**") in connection with the operation of the business at the Trust Estate, and Trustor further represents and warrants that the Enumerated Names are the only such trade or fictitious names Trustor has so used. For all purposes under this Deed of Trust it shall be deemed that the term "Trustor" includes all trade or fictitious names that Wynn Las Vegas, LLC (or any successor or assign thereof) now or hereafter uses, or has in the past used, including, without limitation, the Enumerated Names, with the same force

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and effect as if this Deed of Trust had been executed in all such names (in addition to "Wynn Las Vegas, LLC").

1.3 Compliance with Legal Requirements. Except as provided in the Credit Agreement, Trustor shall promptly, fully, and faithfully comply in all material respects with all Legal Requirements and shall cause all portions of the Trust Estate and its use and occupancy to fully comply in all material respects with Legal Requirements at all times, whether or not such compliance requires work or remedial measures that are ordinary or extraordinary, foreseen or unforeseen, structural or nonstructural, or that interfere with the use or enjoyment of the Trust Estate.

1.4 Taxes. Except as otherwise permitted by the Credit Agreement and the Disbursement and Administration Agreement, (a) Trustor shall pay all Impositions as they become due and payable and shall deliver to Beneficiary promptly upon Beneficiary's request, evidence satisfactory to Beneficiary that the Impositions have been paid or are not delinquent; (b) Trustor shall not suffer to exist, permit or initiate the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Land as a single lien, except as may be required by law; and (c) in the event of the passage of any law deducting from the value of real property for the purposes of taxation any lien thereon, or changing in any way the taxation of deeds of trust or obligations secured thereby for state or local purposes, or the manner of collecting such taxes and imposing a tax, either directly or indirectly, on this Deed of Trust, the Notes or the other Loan Documents, Trustor shall pay all such taxes.

1.5 Insurance.

(a) **Hazard Insurance Requirements and Proceeds.**

(1) *Hazard Insurance.* Trustor shall at its sole expense obtain for, deliver to, assign and maintain for the benefit of Beneficiary, during the term of this Deed of Trust, insurance policies insuring the Trust Estate and liability insurance policies, all in accordance with the requirements of the Credit Agreement and the Disbursement and Administration Agreement (while in effect). Trustor shall pay promptly when due any premiums on such insurance policies and on any renewals thereof. In the event of the foreclosure of this Deed of Trust or any other transfer of title to the Trust Estate in partial or complete extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of Beneficiary in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

(2) *Handling of Proceeds.* All Proceeds from any insurance policies shall be collected, held, handled and disbursed in accordance with the provisions of the Credit Agreement and the Disbursement and Administration Agreement (while in effect). All proceeds of insurance allocable to Trustor, as owner of the Land, and attributable to business interruption insurance shall be collected, held, handled and disbursed in accordance with the provisions of the Credit Agreement and the Disbursement and Administration Agreement. Any such proceeds disbursed to Beneficiary shall be applied to pay amounts then due and payable under this Deed of Trust. The balance shall be retained by Beneficiary or its designee in an interest bearing or other investment account approved by Beneficiary, which account Trustor hereby pledges to Beneficiary to secure the Obligations. Disbursements shall be permitted from such account to pay expenses reasonably incurred by Trustor in owning and operating the Trust Estate, as reasonably approved by Beneficiary.

(b) **Compliance with Insurance Policies.** Trustor shall not violate or permit to be violated any of the conditions or provisions of any policy of insurance required by the Credit Agreement, the Disbursement and Administration Agreement (while in effect) or this Deed of Trust and

Trustor shall so perform and satisfy the requirements of the companies writing such policies that, at all times, companies of good standing shall be willing to write and/or continue such insurance. Trustor further covenants to promptly send to Beneficiary all notices relating to any violation of such policies or otherwise affecting Trustor's insurance coverage or ability to obtain and maintain such insurance coverage.

1.6 **Condemnation.** Beneficiary is hereby authorized, at its option, to commence, appear in and prosecute in its own or Trustor's name any action or proceeding relating to any condemnation and to settle or compromise any claim in connection therewith, and Trustor hereby appoints Beneficiary as its attorney-in-fact to take any action in Trustor's name pursuant to Beneficiary's rights hereunder. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Trust Estate or any portion thereof, Trustor shall notify the Trustee and Beneficiary of the pendency of such proceedings. Trustor from time to time shall execute and deliver to Beneficiary all instruments requested by it to permit such participation; provided, however, that such instruments shall be deemed as supplemental to the foregoing grant of permission to Trustee and Beneficiary, and unless otherwise required, the foregoing permission shall, without more, be deemed sufficient to permit Trustee and/or Beneficiary to participate in such proceedings on behalf of Trustor. All such compensation awards, damages, claims, rights of action and Proceeds, and any other payments or relief, and the right thereto, are, whether paid to Beneficiary or Trustor or a third party trustee, included in the Trust Estate. Beneficiary, after deducting therefrom all its expenses, including reasonable attorneys fees, shall apply all Proceeds paid directly to it in accordance with the provisions of the Credit Agreement. All Proceeds paid directly to the Trustor shall be applied in accordance with the Disbursement and Administration Agreement. To the extent that any condemnation proceeds are not required to be applied towards restoration of the improvements upon the Land, then Beneficiary shall have the right to apply said condemnation proceeds towards repayment of the Obligations. Trustor hereby waives any rights it may have under NRS 37.115, as amended or recodified from time to time.

1.7 **Care of Trust Estate.**

(a) Trustor shall preserve and maintain the Trust Estate in good condition and repair. Trustor shall not permit, commit or suffer to exist any waste, impairment or deterioration of the Trust Estate or of any part thereof that in any manner materially impairs Beneficiary's security hereunder and shall not take any action which will increase the risk of fire or other hazard to the Trust Estate or to any part thereof.

(b) Except for Permitted Dispositions, no material part of the Improvements or Tangible Collateral that are part of the Trust Estate shall be removed, demolished or materially altered, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld or delayed. Trustor shall have the right, without such consent, to remove and dispose of free from the lien of this Deed of Trust any part of the Improvements or Tangible Collateral that are part of the Trust Estate as from time to time may become worn out or obsolete or otherwise not useful in connection with the operation of the Trust Estate, provided that either (i) such removal or disposition does not materially affect the value of the Trust Estate or (ii) prior to or promptly following such removal, any such property shall be replaced with other property of substantially equal utility and of a value at least substantially equal to that of the replaced property when first acquired and free from any security interest of any other person (subject only to Permitted Liens), and by such removal and replacement Trustor shall be deemed to have subjected such replacement property to the lien of this Deed of Trust.

(c) Notwithstanding the foregoing provisions of this *Section 1.7*, the Trustor may develop the Project in the manner contemplated by the Disbursement and Administration Agreement, the Credit Agreement and the other Financing Agreements.

1.8 **Leases.**

(a) Trustor represents, warrants and covenants that:

(i) as of the date hereof, Trustor has not entered into any Space Leases;

(ii) except for the assignment effected hereby and in the other Financing Agreements, Trustor has not executed any assignment or pledge of any of Space Leases, the Rents, or of Trustor's right, title and interest in the same; and

(iii) this Deed of Trust does not and will not constitute a violation or default under any Space Lease, and is and shall at all times constitute a valid lien on Trustor's interests in the Space Leases.

(b) Trustor shall not enter into any Space Lease or any modifications or amendments to any Space Lease, either orally or in writing, unless such Space Lease complies with the requirements of the Credit Agreement.

(c) After an Event of Default, upon the request of Administrative Agent Trustor shall deliver to Beneficiary executed copies of all Space Leases.

1.9 *Further Encumbrance.*

(a) Trustor covenants that at all times prior to the discharge of the Credit Agreement and the Notes, except for Permitted Liens and Permitted Dispositions, Trustor shall neither make nor suffer to exist, nor enter into any agreement for, any sale, assignment, exchange, mortgage, transfer, Lien, hypothecation or encumbrance of all or any part of the Trust Estate, including, without limitation, the Rents. As used herein, "transfer" includes the actual transfer or other disposition, whether voluntary or involuntary, by law, or otherwise, except those transfers specifically permitted herein, provided, however, that "transfer" shall not include the granting of utility or other beneficial easements with respect to the Trust Estate which have been or are granted by Trustor and are reasonably necessary to the construction, maintenance or operation of the Project.

(b) Any Permitted Lien consisting of the lien of a deed of trust which is junior to the lien of the Loan Documents (including the Security Documents) (a "Subordinate Deed of Trust") shall be permitted hereunder so long as there shall have been delivered to Beneficiary, not less than thirty (30) days prior to the date thereof, a copy thereof which shall contain express covenants in form and substance satisfactory to Beneficiary to the effect that: (i) the Subordinate Deed of Trust is in all respects subject and subordinate to this Deed of Trust; (ii) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Trust Estate shall be named as a party defendant nor shall any action be taken with respect to the Trust Estate which would terminate any occupancy or tenancy of the Trust Estate, or any portion thereof, without the consent of Beneficiary; (iii) any Rents, if collected through a receiver or by the holder of the Subordinate Deed of Trust, shall be applied first to the obligations secured by this Deed of Trust, including principal and interest due and owing on or to become due and owing on the Notes or the other Loan Documents, and then to the payment of maintenance expenses, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operation, and maintenance of the Trust Estate; and (iv) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust, prompt notice of the commencement thereof shall be given to Beneficiary.

(c) Trustor agrees that in the event the ownership of the Trust Estate or any part thereof becomes vested in a person other than Trustor, Beneficiary may, without notice to Trustor, deal in any way with such successor or successors in interest with reference to this Deed of Trust, the Notes, the other Loan Documents and other Obligations hereby secured without in any way vitiating or discharging Trustor's or any guarantor's, surety's or endorser's liability hereunder or upon the obligations hereby secured. No

sale of the Trust Estate and no forbearance to any person with respect to this Deed of Trust and no extension to any person of the time for payment of the Notes or other payment obligations under the Loan Documents (whether principal and interest payments or otherwise), and other sums hereby secured given by Beneficiary shall operate to release, discharge, modify, change or affect the original liability of Trustor, or such guarantor, surety or endorser either in whole or in part.

(d) Trustor covenants and agrees to comply with all of the terms and conditions set forth in any FF&E Financing Agreement. If Trustor shall fail to make any payment required to be made by it under any FF&E Financing Agreement, except where Trustor is contesting such payment in good faith, then the Beneficiary shall be entitled to make such payment on Trustor's behalf and any and all sums so expended by the Beneficiary shall be secured by this Deed of Trust and shall be repaid by Trustor upon demand, together with interest thereon at the interest at the rate applicable to overdue principal set forth in the Credit Agreement from the date of advance.

1.10 *Partial Releases of Trust Estate.*

(a) Trustor may from time to time make a Permitted Disposition including, but not limited to, (i) transferring a portion of the Trust Estate (including any temporary taking) to any person legally empowered to exercise the power of eminent domain, or pursuant to dedication agreements that are now in effect or entered into in the future in connection with the development of the Project, (ii) granting utility easements reasonably necessary or desirable for the construction and/or operation of the Project, which grant or transfer is for the benefit of the Trust Estate, or (iii) transferring a portion of the Trust Estate as permitted pursuant to the Disbursement and Administration Agreement. In each such case, Beneficiary shall execute and deliver any instruments necessary or appropriate to effectuate or confirm any such transfer or grant, free from the lien of this Deed of Trust, *provided, however*, that Beneficiary shall execute a lien release or subordination agreement, as appropriate, for matters described in clauses (i) and (iii) above only if:

(A) Such transfer, grant or release is not prohibited by the Credit Agreement and all conditions precedent contained in the Credit Agreement for such transfer, grant or release, if any, shall have been satisfied;

(B) Beneficiary and Trustee shall have received a counterpart of the instrument pursuant to which such transfer, grant or release is to be made, and each instrument which Beneficiary or Trustee is requested to execute in order to effectuate or confirm such transfer, grant or release;

(C) In the case of a transfer to a person legally empowered to exercise the power of eminent domain, which transfer involves property whose value is greater than \$5,000,000, Beneficiary and Trustee shall have received an opinion of counsel, who may be counsel to Trustor, to the effect that the assignee or grantee of the portion of the Trust Estate being transferred is legally empowered to take such portion under the power of eminent domain; and

(D) Beneficiary and Trustee shall have received such other instruments, certificates (including evidence of authority) and opinions as Beneficiary or Trustee may reasonably request, including, but not limited to, opinions that the proposed release is permitted by this *Section 1.10*.

(b) Any consideration received for a transfer to any person empowered to exercise the right of eminent domain shall be subject to *Section 1.6* hereof.

1.11 *Further Assurances.*

(a) At its sole cost and without expense to Trustee or Beneficiary, and subject in all events to compliance with the Nevada Gaming Laws and other applicable Legal Requirements, Trustor shall do, execute, acknowledge and deliver any and all such further acts, deeds, conveyances, notices, requests for

any chattel paper or instruments to Beneficiary and take any other actions that are necessary, prudent, or reasonably requested by Beneficiary or Trustee to perfect or continue the perfection and first priority of Beneficiary's security interest in the Trust Estate, to protect the Trust Estate against the rights, claims, or interests of third persons other than holders of Permitted Liens or to effect the purposes of this Deed of Trust, including the security agreement and the absolute assignment of Rents contained herein, or for the filing, registering or recording thereof.

(b) Trustor shall forthwith upon the execution and delivery of this Deed of Trust, and thereafter from time to time, cause this Deed of Trust and each instrument of further assurance to be filed, indexed, registered, recorded, given or delivered in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the title of Trustee and/or Beneficiary to, the Trust Estate.

1.12 **Security Agreement and Financing Statements.** Trustor (as debtor) hereby grants to Beneficiary (as creditor and secured party) a present and future security interest in all Tangible Collateral, Intangible Collateral, FF&E, Improvements, all other personal property now or hereafter owned or leased by Trustor or in which Trustor has or will have any interest, to the extent that such property constitutes a part of the Trust Estate (whether or not such items are stored on the premises or elsewhere), Proceeds of the foregoing comprising a portion of the Trust Estate and all proceeds of insurance policies and consideration awards arising therefrom and all proceeds, products, substitutions, and accessions therefor and thereto, subject to Beneficiary's rights to treat such property as real property as herein provided (collectively, the "**Personal Property**"). Trustor shall execute and/or deliver any and all documents and writings, including without limitation financing statements pursuant to the UCC, as may be necessary or prudent to preserve and maintain the priority of the security interest granted hereby on property which may be deemed subject to the foregoing security agreement or as Beneficiary may reasonably request, and shall pay to Beneficiary on demand any reasonable expenses incurred by Beneficiary in connection with the preparation, execution and filing of any such documents. Trustor hereby authorizes and empowers Beneficiary to file, on Trustor's behalf, all financing statements and refile and continuations thereof as advisable to create, preserve and protect said security interest. Trustor acknowledges and agrees that it is not authorized to, and will not, authenticate or file, or authorize the filing of, any financing statements or other record with respect to the Personal Property (including any amendments thereto, or continuation or termination statements thereof), except as permitted by the Credit Agreement. Trustor approves and ratifies any filing or recording of records made by or on behalf of Beneficiary in connection with the perfection of the security interest in favor of Beneficiary hereunder. This Deed of Trust constitutes both a real property deed of trust and a "security agreement," within the meaning of the UCC, and the Trust Estate includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Trust Estate. Trustor by executing and delivering this Deed of Trust has granted to Beneficiary, as security of the Obligations, a security interest in the Trust Estate.

(a) **Fixture Filing.** Without in any way limiting the generality of the immediately preceding paragraph or of the definition of the Trust Estate, this Deed of Trust constitutes a fixture filing under Sections 9-334 and 9-502 of the UCC (NRS 104.9334 and 104.9502). For such purposes, (i) the "debtor" is Trustor and its address is the address given for it in the initial paragraph of this Deed of Trust; (ii) the "secured party" is Beneficiary, and its address for the purpose of obtaining information is the address given for it in the initial paragraph of this Deed of Trust; (iii) the real estate to which the fixtures are or are to become attached is Trustor's interest in the Land; and (iv) the record owner of such real estate is Trustor.

(b) **Remedies.** This Deed of Trust shall be deemed a security agreement as defined in the UCC and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall include any or all of (i) those prescribed herein, and (ii) those available under applicable law, and (iii) those available under the UCC, all at Beneficiary's sole election. In

addition, a photographic or other reproduction of this Deed of Trust shall be sufficient as a financing statement for filing wherever filing may be necessary to perfect or continue the security interest granted herein.

(c) **Derogation of Real Property.** It is the intention of the parties that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in anyway derogating from or impairing the express declaration and intention of the parties hereto as hereinabove stated that everything used in connection with the production of income from the Trust Estate and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real property encumbered by this Deed of Trust irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. It is the intention of the parties that the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Trustor's interest as lessors in any present or future Space Lease or rights to Rents, shall never be construed as in anyway altering any of the rights of Beneficiary as determined by this Deed of Trust or impugning the priority of Beneficiary's real property lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of Beneficiary in the event any court or judge shall at any time hold with respect to the matters set forth in the foregoing clauses (1), (2) and (3) that notice of Beneficiary's priority of interest to be effective against a particular class of persons, including but not limited to, the federal government and any subdivisions or entity of the federal government, must be filed in the UCC records.

(d) **Priority; Permitted Financing of Tangible Collateral.** All Personal Property of any nature whatsoever which is subject to the provisions of this security agreement shall be purchased or obtained by Trustor in its name and free and clear of any lien or encumbrance, except for Permitted Liens and the lien hereof, for use only in connection with the business and operation of the Project, and shall be and at all times remain free and clear of any lease or similar arrangement, chattel financing, installment sale agreement, security agreement and any encumbrance of like kind, so that Beneficiary's security interest shall attach to and vest in Trustor for the benefit of Beneficiary, with the priority herein specified, immediately upon the installation or use of the Personal Property at the Land and Trustor warrants and represents that Beneficiary's security interest in the Personal Property is a validly attached and binding security interest, properly perfected and prior to all other security interests therein except as otherwise permitted in this Deed of

Trust. The foregoing shall not be construed as limiting Trustor's rights to transfer Personal Property pursuant to Permitted Dispositions or to obtain releases of Personal Property from the Lien of this Deed of Trust pursuant to *Section 1.10* hereof.

(e) **Preservation of Contractual Rights of Collateral.** Trustor shall, prior to delinquency, default, or forfeiture, perform all obligations and satisfy all material conditions required on its part to be satisfied to preserve its rights and privileges under any contract, lease, license, permit, or other authorization (i) under which it holds any Tangible Collateral or (ii) which constitutes part of the Intangible Collateral, except where Trustor is contesting such obligations in good faith.

(f) **Removal of Collateral.** Except for damaged or obsolete Tangible Collateral which is either no longer usable or which is removed temporarily for repair or improvement or removed for replacement on the Trust Estate with Tangible Collateral of similar function or as otherwise permitted herein, none of the Tangible Collateral shall be removed from the Trust Estate without Beneficiary's prior written consent.

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(g) **Change of Name.** Trustor shall not change its corporate (or other entity) or business name, or do business within the State of Nevada under any name other than such name, or any trade name(s) other than those as to which Trustor gives prior written notice to Beneficiary of its intent to use such trade names, or any other business names (if any) specified in the financing statements delivered to Beneficiary for filing in connection with the execution hereof, without, in each case, providing Beneficiary with the additional financing statement(s) and any other similar documents deemed reasonably necessary by Beneficiary to assure that its security interest remains perfected and of undiminished priority in all such Personal Property notwithstanding such name change.

1.13 **Assignment of Leases and Rents.** Subject to Nevada Gaming Laws and other applicable Legal Requirements, the assignment of Leases and Rents set out above in Granting Clause (G) shall constitute an absolute and present assignment to Beneficiary, subject to the license herein given to Trustor to collect the Rents, and shall be fully operative without any further action on the part of any party, and specifically Beneficiary shall be entitled upon the occurrence of an Event of Default hereunder to all Rents and to enter upon the Land and the Improvements to collect such Rents, provided, however, that Beneficiary shall not be obligated to take possession of the Trust Estate, or any portion thereof. The absolute assignment contained in Granting Clause (G) shall not be deemed to impose upon Beneficiary any of the obligations or duties of Trustor provided in any such Space Lease (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease in the event that any lessee shall have been joined as a party defendant in any action to foreclose this Deed of Trust and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Trust Estate or any part thereof).

1.14 **Expenses.**

(a) Trustor shall pay when due and payable all out-of-pocket costs, including without limitation, those reasonable appraisal fees, recording fees, taxes, abstract fees, title policy fees, escrow fees, attorneys' and paralegal fees, travel expenses, fees for inspecting architect(s) and engineer(s) and all other costs and expenses of every character which may hereafter be incurred by Beneficiary or any assignee of Beneficiary in connection with the preparation and execution of the Commitment Letter, the Credit Agreement and the other Loan Documents (including the Security Documents) or instruments, agreements or documents of further assurance, the funding of the indebtedness secured hereby, and the enforcement of any Loan Document (including any Security Document). Other than costs associated with the enforcement of any Loan Document, all such costs shall be itemized in reasonable detail; and

(b) Trustor shall, upon demand by Beneficiary, reimburse Beneficiary or any assignee of Beneficiary for all such reasonable expenses which have been incurred or which shall be incurred by it; and

(c) Trustor shall indemnify Beneficiary with respect to any transaction or matter in any way connected with any portion of the Trust Estate, this Deed of Trust, including any occurrence at, in, on, upon or about the Trust Estate (including any personal injury, loss of life, or property damage), or Trustor's use, occupancy, or operation of the Trust Estate, or the filing or enforcement of any mechanic's lien, or otherwise caused in whole or in part by any act, omission or negligence occurring on or at the Trust Estate, including failure to comply with any Legal Requirement or with any requirement of this Deed of Trust that applies to Trustor, except to the extent resulting from the gross negligence, fraud or willful misconduct of Trustee or Beneficiary. If Beneficiary is a party to any litigation as to which either Trustor is required to indemnify Beneficiary (or is made a defendant in any action of any kind against Trustor or relating directly or indirectly to any portion of the Trust Estate) then, at Beneficiary's option, Trustor shall undertake Beneficiary's defense, using counsel reasonably satisfactory to Beneficiary (and any settlement shall be subject to Beneficiary's consent, which consent

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shall not be unreasonably withheld), and in any case shall indemnify Beneficiary against such litigation. Trustor shall pay all reasonable costs and expenses, including reasonable legal costs, that Beneficiary pays or incurs in connection with any such litigation. Any amount payable under any indemnity in this Deed of Trust shall be a demand obligation, shall be added to, and become a part of, the secured obligations under this Deed of Trust, shall be secured by this Deed of Trust and, if not paid promptly following demand therefor (which demand shall, unless associated with Loan Document enforcement actions, set forth in reasonable detail an itemization of the amount so demanded) shall bear interest at the interest rate specified in the Credit Agreement. Such indemnity shall survive any release of this Deed of Trust and any foreclosure.

1.15 **Beneficiary's Cure of Trustor's Default.** If Trustor defaults hereunder in the payment of any tax, assessment, lien, encumbrance or other Imposition, in its obligation to furnish insurance hereunder, or in the performance or observance of any other covenant, condition or term of this Deed of Trust or any other Financing Agreement or any FF&E Financing Agreement, Beneficiary may, but is not obligated to, to preserve its interest in the Trust Estate, perform or observe the same, and all payments made (whether such payments are regular or accelerated payments) and reasonable costs and expenses incurred or paid by Beneficiary in connection therewith shall become due and payable immediately. The amounts so incurred or paid by Beneficiary, together with interest thereon at the interest rate applicable to overdue principal set forth in the Credit Agreement, from the date incurred until paid by Trustor, shall be added to the indebtedness and secured by the lien of this Deed of Trust. Beneficiary, is hereby empowered to enter and to authorize others to enter upon the Land or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Trustor or any person in possession holding under Trustor. No exercise of any rights under this Section 1.15 by Beneficiary shall cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

1.16 **Use of Land.** Trustor covenants that the Trust Estate shall be (i) used and operated in a manner consistent with the requirements of the Loan Documents and (ii) open during such days and hours as are customarily observed by casino-hotels located in Las Vegas, Nevada, reasonably consistent with the provisions of the Credit Agreement.

1.17 **Compliance with Permitted Lien Agreements.** Trustor shall comply with each and every material obligation contained in any agreement pertaining to a Permitted Lien.

1.18 **Defense of Actions.** Trustor shall appear in and defend any action or proceeding affecting or purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and shall pay all costs and expenses, including cost of title search and insurance or other evidence of title, preparation of survey, and reasonable attorneys' fees in any such action or proceeding in which Beneficiary or Trustee may appear or may be joined as a party and in any suit brought by Beneficiary based upon or in connection with this Deed of Trust or any Loan Document. Nothing contained in this section shall, however, limit the right of Beneficiary to appear in such action or proceeding with counsel of its own choice, either on its own behalf or on behalf of Trustor.

1.19 **Affiliates.**

(a) **Subject to Trust Deed.** Subject to compliance with the requirements of applicable Nevada Gaming Laws, Trustor shall cause all of its Affiliates in any way involved with the operation of the Trust Estate or the Project to observe the covenants and conditions of this Deed of Trust to the extent necessary to give the full intended effect to such covenants and conditions and to protect and preserve the security of Beneficiary hereunder. Trustor shall, at Beneficiary's request, cause any such Affiliate to execute and deliver to Beneficiary or Trustee such further instruments or documents as Beneficiary may reasonably deem necessary to effectuate the terms of this Section 1.19.

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(b) **Restriction on Use of Subsidiary or Affiliate.** Except as permitted under the Credit Agreement, the Notes or the other Loan Documents (including any Security Document), Trustor shall not use any Affiliate in the operation of the Trust Estate or the Project if such use would in any way impair the security for the Notes and the other Loan Documents or circumvent any covenant or condition of this Deed of Trust or of any other Loan Document.

1.20 **Title Insurance.** On the Closing Date, Trustor shall cause to be delivered to Trustee at Trustor's expense, one or more ALTA extended coverage Lender's Policies of Title Insurance showing fee title to the real property situated in the County of Clark, State of Nevada, more specifically described in Schedule A attached hereto, vested in Trustor and the lien of this Deed of Trust to be a perfected lien, prior to any and all encumbrances other than Permitted Encumbrances (excluding, however, any such non-Permitted Encumbrances for which the Title Insurer has agreed to provide an endorsement or affirmative coverage protecting the lien of this Deed of Trust against such non-Permitted Encumbrances).

ARTICLE TWO

CREDIT AGREEMENT PROVISIONS

2.1 Interaction with Credit Agreement

(a) **Incorporation by Reference.** All terms, covenants, conditions, provisions and requirements of the Credit Agreement are incorporated by reference in this Deed of Trust.

(b) **Conflicts.** In the event of any conflict or inconsistency between the provisions of this Deed of Trust and those of the Credit Agreement or the Disbursement and Administration Agreement, the provisions of the Credit Agreement or the Disbursement and Administration Agreement, as applicable, shall govern.

2.2 **Other Collateral.** This Deed of Trust is one of a number of security agreements to secure the debt delivered by or on behalf of Trustor pursuant to the Credit Agreement and the other Loan Documents (including the Security Documents) and securing the Obligations secured hereunder. All potential junior Lien claimants are placed on notice that, under any of the Loan Documents (including the Security Documents) (including a separate future unrecorded agreement between Trustor and Beneficiary), other collateral for the Obligations secured hereunder (*i.e.*, collateral other than the Trust Estate) may, under certain circumstances, be released without a corresponding reduction in the total principal amount secured by this Deed of Trust. Such a release would decrease the amount of collateral securing the same indebtedness, thereby increasing the burden on the remaining Trust Estate created and continued by this Deed of Trust. No such release shall impair the priority of the lien of this Deed of Trust. By accepting its interest in the Trust Estate, each and every junior Lien claimant shall be deemed to have acknowledged the possibility of, and consented to, any such release. Nothing in this paragraph shall impose any obligation upon Beneficiary.

ARTICLE THREE

DEFAULTS

3.1 **Event of Default.** The term "Event of Default," wherever used in this Deed of Trust, shall mean any of (i) one or more of the events of default listed in the Credit Agreement or (ii) so long as the Disbursement and Administration Agreement is in effect, one or more of the events of default listed in the Disbursement and Administration Agreement (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body).

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ARTICLE FOUR

REMEDIES

4.1 Acceleration of Maturity. If an Event of Default occurs, Beneficiary may (except that such acceleration shall be automatic if the Event of Default is caused by Trustor's Bankruptcy), in accordance with the Credit Agreement, declare the Notes and other indebtedness under the Loan Documents and all indebtedness or sums secured hereby, to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become due and payable without demand, presentment, notice or other requirements of any kind (all of which Trustor waives) notwithstanding anything in this Deed of Trust or any Loan Document or applicable law to the contrary.

4.2 Protective Advances. If Trustor fails to make any payment or perform any other obligation under the Notes, Credit Agreement or any other Financing Agreement, then without thereby limiting Beneficiary's other rights or remedies, waiving or releasing any of Trustor's obligations, or imposing any obligation on Beneficiary, Beneficiary may either advance any amount owing or perform any or all actions that Beneficiary considers necessary or appropriate to cure such default. All such advances shall constitute "Protective Advances." No sums advanced or performance rendered by Beneficiary shall cure, or be deemed a waiver of any Event of Default.

4.3 Institution of Equity Proceedings. If an Event of Default occurs, Beneficiary may institute an action, suit or proceeding in equity for specific performance of this Deed of Trust, the Notes or any other Loan Document (including any Security Document), all of which shall be specifically enforceable by injunction or other equitable remedy. Trustor waives any defense based on laches or any applicable statute of limitations.

4.4 Beneficiary's Power of Enforcement.

(a) If an Event of Default occurs, Beneficiary shall be entitled, at its option and in its sole and absolute discretion, to prepare and record on its own behalf, or to deliver to Trustee for recording, if appropriate, written declaration of default and demand for sale and written Notice of Breach and Election to Sell (NRS 107.080(3)) (or other statutory notice) to cause the Trust Estate to be sold to satisfy the obligations hereof, and in the case of delivery to Trustee, Trustee shall cause said notice to be filed for record.

(b) After the lapse of such time as may then be required by law following the recordation of said Notice of Breach and Election to Sell, and notice of sale having been given as then required by law, including compliance with all applicable Nevada Gaming Laws, Trustee without demand on Trustor, shall sell the Trust Estate or any portion thereof at the time and place fixed by it in said notice, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder, of cash in lawful money of the United States payable at the time of sale. Trustee may, for any cause it deems expedient, postpone the sale of all or any portion of said property until it shall be completed and, in every case, notice of postponement shall be given by public announcement thereof at the time and place last appointed for the sale and from time to time thereafter Trustee may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall execute and deliver to the purchaser its Deed, Bill of Sale, or other instrument conveying said property so sold, but without any covenant or warranty, express or implied. The recitals in such instrument of conveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale.

(c) After deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including, without limitation, costs of evidence of title and reasonable attorneys' fees and other legal expenses of Trustee or Beneficiary in connection with a sale, Trustee shall apply the proceeds of such sale to

payment of all sums expended under the terms hereof not then repaid, with accrued interest at the rate applicable to overdue principal set forth in the Credit Agreement to the payment of all other sums then secured hereby and the remainder, if any, to the person or persons legally entitled thereto as provided in NRS 40.462.

(d) Subject to compliance with applicable Nevada Gaming Laws, if any Event of Default occurs, Beneficiary may, either with or without entry or taking possession of the Trust Estate, and without regard to whether or not the indebtedness and other sums secured hereby shall be due and without prejudice to the right of Beneficiary thereafter to bring an action or proceeding to foreclose or any other action for any default existing at the time such earlier action was commenced, proceed by any appropriate action or proceeding: (1) to enforce payment of the Notes or other payment obligations under the Loan Documents (whether principal and interest payments or otherwise), to the extent permitted by law, or the performance of any term hereof or any other right; (2) to foreclose this Deed of Trust in any manner provided by law for the foreclosure of mortgages or deeds of trust on real property and to sell, as an entirety or in separate lots or parcels, the Trust Estate or any portion thereof pursuant to the laws of the State of Nevada or under the judgment or decree of a court or courts of competent jurisdiction, and Beneficiary shall be entitled to recover in any such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees in such amount as shall be awarded by the court; (3) to exercise any or all of the rights and remedies available to it under the Credit Agreement; and (4) to pursue any other remedy available to it. Beneficiary shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Beneficiary may determine.

(e) The remedies described in this Section 4.4 may be exercised with respect to all or any portion of the Personal Property, either simultaneously with the sale of any real property encumbered hereby or independent thereof. Beneficiary shall at any time be permitted to proceed with respect to all or any portion of the Personal Property in any manner permitted by the UCC. Trustor agrees that Beneficiary's inclusion of all or any portion of the Personal Property (and all personal property that is subject to a security interest in favor, or for the benefit, of Beneficiary) in a sale or other remedy exercised with respect to the real property encumbered hereby, as permitted by the UCC, is a commercially reasonable disposition of such property.

4.5 Beneficiary's Right to Enter and Take Possession, Operate and Apply Income.

(a) Subject to compliance with applicable Nevada Gaming Laws, if an Event of Default occurs, (i) Trustor, upon demand of Beneficiary, shall forthwith surrender to Beneficiary the actual possession and, if and to the extent permitted by law, Beneficiary itself, or by such officers or agents as it may appoint, may enter and take possession of all the Trust Estate including the Personal Property, without liability for trespass, damages or otherwise, and may exclude Trustor and its agents and employees wholly therefrom and may have joint access with Trustor to the books, papers and accounts of Trustor; and (ii) Trustor shall pay monthly in advance to Beneficiary on Beneficiary's entry into possession, or to any receiver appointed to collect the Rents, all Rents then due and payable.

(b) If Trustor shall for any reason fail to surrender or deliver the Trust Estate, the Personal Property or any part thereof after Beneficiary's demand, Beneficiary may obtain a judgment or decree conferring on Beneficiary or Trustee the right to immediate possession or requiring Trustor to deliver immediate possession of all or part of such property to Beneficiary or Trustee and Trustor hereby specifically consents to the entry of such judgment or decree. Trustor shall pay to Beneficiary or Trustee, upon demand, all reasonable costs and expenses of obtaining such judgment or decree and reasonable compensation to Beneficiary or Trustee, their attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Deed of Trust.

Trust Estate and conduct the business thereof, and, from time to time in its sole and absolute discretion and without being under any duty to so act:

- (1) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;
- (2) insure or keep the Trust Estate insured;
- (3) manage and operate the Trust Estate and exercise all the rights and powers of Trustor in their name or otherwise with respect to the same;
- (4) enter into agreements with others to exercise the powers herein granted Beneficiary or Trustee, all as Beneficiary or Trustee from time to time may determine; and, subject to the absolute assignment of the Leases and Rents to Beneficiary, Beneficiary or Trustee may collect and receive all the Rents, including those past due as well as those accruing thereafter; and shall apply the monies so received by Beneficiary or Trustee in such priority as Beneficiary may determine to (1) the payment of interest and principal due and payable on the Notes or the other Loan Documents, (2) the deposits for taxes and assessments and insurance premiums due, (3) the cost of insurance, taxes, assessments and other proper charges upon the Trust Estate or any part thereof; (4) the compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary or Trustee; and (5) any other charges or costs required to be paid by Trustor under the terms hereof; and
- (5) rent or sublet the Trust Estate or any portion thereof for any purpose permitted by this Deed of Trust.

Beneficiary or Trustee shall surrender possession of the Trust Estate and the Personal Property to Trustor only when all that is due upon such interest and principal, tax and insurance deposits, and all amounts under any of the terms of the Credit Agreement or this Deed of Trust, shall have been paid and all defaults made good. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.6 Leases. Beneficiary is authorized to foreclose this Deed of Trust subject to the rights of any tenants of the Trust Estate, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights shall not be, nor be asserted by Trustor to be, a defense to any proceedings instituted by Beneficiary to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Trust Estate, or any portion thereof. Unless otherwise agreed by Beneficiary in writing, all Space Leases executed subsequent to the date hereof, or any part thereof, shall be subordinate and inferior to the lien of this Deed of Trust; provided, however that (i) in accordance with the terms of the Credit Agreement, Beneficiary may be required to execute a non-disturbance and attornment agreement in connection with certain Space Leases; and (ii) from time to time Beneficiary may execute and record among the land records of the jurisdiction where this Deed of Trust is recorded, subordination statements with respect to such of said Space Leases as Beneficiary may designate in its sole discretion, whereby the Space Leases so designated by Beneficiary shall be made superior to the lien of this Deed of Trust for the term set forth in such subordination statement. From and after the recording of such subordination statements, and for the respective periods as may be set forth therein, the Space Leases therein referred to shall be superior to the lien of this Deed of Trust and shall not be affected by any foreclosure hereof. All such Space Leases shall contain a provision to the effect that the Trustor and Space Lessee recognize the right of Beneficiary to elect and to effect such subordination of this Deed of Trust and consents thereto.

4.7 Purchase by Beneficiary. Upon any foreclosure sale (whether judicial or nonjudicial), Beneficiary may bid for and purchase the property subject to such sale and, upon compliance with the

terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

4.8 Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws. Trustor agrees to the full extent permitted by law that if an Event of Default occurs, neither Trustor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust or the absolute sale of the Trust Estate or any portion thereof or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof, and Trustor for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Trust Estate marshalled upon any foreclosure of the lien hereof and agrees that Trustee or any court having jurisdiction to foreclose such lien may sell the Trust Estate in part or as an entirety.

4.9 Receiver. If an Event of Default occurs, Beneficiary, to the extent permitted by law and subject to compliance with all applicable Nevada Gaming Laws, and without regard to the value, adequacy or occupancy of the security for the indebtedness and other sums secured hereby, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Trust Estate and to collect all Rents and apply the same as the court may direct, and such receiver may be appointed by any court of competent jurisdiction upon application by Beneficiary. Beneficiary may have a receiver appointed without notice to Trustor or any third party, and Beneficiary may waive any requirement that the receiver post a bond. Beneficiary shall have the power to designate and select the Person who shall serve as the receiver and to negotiate all terms and conditions under which such receiver shall serve. Any receiver appointed on Beneficiary's behalf may be an Affiliate of Beneficiary. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Deed of Trust. The right to enter and take possession of and to manage and operate the Trust Estate and to collect all Rents, whether by a receiver or otherwise, shall be cumulative to any other right or remedy available to Beneficiary under this Deed of Trust or the other Loan Documents or otherwise available to Beneficiary and may be exercised concurrently therewith or independently thereof. Beneficiary shall be liable to account only for such Rents (including, without limitation, security deposits) actually received by Beneficiary, whether received pursuant to this section or any other provision hereof. Notwithstanding the appointment of any receiver or other custodian, Beneficiary shall be entitled as pledgee to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Deed of Trust to, Beneficiary.

4.10 **Suits to Protect the Trust Estate.** Beneficiary shall have the power and authority to institute and maintain any suits and proceedings as Beneficiary, in its sole and absolute discretion, may deem advisable (a) to prevent any impairment of the Trust Estate by any acts which may be unlawful or in violation of this Deed of Trust, (b) to preserve or protect its interest in the Trust Estate, or (c) to restrain the enforcement of or compliance with any legislation or other Legal Requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Beneficiary's interest.

4.11 **Proofs of Claim.** In the case of any receivership, Insolvency, Bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Trustor, or, to the extent the same would result in an Event of Default hereunder, any Subsidiary, or any guarantor, co-maker or endorser of any of Trustor's obligations, its creditors or its property, Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim or other documents as it may deem to be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Trustor under the Notes or any other Loan Document (including any Security Document), at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Trustor after such date.

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4.12 **Trustor to Pay the Notes on Any Default in Payment; Application of Monies by Beneficiary.**

(a) In case of a foreclosure sale of all or any part of the Trust Estate and of the application of the proceeds of sale to the payment of the sums secured hereby, Beneficiary shall be entitled to enforce payment from Trustor of any additional amounts then remaining due and unpaid and to recover judgment against Trustor for any portion thereof remaining unpaid, with interest at the rate applicable to overdue principal as set forth in the Credit Agreement.

(b) Trustor hereby agrees to the extent permitted by law, that no recovery of any such judgment by Beneficiary or other action by Beneficiary and no attachment or levy of any execution upon any of the Trust Estate or any other property shall in any way affect the Lien and security interest of this Deed of Trust upon the Trust Estate or any part thereof or any Lien, rights, powers or remedies of Beneficiary hereunder, but such Lien, rights, powers and remedies shall continue unimpaired as before.

(c) Any monies collected or received by Beneficiary under this Section 4.12 shall be first applied to the payment of reasonable compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary, and the balance remaining shall be applied to the payment of amounts due and unpaid under the Notes and the other Loan Documents.

(d) The provisions of this section shall not be deemed to limit or otherwise modify the provisions of any guaranty of the indebtedness evidenced by the Notes or the other Loan Documents.

4.13 **Delay or Omission; No Waiver.** No delay or omission of Beneficiary or any Bank to exercise any right, power or remedy upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Beneficiary whether contained herein or in the other Loan Documents or otherwise available to Beneficiary may be exercised from time to time and as often as may be deemed expedient by Beneficiary.

4.14 **No Waiver of One Default to Affect Another.** No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If Beneficiary or the required percentage of the Banks (as determined pursuant to the Credit Agreement), to the extent applicable under the Credit Agreement, (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Notes, the Credit Agreement, this Deed of Trust, the Disbursement and Administration Agreement or any other Loan Document (including any Security Document); (d) releases any part of the Trust Estate from the lien or security interest of this Deed of Trust or any other instrument securing the Notes or the other Loan Documents; (e) consents to the filing of any map, plat or replat of the Land (to the extent such consent is required); (f) consents to the granting of any easement on the Land (to the extent such consent is required); or (g) makes or consents to any agreement changing the terms of this Deed of Trust or any other Loan Document subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability of Trustor under the Notes, this Deed of Trust or any other Loan Document (including any Security Document) or otherwise, or any subsequent purchaser of the Trust Estate or any part thereof or any maker, co-signer, surety or guarantor. No such act or omission shall preclude Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by Beneficiary, shall the lien or security interest of this Deed of Trust be altered thereby, except to the extent expressly provided in any releases, maps, easements or subordinations described in clause (d), (e), (f) or (g) above of this Section 4.14. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Trust Estate, Beneficiary, without notice to any person, firm or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Trust Estate or the

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indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder, or waiving its right to declare such sale or transfer an Event of Default as provided herein. Notwithstanding anything to the contrary contained in this Deed of Trust or any other Loan Document (including any Security Document), (i) in the case of any non-monetary Event of Default, Beneficiary may continue to accept payments due hereunder without thereby waiving the existence of such or any other Event of Default and (ii) in the case of any monetary Event of Default, Beneficiary may accept partial payments of any sums due hereunder without thereby waiving the existence of such Event of Default if the partial payment is not sufficient to completely cure such Event of Default.

4.15 **Discontinuance of Proceedings; Position of Parties Restored.** If Beneficiary shall have proceeded to enforce any right or remedy under this Deed of Trust by foreclosure, entry of judgment or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Beneficiary, then and in every such case Trustor and Beneficiary shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Beneficiary shall continue as if no such proceedings had occurred or had been taken.

4.16 **Remedies Cumulative.** No right, power or remedy, including without limitation remedies with respect to any security for the Notes or any other Loan Document, conferred upon or reserved to Beneficiary by this Deed of Trust or any other Loan Document (including any Security Document) is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right,

power and remedy given hereunder or any other Loan Document (including any Security Document), now or hereafter existing at law, in equity or by statute, and Beneficiary shall be entitled to resort to such rights, powers, remedies or security as Beneficiary shall in its sole and absolute discretion deem advisable.

4.17 Interest After Event of Default. If an Event of Default shall have occurred and is continuing, all sums outstanding and unpaid under the Notes, this Deed of Trust and the other Loan Documents shall, at Beneficiary's option, bear interest at the rate applicable to overdue principal set forth in the Credit Agreement until such Event of Default has been cured. Trustor's obligation to pay such interest shall be secured by this Deed of Trust.

4.18 Foreclosure; Expenses of Litigation. If Trustee forecloses, reasonable attorneys' fees for services in the supervision of said foreclosure proceeding shall be allowed to the Trustee and Beneficiary as part of the foreclosure costs. In the event of foreclosure of the lien hereof, there shall be allowed and included as additional indebtedness all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after foreclosure sale or entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and guarantees, and similar data and assurances with respect to title as Beneficiary may deem reasonably advisable either to prosecute such suit or to evidence to a bidder at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Trust Estate or any portion thereof. All expenditures and expenses of the nature in this section mentioned, and such expenses and fees as may be incurred in the protection of the Trust Estate and the maintenance of the lien and security interest of this Deed of Trust, including the fees of any attorney employed by Beneficiary in any litigation or proceeding affecting this Deed of Trust or any other Loan Document (including any Security Document), the Trust Estate or any portion thereof, including, without limitation, civil, probate, appellate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Trustor, with interest thereon at the rate applicable to overdue principal set forth in the Credit Agreement, and shall

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be secured by this Deed of Trust. Trustee waives its right to any statutory fee in connection with any judicial or nonjudicial foreclosure of the lien hereof and agrees to accept a reasonable fee for such services.

4.19 Deficiency Judgments. If after foreclosure of this Deed of Trust or Trustee's sale hereunder, there shall remain any deficiency with respect to any amounts payable under the Notes, this Deed of Trust or the other Loan Documents or any amounts secured hereby, and Beneficiary shall institute any proceedings to recover such deficiency or deficiencies, all such amounts shall continue to bear interest at the rate applicable to overdue principal set forth in the Credit Agreement. Trustor waives any defense to Beneficiary's recovery against Trustor of any deficiency after any foreclosure sale of the Trust Estate. Trustor expressly waives any defense or benefits that may be derived from any statute granting Trustor any defense to any such recovery by Beneficiary. In addition, Beneficiary and Trustee shall be entitled to recovery of all of their reasonable costs and expenditures (including without limitation any court imposed costs) in connection with such proceedings, including their reasonable attorneys' fees, appraisal fees and the other costs, fees and expenditures referred to in Section 4.18 above. This provision shall survive any foreclosure or sale of the Trust Estate, any portion thereof and/or the extinguishment of the lien hereof.

4.20 Waiver of Jury Trial. Beneficiary and Trustor each waive any right to have a jury participate in resolving any dispute whether sounding in contract, tort or otherwise arising out of, connected with, related to or incidental to the relationship established between them in connection with the Notes, this Deed of Trust or any other Loan Document (including any Security Document). Any such disputes shall be resolved in a bench trial without a jury.

4.21 Exculpation of Beneficiary. The acceptance by Beneficiary of the assignment contained herein with all of the rights, powers, privileges and authority created hereby shall not, prior to entry upon and taking possession of the Trust Estate by Beneficiary, be deemed or construed to make Beneficiary a "mortgagee in possession"; nor thereafter or at any time or in any event obligate Beneficiary to appear in or defend any action or proceeding relating to the Space Leases, the Rents or the Trust Estate, or to take any action hereunder or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under any Space Lease or to assume any obligation or responsibility for any security deposits or other deposits except to the extent such deposits are actually received by Beneficiary, nor shall Beneficiary, prior to such entry and taking, be liable in any way for any injury or damage to person or property sustained by any Person in or about the Trust Estate.

ARTICLE FIVE

RIGHTS AND RESPONSIBILITIES OF TRUSTEE; OTHER PROVISIONS RELATING TO TRUSTEE

Notwithstanding anything to the contrary in this Deed of Trust, Trustor and Beneficiary agree as follows.

5.1 Exercise of Remedies by Trustee. To the extent that this Deed of Trust or applicable law, including all applicable Nevada Gaming Laws, authorizes or empowers, or does not require approval for, Beneficiary to exercise any remedies set forth in Article Four hereof or otherwise, or perform any acts in connection therewith, Trustee (but not to the exclusion of Beneficiary unless so required under the law of the State of Nevada) shall have the power to exercise any or all such remedies, and to perform any acts provided for in this Deed of Trust in connection therewith, all for the benefit of Beneficiary and on Beneficiary's behalf in accordance with applicable law of the State of Nevada. In connection therewith, Trustee: (a) shall not exercise, or waive the exercise of, any Beneficiary's remedies (other than any rights of Trustee to any indemnity or reimbursement), except at Beneficiary's request, and (b) shall exercise, or waive the exercise of, any or all of Beneficiary's remedies at

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Beneficiary's request, and in accordance with Beneficiary's directions as to the manner of such exercise or waiver. Trustee may, however, decline to follow Beneficiary's request or direction if Trustee shall be advised by counsel that the action or proceeding, or manner thereof, so directed may not lawfully be taken or waived.

5.2 Rights and Privileges of Trustee. To the extent that this Deed of Trust requires Trustor to indemnify Beneficiary or reimburse Beneficiary for any expenditures Beneficiary may incur, Trustee shall be entitled to the same indemnity and the same rights to reimbursement of expenses as Beneficiary, subject to such limitations and conditions as would apply in the case of Beneficiary. To the extent that this Deed of Trust negates or limits Beneficiary's liability as to any matter, Trustee shall be entitled to the same negation or limitation of liability. To the extent that Trustor, pursuant to this Deed of Trust, appoints Beneficiary as

Trustor's attorney in fact for any purpose, Beneficiary or (when so instructed by Beneficiary) Trustee shall be entitled to act on Trustor's behalf without joinder or confirmation by the other.

5.3 **Resignation or Replacement of Trustee.** Trustee may resign by an instrument in writing addressed to Beneficiary, and Trustee may be removed at any time with or without cause (i.e., in Beneficiary's sole and absolute discretion) by an instrument in writing executed by Beneficiary. In case of the death, resignation, removal or disqualification of Trustee or if for any reason Beneficiary shall deem it desirable to appoint a substitute, successor or replacement Trustee to act instead of Trustee originally named (or in place of any substitute, successor or replacement Trustee), then Beneficiary shall have the right and is hereby authorized and empowered to appoint a successor, substitute or replacement Trustee, without any formality other than appointment and designation in writing executed by Beneficiary, which instrument shall be recorded if required by the law of the State of Nevada. The law of the State of Nevada (including, without limitation, the Nevada Gaming Laws) shall govern the qualifications of any Trustee. The authority conferred upon Trustee by this Deed of Trust shall automatically extend to any and all other successor, substitute and replacement Trustee(s) successively until the obligations secured hereunder have been paid in full or the Trust Estate has been sold hereunder or released in accordance with the provisions of the Loan Documents (including the Security Documents). Beneficiary's written appointment and designation of any Trustee shall be full evidence of Beneficiary's right and authority to make the same and of all facts therein recited. No confirmation, authorization, approval or other action by Trustor shall be required in connection with any resignation or other replacement of Trustee.

5.4 **Authority of Beneficiary.** If Beneficiary is a banking corporation, state banking corporation or a national banking association and the instrument of appointment of any successor or replacement Trustee is executed on Beneficiary's behalf by an officer of such corporation, state banking corporation or national banking association, then such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of Beneficiary.

5.5 **Effect of Appointment of Successor Trustee.** Upon the appointment and designation of any successor, substitute or replacement Trustee, and subject to compliance with applicable Nevada Gaming Laws and other applicable laws, Trustee's entire estate and title in the Trust Estate shall vest in the designated successor, substitute or replacement Trustee. Such successor, substitute or replacement Trustee shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon Trustee. All references herein to Trustee shall be deemed to refer to Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder.

5.6 **Confirmation of Transfer and Succession.** Upon the written request of Beneficiary or of any successor, substitute or replacement Trustee, any former Trustee ceasing to act shall execute and deliver an instrument transferring to such successor, substitute or replacement Trustee all of the right, title,

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estate and interest in the Trust Estate of Trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon Trustee, and shall duly assign, transfer and deliver all properties and moneys held by said Trustee hereunder to said successor, substitute or replacement Trustee.

5.7 **Exculpation.** Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or otherwise be responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence, willful misconduct or knowing violation of law. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law). Trustee shall be under no liability for interest on any moneys received by it hereunder.

5.8 **Endorsement and Execution of Documents.** Upon Beneficiary's written request, Trustee shall, without liability or notice to Trustor, execute, consent to, or join in any instrument or agreement in connection with or necessary to effectuate the purposes of the Loan Documents (including the Security Documents). Trustor hereby irrevocably designates Trustee as its attorney in fact to execute, acknowledge and deliver, on Trustor's behalf and in Trustor's name, all instruments or agreements necessary to implement any provision(s) of this Deed of Trust or to further perfect the lien created by this Deed of Trust on the Trust Estate. This power of attorney shall be deemed to be coupled with an interest and shall survive any disability of Trustor.

5.9 **Multiple Trustees.** If Beneficiary appoints multiple trustees, then any Trustee, individually, may exercise all powers granted to Trustee under this instrument, without the need for action by any other Trustee(s). 00

5.10 **Terms of Trustee's Acceptance.** Trustee accepts the trust created by this Deed of Trust upon the following terms and conditions:

- (a) **Delegation.** Trustee may exercise any of its powers through appointment of attorney(s) in fact or agents.
- (b) **Counsel.** Trustee may select and employ legal counsel (including any law firm representing Beneficiary). Trustor shall reimburse all reasonable legal fees and expenses that Trustee may thereby incur.
- (c) **Security.** Trustee shall be under no obligation to take any action upon any Event of Default unless furnished security or indemnity, in form satisfactory to Trustee, against costs, expenses, and liabilities that Trustee may incur.
- (d) **Costs and Expenses.** Trustor shall reimburse Trustee, as part of the Obligations secured hereunder, for all reasonable disbursements and expenses (including reasonable legal fees and expenses) incurred by reason of and as provided for in this Deed of Trust, including any of the foregoing incurred in Trustee's administering and executing the trust created by this Deed of Trust, in complying with all applicable Nevada Gaming Laws and performing Trustee's duties and exercising Trustee's powers under this Deed of Trust.
- (e) **Release.** Upon full and indefeasible payment and performance of the Obligations secured hereunder, Beneficiary shall request that Trustee release this Deed of Trust. Upon receipt of such request Trustee shall release this Deed of Trust to Trustor. Trustor shall pay all costs of recordation, if any.

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MISCELLANEOUS PROVISIONS

6.1 **Heirs, Successors and Assigns Included in Parties.** Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included, and subject to the limitations set forth in Section 1.9, all covenants and agreements contained in this Deed of Trust, by or on behalf of Trustor or Beneficiary shall bind and inure to the benefit of its heirs, successors and assigns, whether so expressed or not.

6.2 **Addresses for Notices, Etc.** Any notice, report, demand or other instrument authorized or required to be given or furnished under this Deed of Trust to Trustor or Beneficiary shall be deemed given or furnished (i) when addressed to the party intended to receive the same, at the address of such party set forth below, and delivered by hand at such address or (ii) three (3) days after the same is deposited in the United States mail as first class certified mail, return receipt requested, postage paid, whether or not the same is actually received by such party:

Beneficiary: Deutsche Bank Trust Company Americas
31 West 52nd Street, 7th Floor
New York, New York 10019
Attn: Jeff Baevsky

With a copy to: Latham & Watkins
701 B. Street, Suite 2100
San Diego, California 92101
Attn: Sony Ben-Moshe, Esq.

Trustor: Wynn Las Vegas, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Legal Department

With a copy to: Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Attn: C. Kevin McGeehan

Trustee: Nevada Title Company
2500 North Buffalo, Suite 150
Las Vegas, Nevada 89128
Attn: Robbie Graham

6.3 **Change of Notice Address.** Any Person may change the address to which any such notice, report, demand or other instrument is to be delivered or mailed to that person, by furnishing written notice of such change to the other parties, but no such notice of change shall be effective unless and until received by such other parties.

6.4 **Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Deed of Trust are for convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

6.5 **Invalid Provisions to Affect No Others.** In the event that any of the covenants, agreements, terms or provisions contained herein or in the Notes, the Credit Agreement or any other Loan Document (including the Security Documents) shall be invalid, illegal or unenforceable in any respect, the validity of the lien hereof and the remaining covenants, agreements, terms or provisions contained

herein or in the Notes, the Credit Agreement or any other Loan Document (including the Security Documents) shall be in no way affected, prejudiced or disturbed thereby. To the extent permitted by law, Trustor waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

6.6 **Changes and Priority Over Intervening Liens.** Neither this Deed of Trust nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Trustor and Beneficiary relating to this Deed of Trust shall be superior to the rights of the holder of any intervening lien or encumbrance.

6.7 **Estoppel Certificates.** Within ten (10) Business Days after Beneficiary's written request, Trustor shall from time to time execute a certificate, in recordable form (an "Estoppel Certificate"), stating, except to the extent it would be inaccurate to so state: (a) the current amount of the Obligations secured hereunder and all elements thereof, including principal, interest, and all other elements; (b) that Trustor has no defense, offset, claim, counterclaim, right of recoupment, deduction, or reduction against any of the Obligations secured hereunder; (c) that none of the Loan Documents (including the Security Documents) have been amended, whether orally or in writing; (d) that Trustor has no claims against Beneficiary of any kind; (e) that any power of attorney granted to Beneficiary is in full force and effect; and (f) such other matters relating to this Deed of Trust or any other Loan Document (including any Security Document) and the relationship of Trustor and Beneficiary as Beneficiary shall request. In addition, the Estoppel Certificate shall set forth the reasons why it would be inaccurate to make any of the foregoing assurances.

6.8 **Waiver of Setoff and Counterclaim; Other Waivers.** All amounts due under this Deed of Trust, the Notes and the other Loan Documents (including the Security Documents) shall be payable without setoff, counterclaim or any deduction whatsoever. Trustor hereby waives the right to assert a counterclaim (other than a compulsory counterclaim) in any action or proceeding brought against it by Beneficiary and/or any Bank under the Credit Agreement, or arising out of or in any way connected with this Deed of Trust or the other Loan Documents (including the Security Documents) or the Obligations.

6.9 **Governing Law.** The Credit Agreement and the Notes provide that they are governed by, and construed and enforced in accordance with, the laws of the State of New York. This Deed of Trust shall also be construed under and governed by the laws of the State of New York; provided, however, that (i) the terms

and provisions of this Deed of Trust pertaining to the priority, perfection, enforcement or realization by Beneficiary of its respective rights and remedies under this Deed of Trust with respect to the Trust Estate shall be governed and construed and enforced in accordance with the internal laws of the State of Nevada (the "State") without giving effect to the conflicts-of-law rules and principles of the State; (ii) Trustor agrees that to the extent deficiency judgments are available under the laws of the State after a foreclosure (judicial or nonjudicial) of the Trust Estate, or any portion thereof, or any other realization thereon by Beneficiary or any Bank under the Credit Agreement, Beneficiary or such Bank, as the case may be, shall have the right to seek such a deficiency judgment against Trustor in the State; and (iii) Trustor agrees that if Beneficiary or any Bank under the Credit Agreement obtains a deficiency judgment in another state against Trustor, then Beneficiary or such Bank, as the case may be, shall have the right to enforce such judgment in the State to the extent permitted under the laws of the State, as well as in other states.

6.10 **Required Notices.** Trustor shall notify Beneficiary promptly of the occurrence of any of the following and shall immediately provide Beneficiary a copy of the notice or documents referred to: (i) receipt of notice from any Governmental Authority relating to all or any material part of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (ii) receipt of any notice from any tenant leasing all or

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any material portion of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iii) receipt of notice from the holder of any Permitted Lien relating to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iv) the commencement of any proceedings or the entry of any judgment, decree or order materially affecting all or any portion of the Trust Estate or which involve the potential liability of Trustor or its Affiliates in an amount in excess of \$25,000,000 (other than for personal injury actions and related property damage suits which are covered by such insurance); or (v) commencement of any judicial or administrative proceedings or the entry of any judgment, decree or order by or against or otherwise affecting Trustor or any Affiliate of Trustor, a material portion of the Trust Estate, or a material portion of the Personal Property, or any other action by any creditor or lessor thereof as a result of any default under the terms of any lease.

6.11 **Reconveyance.** Upon written request of Trustor when the Obligations secured hereby have been satisfied in full, Beneficiary shall cause Trustee to reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

6.12 **Attorneys' Fees.** Without limiting any other provision contained herein, Trustor agrees to pay all costs of Beneficiary or Trustee incurred in connection with the enforcement of this Deed of Trust, the Notes or the other Loan Documents, including without limitation all reasonable attorneys' fees whether or not suit is commenced, and including, without limitation, fees incurred in connection with any probate, appellate, bankruptcy, deficiency or any other litigation proceedings, all of which sums shall be secured hereby.

6.13 **Late Charges.** By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to collect any late charge thereon or interest thereon at the interest rate on the Notes or as otherwise specified in the Credit Agreement, if so provided, not then paid or its right either to require prompt payment when due of all other sums so secured or to declare default for failure to pay any amounts not so paid.

6.14 **Cost of Accounting.** Trustor shall pay to Beneficiary, for and on account of the preparation and rendition of any accounting, which Trustor may be entitled to require under any law or statute now or hereafter providing therefor, the reasonable costs thereof.

6.15 **Right of Entry.** Subject to compliance with applicable Nevada Gaming Laws, Beneficiary may at any reasonable time or times and on reasonable prior written notice to Trustor make or cause to be made entry upon and inspections of the Trust Estate or any part thereof in person or by agent.

6.16 **Corrections.** Trustor shall, upon request of Beneficiary or Trustee, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust (including, but not limited to, in the exhibits and schedules attached hereto) or in the execution or acknowledgement hereof, and shall execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Trustee to carry out more effectively the purposes of this Deed of Trust, to subject to the lien and security interest hereby created any of Trustor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.

6.17 **Statute of Limitations.** To the fullest extent allowed by the law, the right to plead, use or assert any statute of limitations as a plea or defense or bar of any kind, or for any purpose, to any debt, demand or obligation secured or to be secured hereby, or to any complaint or other pleading or proceeding filed, instituted or maintained for the purpose of enforcing this Deed of Trust or any rights hereunder, is hereby waived by Trustor.

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6.18 **Subrogation.** Should the proceeds of any loan or advance made by Beneficiary or any Bank under the Credit Agreement to Trustor, repayment of which is hereby secured, or any part thereof, or any amount paid out or advanced by Beneficiary or any Bank under the Credit Agreement, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior or superior lien or encumbrance upon the Trust Estate, or any part thereof, then, as additional security hereunder, Trustee, on behalf of Beneficiary, shall be subrogated to any and all rights, superior titles, liens, and equities owned or claimed by any owner or holder of said outstanding liens, charges, and indebtedness, however remote, regardless of whether said liens, charges, and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

6.19 **Joint and Several Liability.** All obligations of Trustor hereunder, if more than one, are joint and several. Recourse for deficiency after sale hereunder may be had against the property of Trustor, without, however, creating a present or other lien or charge thereon.

6.20 **Homestead.** Trustor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Trust Estate as against the collection of the Obligations, or any part hereof.

6.21 **Context.** In this Deed of Trust, whenever the context so requires, the neuter includes the masculine and feminine, and the singular including the plural, and vice versa.

6.22 **Time.** Time is of the essence of each and every term, covenant and condition hereof. Unless otherwise specified herein, any reference to "days" in this Deed of Trust shall be deemed to mean "calendar days."

6.23 **Interpretation.** As used in this Deed of Trust unless the context clearly requires otherwise: The terms "herein" or "hereunder" and similar terms without reference to a particular section shall refer to the entire Deed of Trust and not just to the section in which such terms appear; the term "lien" shall also mean a security interest, and the term "security interest" shall also mean a lien.

6.24 **Effect of NRS 107.030.** To the extent not inconsistent herewith, the provisions of NRS 107.030 (1), (3), (5), (6), (8) and (9) are included herein by reference.

6.25 **Amendments.** This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought and only as permitted by the provisions of the Credit Agreement.

6.26 **No Conflicts.** In the event that any of the provisions contained here conflict with the Borrower Security Agreement, the provisions contained in the Borrower Security Agreement shall prevail.

ARTICLE SEVEN

POWER OF ATTORNEY

7.1 **Grant of Power.** Subject to compliance with applicable Nevada Gaming Laws, Trustor irrevocably appoints Beneficiary and any successor thereto as its attorney-in-fact, with full power and authority, including the power of substitution, exercisable only during the continuance of an Event of Default to act for Trustor in its name, place and stead as hereinafter provided:

7.1.1 **Possession and Completion.** To take possession of the Land and the Project, remove all employees, contractors and agents of Trustor therefrom, complete or attempt to complete the work of construction, and market, sell or lease the Land and the Project.

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7.1.2 **Plans.** To make such additions, changes and corrections in the current Plans and Specifications as may be necessary or desirable, in Beneficiary's reasonable discretion, or as it deems proper to complete the Project.

7.1.3 **Employment of Others.** To employ such contractors, subcontractors, suppliers, architects, inspectors, consultants, property managers and other agents as Beneficiary, in its discretion, deems proper for the completion of the Project, for the protection or clearance of title to the Land or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.4 **Security Guards.** To employ watchmen to protect the Land and the Project from injury.

7.1.5 **Compromise Claims.** To pay, settle or compromise all bills and claims then existing or thereafter arising against Trustor, which Beneficiary, in its discretion, deems proper for the protection or clearance of title to the Land or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.6 **Legal Proceedings.** To prosecute and defend all actions and proceedings in connection with the Land or the Project.

7.2 **Other Acts.** To execute, acknowledge and deliver all other instruments and documents in the name of Trustor that are necessary or desirable, to exercise Trustor's rights under all contracts concerning the Land or the Project, including, without limitation, under any Space Leases, and to do all other acts with respect to the Land or the Project that Trustor might do on its own behalf, as Beneficiary, in its reasonable discretion, deems proper.

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IN WITNESS WHEREOF, Trustor has executed this Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing as of the day and year first above written.

TRUSTOR:

WYNN LAS VEGAS, LLC,
a Nevada limited liability company,

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn
Title: *Managing Member*

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SCHEDULE A
DESCRIPTION OF LAND

QuickLinks

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APNs: 162-16-610-016,
162-16-610-007 and
162-16-610-006

Recording requested by and recorded
counterparts should be returned to:

Sony Ben-Moshe, Esq.
Latham & Watkins
701 B Street, Suite 2100
San Diego, California 92101

Mail Property Tax Statements to:

Palo, LLC
Legal Department
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

MADE BY

**PALO, LLC,
a Nevada limited liability company,
as Trustor,**

to

**Nevada Title Company,
a Nevada corporation,
as Trustee,
for the benefit of**

**DEUTSCHE BANK TRUST COMPANY AMERICAS,
IN ITS CAPACITY AS ADMINISTRATIVE AGENT FOR THE BENEFIT OF THE BANKS,
AS BENEFICIARY**

THIS INSTRUMENT IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS OF CLARK COUNTY, NEVADA UNDER THE NAMES OF PALO, LLC AS "DEBTOR" AND DEUTSCHE BANK TRUST COMPANY AMERICAS AS "SECURED PARTY."

THIS INSTRUMENT IS A "CONSTRUCTION MORTGAGE" AS THAT TERM IS DEFINED IN SECTION 104.9334(8) OF THE NEVADA REVISED STATUTES AND SECURES AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT UPON LAND.

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SCHEDULE A DESCRIPTION OF THE LAND

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (hereinafter called "**Deed of Trust**") is made and effective as of July 2, 2002, by PALO, LLC, a Nevada limited liability company (together with all successors and assigns of the Trust Estate (as hereinafter defined), "**Trustor**"), whose address is 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109, to Nevada Title Company, a Nevada corporation, whose address is 2500 North Buffalo, Suite 150, Las Vegas, Nevada 89128, as Trustee ("**Trustee**"), for the benefit of DEUTSCHE BANK TRUST COMPANY AMERICAS ("**Beneficiary**"), in its capacity as Administrative Agent under (i) that certain Amended and Restated Commitment Letter (as the same may be amended or modified from time to time, the "**Commitment Letter**") dated as of June 14, 2002, among Wynn Resorts Holdings, LLC, a Nevada limited liability company (formerly known as Wynn Resorts, LLC), Beneficiary, Deutsche Bank Securities Inc., Bank of America, N.A., Banc of America Securities LLC, Bear Stearns Corporate Lending, Inc., Bear, Stearns & Co. Inc., Valvino Lamore, LLC, a Nevada limited liability company, and Wynn Las Vegas, LLC, a Nevada limited liability company ("**Borrower**"), and that certain Credit Agreement (as the same may be amended or modified from time to time, the "**Credit Agreement**") to be entered into in connection with and in furtherance of the Commitment Letter among Borrower, Beneficiary and the other parties signatory thereto (such other parties, together with Beneficiary and Deutsche Bank Securities Inc., the "**Banks**") pursuant to which the Banks have agreed to lend to Borrower an aggregate principal amount of \$1,000,000,000 and (ii) that certain Guaranty (as the same may be amended or modified from time to time, the "**Guaranty**") to be entered into in connection with and in furtherance of the Commitment Letter and the Credit Agreement by Trustor for the benefit of Beneficiary on behalf of the Banks pursuant to which Trustor will guaranty the payment and performance of all obligations of Borrower under the Credit Agreement and the other Loan Documents.

THIS INSTRUMENT SECURES FUTURE ADVANCES. THE MAXIMUM AMOUNT OF PRINCIPAL TO BE SECURED HEREBY IS \$1,000,000,000. THIS INSTRUMENT IS TO BE GOVERNED BY THE PROVISIONS OF NRS 106.300 THROUGH NRS 106.400 INCLUSIVE.

THE OBLIGATIONS SECURED HEREBY INCLUDE REVOLVING CREDIT OBLIGATIONS WHICH PERMIT BORROWING, REPAYMENT AND REBORROWING. INTEREST ON OBLIGATIONS SECURED HEREBY ACCRUES AT A RATE WHICH MAY FLUCTUATE FROM TIME TO TIME.

DEFINITIONS—As used in this Deed of Trust, the following terms have the meanings hereinafter set forth:

"**Accounts Receivable**" shall have the meaning set forth in Section 9-102 (NRS 104.9102) of the UCC for the term "account."

"**Appurtenant Rights**" means all and singular tenements, hereditaments, rights, reversions, remainders, development rights, privileges, benefits, easements (in gross or appurtenant), rights-of-way, gores or strips of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, and all appurtenances whatsoever and claims or demands of Trustor at law or in equity in any way belonging, benefiting, relating or appertaining to the Land, the airspace over the Land, the Improvements or any of the Trust Estate encumbered by this Deed of Trust, or which hereinafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Trustor.

"**Bankruptcy**" means, with respect to any Person, that (i) a court having jurisdiction in the Trust Estate shall have entered a decree or order for relief in respect of such Person in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order has not been stayed; or any other similar relief shall have

been granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against such Person, under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the Trust Estate for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over such Person, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of such Person, for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of such Person, and any such event described in this clause (ii) shall continue for 60 days unless dismissed, bonded or discharged; or (iii) such Person shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or such Person shall make any assignment for the benefit of creditors, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable or if the fair market value of its assets does not exceed its aggregate liabilities; or (iv) such Person shall, or the Board of Directors of such Person (or any committee thereof) shall, adopt any resolution or otherwise authorize any action to approve any of the actions referred to in clause (iii) above.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute thereto.

"Business Day" means any day that is not a Saturday, a Sunday or a day on which banking institutions in the State of Nevada or the City of New York are not required to be open.

"Deed of Trust" means this Deed of Trust as it may be amended, increased or modified from time to time.

"Disbursement and Administration Agreement" means that certain Master Disbursement and Administration Agreement to be entered into on even date with the Credit Agreement, among Borrower, Beneficiary, the trustee for holders of mortgage notes to be issued in connection with the financing of the Project, a disbursement agent to be named therein and the other parties signatory thereto, as the same may hereafter be amended or modified in accordance with its terms and the terms of the Credit Agreement.

"Event of Default" has the meaning set forth in Section 3.1 hereof.

"FF&E" means all furniture, fixtures, equipment, appurtenances and personal property now or in the future contained in, used in connection with, attached to, or otherwise useful or convenient to the use, operation, or occupancy of, or placed on, but unattached to, any part of the Land or Improvements whether or not the same constitutes real property or fixtures in the State of Nevada, including all removable window and floor coverings, all furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator and escalator plants, cooking facilities, vacuum cleaning systems, public address and communications systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings, fixtures, and building materials, all gaming and financial equipment, computer equipment, calculators, adding machines, gaming tables, video game and slot machines, and any other electronic equipment of every nature used or located on any part of the Land or Improvements, together with all Venetian blinds, shades, draperies, drapery and curtain rods, brackets, bulbs, cleaning apparatus, mirrors, lamps, ornaments, cooling apparatus and equipment, ranges and ovens, garbage disposals, dishwashers, mantels, and any and all such property which is at any time installed in, affixed to or placed upon the Land or Improvements.

"FF&E Financing Agreement" means any financing agreement entered into by Trustor (i) the proceeds of which are used by Trustor for the acquisition or lease of FF&E, (ii) pursuant to which Trustor grants to the lender or lessor thereunder a security interest in the FF&E so acquired or leased and (iii) which is permitted by the Credit Agreement and the Guaranty.

"Governmental Authority" means any agency, authority, board, bureau, commission, department, office, public entity, or instrumentality of any nature whatsoever of the United States federal or foreign government, any state, province or any city or other political subdivision or otherwise, whether now or hereafter in existence, or any officer or official thereof, including, without limitation, any Nevada Gaming Authority.

"Imposition" means any taxes, assessments, water rates, sewer rates, maintenance charges, other governmental impositions and other charges now or hereafter levied or assessed or imposed against the Trust Estate or any part thereof.

"Improvements" means (1) all the buildings, structures, facilities and improvements of every nature whatsoever now or hereafter situated on the Land or any real property encumbered hereby, and (2) all fixtures, machinery, appliances, goods, building or other materials, equipment, including without limitation all gaming equipment and devices, and all machinery, equipment, engines, appliances and fixtures for generating or distributing air, water, heat, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse or garbage; all wall-beds, wall-safes, built-in furniture and installations, shelving, lockers, partitions, doorstops, vaults, motors, elevators, dumb-waiters, awnings, window shades, Venetian blinds, light fixtures, fire hoses and brackets and boxes for the same, fire sprinklers, alarm, surveillance and security systems, computers, drapes, drapery rods and brackets, mirrors, mantels, screens, linoleum, carpets and carpeting, plumbing, bathtubs, sinks, basins, pipes, faucets, water closets, laundry equipment, washers, dryers, ice-boxes and heating units; all kitchen and restaurant equipment, including but not limited to silverware, dishes, menus, cooking utensils, stoves, refrigerators, ovens, ranges, dishwashers, disposals, water heaters, incinerators, furniture, fixtures and furnishings, communication systems, and equipment; all cocktail lounge supplies, including but not limited to bars, glassware, bottles and tables used in connection with the Land; all chaise lounges, hot tubs, swimming pool heaters and equipment and all other recreational equipment (computerized and otherwise), beauty and barber equipment, and maintenance supplies used in connection with the Land; all amusement rides and attractions attached to the Land, all specifically designed installations and furnishings, and all furniture, furnishings and personal property of every nature whatsoever now or hereafter owned or leased by Trustor or in which Trustor has any rights or interest and located in or on, or attached to, or used or intended to be used or which are now or may hereafter be appropriated for use on or in connection with the operation of the Land or any real or personal property encumbered hereby or any other Improvements, or in connection with any construction being conducted or which may be conducted thereon, and all extensions, additions, accessions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing, and all of the right, title and interest of Trustor in and to any such property, which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and improvements and a part of the real property hereby encumbered.

"Insolvent" means with respect to any person or entity, that such person or entity shall be deemed to be insolvent if it shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable and/or if the fair market value of its assets does not exceed its aggregate liabilities.

"Intangible Collateral" means (a) the rights to use all names and all derivations thereof now or hereafter used by Trustor in connection with the Land or Improvements, including, without limitation, the name "Le Reve", including any variations thereon, together with the goodwill associated therewith, and all names, logos, and designs used by Trustor, or in connection with the Land or in which Trustor

has rights, with the exclusive right to use such names, logos and designs wherever they are now or hereafter used in connection with the Project (or in connection with the marketing of the Project), and any and all other trade names, trademarks or service marks, whether or not registered, now or hereafter used in the operation of the Project, including, without limitation, any interest as a lessee, licensee or franchisee, and, in each case, together with the goodwill associated therewith; (b) subject to the absolute assignment contained herein, the Rents; (c) any and all books, records, customer lists, concession agreements, supply or service contracts, licenses, permits, governmental approvals (to the extent such licenses, permits and approvals may be pledged under applicable law), signs, goodwill, casino and hotel credit and charge records, supplier lists, checking accounts, safe deposit boxes (excluding the contents of such deposit boxes owned by persons other than Trustor and its subsidiaries), cash, instruments, chattel papers, including inter-company notes and pledges, documents, unearned premiums, deposits, refunds, including but not limited to income tax refunds, prepaid expenses, rebates, tax and insurance escrow and impound accounts, if any, actions and rights in action, and all other claims, including without limitation condemnation awards and insurance proceeds, and all other contract rights and general intangibles resulting from or used in connection with the operation and occupancy of the Trust Estate and the Improvements and in which Trustor now or hereafter has rights; and (d) general intangibles, vacation license resort agreements or other time share license or right to use agreements, including without limitation all rents, issues, profits, income and maintenance fees resulting therefrom, whether any of the foregoing is now owned or hereafter acquired.

"Land" means the real property situated in the County of Clark, State of Nevada, more specifically described in *Schedule A* attached hereto and incorporated herein by reference, including any after acquired title thereto.

"Legal Requirements" means all applicable restrictive covenants, applicable zoning and subdivision ordinances and building codes, all applicable health and Environmental Laws and regulations, all applicable gaming laws and regulations, and all other applicable laws, ordinances, rules, regulations, judicial decisions, administrative orders, and other requirements of any Governmental Authority having jurisdiction over Trustor, the Trust Estate and/or any Affiliate of Trustor, in effect either at the time of execution of this Deed of Trust or at any time during the term hereof, including, without limitation, all Environmental Laws and Nevada Gaming Laws.

"Notes" means, collectively, those certain Promissory Note(s) to be issued pursuant to the Credit Agreement, as the same may be amended or replaced from time to time in accordance with its terms.

"NRS" means the Nevada Revised Statutes as in effect from time to time.

"Obligations" means (i) the payment and performance by Borrower of each covenant and agreement of Borrower contained in the Commitment Letter, the Credit Agreement, the Notes and the other Loan Documents (including the Security Documents) and (ii) the payment and performance by Trustor of each covenant and agreement of Trustor contained in the Guaranty, this Deed of Trust and the other Loan Documents.

"Permitted Dispositions" means (a) the sale, transfer, lease or other disposition of assets in the Trust Estate, in the ordinary course of business, of inventory held in the ordinary course of business (b) the dispositions set forth in *Section 1.10* hereof and (c) other sales, transfers, leases or other dispositions of assets in the Trust Estate, including entering into Space Leases; *provided* that all applicable provisions of the Loan Documents, including the Guaranty, are complied with.

"Personal Property" has the meaning set forth in *Section 1.12* hereof.

"Proceeds" has the meaning assigned to it under the UCC and, in any event, shall include but not be limited to (i) any and all proceeds of any insurance (including without limitation property casualty and title insurance), indemnity, warranty or guaranty payable from time to time with respect to any of the Trust Estate; (ii) any and all proceeds in the form of accounts, security deposits, tax escrows (if

any), down payments (to the extent the same may be pledged under applicable law), collections, contract rights, documents, instruments, chattel paper, liens and security instruments, guarantees or general intangibles relating in whole or in part to the Project and all rights and remedies of whatever kind or nature Trustor may hold or acquire for the purpose of securing or enforcing any obligation due Trustor thereunder; (iii) any and all payments in any form whatsoever made or due and payable from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Trust Estate by any Governmental Authority; (iv) subject to the absolute assignment contained herein, the Rents or other benefits arising out of, in connection with or pursuant to any Space Lease of the Trust Estate; and (v) any and all other amounts from time to time paid or payable in connection with any of the Trust Estate; *provided, however*, that the Trustor is not authorized to dispose of any of the Trust Estate unless such disposition is a Permitted Disposition.

"Project" means the resort-hotel-casino-mall complex proposed to be constructed in Clark County, Nevada as described in the Plans and Specifications and as applicable to the Land and the Improvements, as such Plans and Specifications may be amended pursuant to the Disbursement and Administration Agreement.

"Rents" means all rents, room revenues, income, receipts, issues, profits, revenues and maintenance fees, room, food and beverage revenues, license and concession fees, income, proceeds and other benefits to which Trustor may now or hereafter be entitled from the Land, the Improvements, the Space Leases or any property encumbered hereby or any business or other activity conducted by Trustor at the Land or the Improvements.

"Space Leases" means any and all leases, subleases, lettings, licenses, concessions, operating agreements, management agreements, and all other agreements affecting the Trust Estate that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, that give any person the right to conduct its business on, or otherwise use, operate or occupy, all or any portion of the Land or Improvements and any leases, agreements or arrangements permitting anyone to enter upon or use any of the Trust Estate to extract or remove natural resources of any kind, together with all amendments, extensions, and renewals of the foregoing entered into in compliance with this Deed of Trust, together with all rental, occupancy, service, maintenance or any other similar agreements pertaining to use or occupation of, or the rendering of services at the Land, the Improvements or any part thereof.

"**Space Lessee(s)**" means any and all tenants, licensees, or other grantees of the Space Leases and any and all guarantors, sureties, endorsers or others having primary or secondary liability with respect to such Space Leases.

"**Tangible Collateral**" means all personal property, goods, equipment, supplies, building and other materials of every nature whatsoever and all other tangible personal property constituting a part or portion of the Project and/or used in the operation of the hotel, casino, restaurants, stores, parking facilities, observation tower and all other commercial operations on the Land or Improvements, including but not limited to communication systems, visual and electronic surveillance systems and transportation systems and not constituting a part of the real property subject to the real property lien of this Deed of Trust and including all property and materials stored therein in which Trustor has an interest and all tools, utensils, food and beverage, liquor, uniforms, linens, housekeeping and maintenance supplies, vehicles, fuel, advertising and promotional material, blueprints, surveys, plans and other documents relating to the Land or Improvements, and all construction materials and all furnishings, fixtures and equipment, including, but not limited to, all FF&E and all equipment and devices which are or are to be installed and used in connection with the operation of the Project, those items of furniture, fixtures and equipment which are to be purchased or leased by Trustor, machinery and any other item of personal property in which Trustor now or hereafter own or acquire an interest or right, and which are used or useful in the construction, operation, use and occupancy of the Project

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and all present and future right and interest of Trustor in and to any casino operator's agreement, license agreement or sublease agreement used in connection with the Land or the Improvements.

"**Title Insurer**" means Commonwealth Land Title Company.

"**Trust Estate**" means all of the property described in Granting Clauses (A) through (O) below, inclusive, and each item of property therein described, provided, however, that such term shall not include the property described in Granting Clause (P) below.

"**UCC**" means the Uniform Commercial Code in effect in the State of Nevada from time to time, NRS chapters 104 and 104A.

The following terms shall have the meaning assigned to such terms in the Disbursement and Administration Agreement:

Environmental Laws
Financing Agreements
Funding Agents
Plans and Specifications

The following terms shall have the meaning assigned to such terms in the Credit Agreement:

Affiliate
Closing Date
Lien
Loan Documents
Nevada Gaming Authority
Nevada Gaming Laws
Nevada Gaming License
Palo Security Agreement
Permitted Encumbrance
Permitted Liens
Person
Security Documents

In addition, any capitalized terms used in this Deed of Trust which are not otherwise defined herein shall have the meaning ascribed to such terms in the Disbursement and Administration Agreement and, if not defined therein, the meaning ascribed to such terms in the Credit Agreement and, if not defined therein, the meaning ascribed to such terms in the Guaranty.

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W I T N E S E T H:

IN CONSIDERATION OF TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION; THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, AND FOR THE PURPOSE OF SECURING in favor of Beneficiary (1) the Obligations; (2) the payment of such additional loans or advances as hereafter may be made to Trustor (individually or jointly and severally with any other Person) or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; *provided, however*, that any and all future advances by Beneficiary to Trustor made for the improvement, protection or preservation of the Trust Estate, together with interest at the rate applicable to overdue principal set forth in the Credit Agreement, shall be automatically secured hereby unless such a note or instrument evidencing such advances specifically recites that it is not intended to be secured hereby and (3) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof or to protect the security hereof (including Protective Advances as such term is defined in *Section 4.2* hereof), together with interest thereon as herein provided, Trustor, in consideration of the premises, and for the purposes aforesaid, does hereby ASSIGN, BARGAIN, CONVEY, PLEDGE, RELEASE, HYPOTHECATE, WARRANT, AND TRANSFER WITH POWER OF SALE UNTO TRUSTEE IN TRUST FOR THE BENEFIT OF BENEFICIARY AND THE BANKS each of the following:

(A) The Land;

(B) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Improvements;

(C) TOGETHER WITH all Appurtenant Rights;

(D) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Tangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(E) TOGETHER WITH the Intangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(F) TOGETHER WITH (i) all the estate, right, title and interest of Trustor of, in and to all judgments and decrees, insurance proceeds, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of any of the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof, or to any Appurtenant Rights thereto, and Beneficiary is (subject to the terms hereof) hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittance therefor, and (subject to the terms hereof) to apply the same toward the payment of the indebtedness and other sums secured hereby, notwithstanding the fact that the amount owing thereon may not then be due and payable; (ii) all proceeds of any sales or other dispositions of the property or rights described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof whether voluntary or involuntary, provided, however, that the foregoing shall not be deemed to permit such sales, transfers, or other dispositions except as specifically permitted herein; and (iii) whether arising from any voluntary or involuntary disposition of the property described in Granting Clauses (A), (B), (C), (D) and (E), all Proceeds, products, replacements, additions, substitutions, renewals and accessions, remainders, reversions and after-acquired interest in, of and to such property;

(G) TOGETHER WITH the absolute assignment of any Space Leases or any part thereof that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, together with all of the following (including all "Cash Collateral" within the meaning of the Bankruptcy Law) arising from the Space Leases: (a) Rents (subject, however,

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to the aforesaid absolute assignment to Trustee for the benefit of Beneficiary and the conditional permission hereinbelow given to Trustor to collect the Rents), (b) all guarantees, letters of credit, security deposits, collateral, cash deposits, and other credit enhancement documents, arrangements and other measures with respect to the Space Leases, (c) all of Trustor's right, title, and interest under the Space Leases, including the following: (i) the right to receive and collect the Rents from the lessee, sublessee or licensee, or their successor(s), under any Space Lease(s) and (ii) the right to enforce against any tenants thereunder and otherwise any and all remedies under the Space Leases, including Trustor's right to evict from possession any tenant thereunder or to retain, apply, use, draw upon, pursue, enforce or realize upon any guaranty of any Space Lease; to terminate, modify, or amend the Space Leases; to obtain possession of, use, or occupy, any of the real or personal property subject to the Space Leases; and to enforce or exercise, whether at law or in equity or by any other means, all provisions of the Space Leases and all obligations of the tenants thereunder based upon (A) any breach by such tenant under the applicable Space Lease (including any claim that Trustor may have by reason of a termination, rejection, or disaffirmance of such Space Lease pursuant to any Bankruptcy Law) and (B) the use and occupancy of the premises demised, whether or not pursuant to the applicable Space Lease (including any claim for use and occupancy arising under landlord-tenant law of the State of Nevada or any Bankruptcy Law). Permission is hereby given to Trustor, so long as no Event of Default has occurred and is continuing hereunder, to collect and use the Rents, as they become due and payable, but not more than one (1) month in advance thereof. Upon the occurrence of an Event of Default, the permission hereby given to Trustor to collect the Rents shall automatically terminate, but such permission shall be reinstated upon a cure or waiver of such Event of Default. Beneficiary shall have the right, at any time and from time to time, to notify any Space Lessee of the rights of Beneficiary as provided by this section;

Notwithstanding anything to the contrary contained herein, the foregoing provisions of this Paragraph (G) shall not constitute an assignment for purposes of security but shall constitute an absolute and present assignment of the Rents to Beneficiary, subject, however, to the conditional license given to Trustor to collect and use the Rents as hereinabove provided; and the existence or exercise of such right of Trustor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Trustor;

(H) TOGETHER WITH all of Trustor's right, title and interest in and to any and all Plans and Specifications and all maps, plans, specifications, surveys, studies, tests, reports, data and drawings relating to the development of the Land or the Project and the construction of the Improvements, including, without limitation, all marketing plans, feasibility studies, soils tests, design contracts and all contracts and agreements of Trustor relating thereto including, without limitation, architectural, structural, mechanical and engineering plans and specifications, studies, data and drawings prepared for or relating to the development of the Land or the Project or the construction, renovation or restoration of any of the Improvements or the extraction of minerals, sand, gravel or other valuable substances from the Land and purchase contracts or any agreement granting Trustor a right to acquire any land situated within Clark County, Nevada;

(I) TOGETHER WITH, to the extent permitted by applicable law, all of Trustor's right, title, and interest in and to any and all licenses, permits, variances, special permits, franchises, certificates, rulings, certifications, validations, exemptions, filings, registrations, authorizations, consents, approvals, waivers, orders, rights and agreements (including, without limitation, options, option rights, contract rights now or hereafter obtained by Trustor from any Governmental Authority having or claiming jurisdiction over the Land, the FF&E, the Project, or any other element of the Trust Estate or providing access thereto, or the operation of any business on, at, or from the Land including, without limitation, any liquor or Nevada Gaming Licenses (except for any registrations, licenses, findings of suitability or approvals issued by the Nevada Nevada Gaming Authorities or any other liquor or gaming licenses which are non-assignable); *provided*, that upon an Event of Default hereunder or under the

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Credit Agreement or under the Guaranty, if Beneficiary is not qualified under the Nevada Gaming Laws to hold such Nevada Gaming Licenses, then Beneficiary may designate an appropriately qualified third party to which an assignment of such Nevada Gaming Licenses can be made in compliance with the Nevada Gaming Laws;

(J) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to all water stock, water permits and other water rights relating to the Land;

(K) TOGETHER WITH all oil and gas and other mineral rights, if any, in or pertaining to the Land and all royalty, leasehold and other rights of Trustor pertaining thereto;

(L) TOGETHER WITH any and all monies and other property, real or personal, which may from time to time be subjected to the lien hereof by Trustor or by anyone on its behalf or with its consent, or which may come into the possession or be subject to the control of Trustee or Beneficiary pursuant to this Deed of Trust, the Commitment Letter, the Credit Agreement, the Guaranty or any other Loan Document (including any Security Document), including, without limitation, any Protective Advances (as defined in *Section 4.2* hereof) under this Deed of Trust; and all of Trustor's right, title, and interest in and to all extensions, improvements, betterments, renewals, substitutes for and replacements of, and all additions, accessions, and appurtenances to, any of the foregoing that Trustor may subsequently acquire or obtain by any means, or construct, assemble, or otherwise place on any of the Trust Estate, and all conversions of any of the foregoing; it being the intention of Trustor that all property hereafter acquired by Trustor and required by the Commitment Letter, the Credit Agreement, the Guaranty, any other Loan Document (including any Security Document) or this Deed of Trust to be subject to the lien of this Deed of Trust or intended so to be shall forthwith upon the acquisition thereof by Trustor be subject to the lien of this Deed of Trust as if such property were now owned by Trustor and were specifically described in this Deed of Trust and granted hereby or pursuant hereto, and Trustee and Beneficiary are hereby authorized, subject to Nevada Gaming Laws and other applicable laws, to receive any and all such property as and for additional security for the obligations secured or intended to be secured hereby. Trustor agrees to take any action as may reasonably be necessary to evidence and perfect such liens or security interests, including, without limitation, the execution of any documents necessary to evidence and perfect such liens or security interests;

(M) TOGETHER WITH, to the extent permitted by applicable laws, any and all Accounts Receivable and all royalties, earnings, income, proceeds, products, rents, revenues, reversions, remainders, issues, profits, avails, production payments, and other benefits directly or indirectly derived or otherwise arising from any of the foregoing, all of which are hereby assigned to Beneficiary, who, except as otherwise expressly provided in this Deed of Trust (including the provisions of *Section 1.13* hereof), is authorized to collect and receive the same, to give receipts and acquittances therefor and to apply the same to the Obligations secured hereunder, whether or not then due and payable;

(N) TOGETHER WITH Proceeds of the foregoing property described in Granting Clauses (A) through (M);

(O) TOGETHER WITH Trustor's rights further to assign, sell, lease, encumber or otherwise transfer or dispose of the property described in Granting Clauses (A) through (N) inclusive, above, for debt or otherwise; and

(P) EXPRESSLY EXCLUDING, HOWEVER, any assets expressly excluded from the definition of "Palo Collateral" in the Guaranty.

Trustor, for itself and its successors and assigns, covenants and agrees to and with Trustee that, at the time or times of the execution of and delivery of these presents or any instrument of further assurance with respect thereto, Trustor has good right, full power and lawful authority to assign, grant, convey, warrant, transfer, bargain or sell its interests in the Trust Estate in the manner and form as aforesaid, and that the Trust Estate is free and clear of all liens and encumbrances whatsoever, except

Permitted Liens, and Trustor shall warrant and forever defend the above-bargained property in the quiet and peaceable possession of Trustee and its successors and assigns against all and every person or persons lawfully or otherwise claiming or to claim the whole or any part thereof, except for Permitted Liens. Trustor agrees that any greater title to the Trust Estate hereafter acquired by Trustor during the term hereof shall be automatically subject hereto.

ARTICLE ONE

COVENANTS OF TRUSTOR

The Beneficiary and the Banks have been induced to enter into the Commitment Letter, the Credit Agreement, the Guaranty and the other Loan Documents and to make advances of loans thereunder to Borrower on the basis of the following material covenants, all agreed to by Trustor:

1.1 Performance of Financing Agreements. Trustor shall perform, observe and comply with each and every provision hereof, and with each and every provision contained in the Guaranty and the other Financing Agreements and shall promptly pay to the respective Funding Agents, when payment shall become due, the principal with interest thereon and all other sums required to be paid by Trustor under this Deed of Trust, the Guaranty and the other Financing Agreements.

1.2 General Representations, Covenants and Warranties. Trustor represents, covenants and warrants that: (a) Trustor has good and marketable title to an indefeasible fee estate in the Land, free and clear of all encumbrances except Permitted Encumbrances, and that it has the right to hold, occupy and enjoy its interest in the Trust Estate, and has good right, full power and lawful authority to subject the Trust Estate to the Lien of this Deed of Trust and pledge the same as provided herein and Beneficiary may at all times peaceably and quietly enter upon, hold, occupy and enjoy the entire Trust Estate in accordance with the terms hereof; (b) Trustor is not Insolvent and no bankruptcy or insolvency proceedings are pending or contemplated by or, to the best of Trustor's knowledge, threatened against Trustor; (c) all costs arising from construction of any Improvements, the performance of any labor and the purchase of all Tangible Collateral and Improvements have been or shall be paid when due (subject to the provisions of the Disbursement and Administration Agreement, the Credit Agreement, the Guaranty and this Deed of Trust); (d) the Land has direct access for ingress and egress to dedicated street(s); (e) Trustor shall at all times conduct and operate the Trust Estate in a manner so as not to lose, or permit its affiliate to lose, the right to conduct gaming activities at the Project; (f) no material part of the Trust Estate has been damaged, destroyed, condemned or abandoned, other than those portions of the Trust Estate that have been the subject of condemnation proceedings that have resulted in the conveyance of such portion of the Trust Estate to the Trustor; (g) no part of the Trust Estate is the subject of condemnation proceedings, other than condemnation proceedings to convey Land to the Trustor, and Trustor has no knowledge of any contemplated or pending condemnation proceeding with respect to any portion of the Trust Estate other than condemnation proceedings to convey Land to the Trustor; and (h) Trustor acknowledges and agrees that it presently may use, and in the past may have used, one or more of the trade or fictitious names, "Le Reve", "Wynn Collection", "Wynn Resorts" and "Desert Inn" and in each case variations thereof (collectively, the "**Enumerated Names**") in connection with the operation of the business at the Trust Estate, and Trustor further represents and warrants that the Enumerated Names are the only such trade or fictitious names Trustor has so used. For all purposes under this Deed of Trust it shall be deemed that the term "Trustor" includes all trade or fictitious names that Palo, LLC (or any successor or assign thereof) now or hereafter uses, or has in the past used, including, without limitation, the Enumerated Names, with the same force and effect as if this Deed of Trust had been executed in all such names (in addition to "Palo, LLC").

1.3 Compliance with Legal Requirements. Except as provided in the Guaranty, Trustor shall promptly, fully, and faithfully comply in all material respects with all Legal Requirements and shall cause all portions of the Trust Estate and its use and occupancy to fully comply in all material respects with Legal Requirements at all times, whether or not such compliance requires work or remedial

measures that are ordinary or extraordinary, foreseen or unforeseen, structural or nonstructural, or that interfere with the use or enjoyment of the Trust Estate.

1.4 **Taxes.** Except as otherwise permitted by the Guaranty, (a) Trustor shall pay all Impositions as they become due and payable and shall deliver to Beneficiary promptly upon Beneficiary's request, evidence satisfactory to Beneficiary that the Impositions have been paid or are not delinquent; (b) Trustor shall not suffer to exist, permit or initiate the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Land as a single lien, except as may be required by law; and (c) in the event of the passage of any law deducting from the value of real property for the purposes of taxation any lien thereon, or changing in any way the taxation of deeds of trust or obligations secured thereby for state or local purposes, or the manner of collecting such taxes and imposing a tax, either directly or indirectly, on this Deed of Trust, the Guaranty or the other Loan Documents to which Trustor is a party, Trustor shall pay all such taxes.

1.5 **Insurance.**

(a) **Hazard Insurance Requirements and Proceeds.**

(1) *Hazard Insurance.* Trustor shall at its sole expense obtain for, deliver to, assign and maintain for the benefit of Beneficiary, during the term of this Deed of Trust, insurance policies insuring the Trust Estate and liability insurance policies, all in accordance with the requirements of the Guaranty. Trustor shall pay promptly when due any premiums on such insurance policies and on any renewals thereof. In the event of the foreclosure of this Deed of Trust or any other transfer of title to the Trust Estate in partial or complete extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of Beneficiary in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

(2) *Handling of Proceeds.* All Proceeds from any insurance policies shall be collected, held, handled and disbursed in accordance with the provisions of the Credit Agreement, the Guaranty and the Disbursement and Administration Agreement (while in effect). All proceeds of insurance allocable to Trustor, as owner of the Land, and attributable to business interruption insurance shall be collected, held, handled and disbursed in accordance with the provisions of the Credit Agreement, the Guaranty and the Disbursement and Administration Agreement. Any such proceeds disbursed to Beneficiary shall be applied to pay amounts then due and payable under this Deed of Trust. The balance shall be retained by Beneficiary or its designee in an interest bearing or other investment account approved by Beneficiary, which account Trustor hereby pledges to Beneficiary to secure the Obligations. Disbursements shall be permitted from such account to pay expenses reasonably incurred by Trustor in owning and operating the Trust Estate, as reasonably approved by Beneficiary.

(b) **Compliance with Insurance Policies.** Trustor shall not violate or permit to be violated any of the conditions or provisions of any policy of insurance required by the Guaranty or this Deed of Trust and Trustor shall so perform and satisfy the requirements of the companies writing such policies that, at all times, companies of good standing shall be willing to write and/or continue such insurance. Trustor further covenants to promptly send to Beneficiary all notices relating to any violation of such policies or otherwise affecting Trustor's insurance coverage or ability to obtain and maintain such insurance coverage.

1.6 **Condemnation.** Beneficiary is hereby authorized, at its option, to commence, appear in and prosecute in its own or Trustor's name any action or proceeding relating to any condemnation and to settle or compromise any claim in connection therewith, and Trustor hereby appoints Beneficiary as its attorney-in-fact to take any action in Trustor's name pursuant to Beneficiary's rights hereunder.

Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Trust Estate or any portion thereof, Trustor shall notify the Trustee and Beneficiary of the pendency of such proceedings. Trustor from time to time shall execute and deliver to Beneficiary all instruments requested by it to permit such participation; provided, however, that such instruments shall be deemed as supplemental to the foregoing grant of permission to Trustee and Beneficiary, and unless otherwise required, the foregoing permission shall, without more, be deemed sufficient to permit Trustee and/or Beneficiary to participate in such proceedings on behalf of Trustor. All such compensation awards, damages, claims, rights of action and Proceeds, and any other payments or relief, and the right thereto, are, whether paid to Beneficiary or Trustor or a third party trustee, included in the Trust Estate. Beneficiary, after deducting therefrom all its expenses, including reasonable attorneys fees, shall apply all Proceeds paid directly to it in accordance with the provisions of the Credit Agreement and the Guaranty. All Proceeds paid directly to the Trustor shall be applied in accordance with the Guaranty and the Disbursement and Administration Agreement. To the extent that any condemnation proceeds are not required to be applied towards restoration of the improvements upon the Land, then Beneficiary shall have the right to apply said condemnation proceeds towards repayment of the Obligations. Trustor hereby waives any rights it may have under NRS 37.115, as amended or recodified from time to time.

1.7 **Care of Trust Estate.**

(a) Trustor shall preserve and maintain the Trust Estate in good condition and repair. Trustor shall not permit, commit or suffer to exist any waste, impairment or deterioration of the Trust Estate or of any part thereof that in any manner materially impairs Beneficiary's security hereunder and shall not take any action which will increase the risk of fire or other hazard to the Trust Estate or to any part thereof.

(b) Except for Permitted Dispositions, no material part of the Improvements or Tangible Collateral that are part of the Trust Estate shall be removed, demolished or materially altered, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld or delayed. Trustor shall have the right, without such consent, to remove and dispose of free from the lien of this Deed of Trust any part of the Improvements or Tangible Collateral that are part of the Trust Estate as from time to time may become worn out or obsolete or otherwise not useful in connection with the operation of the Trust Estate, provided that either (i) such removal or disposition does not materially affect the value of the Trust Estate or (ii) prior to or promptly following such removal, any such property shall be replaced with other property of substantially equal utility and of a value at least substantially equal to that of the replaced property when first acquired and free from any security interest of any other person (subject only to Permitted Liens), and by such removal and replacement Trustor shall be deemed to have subjected such replacement property to the lien of this Deed of Trust.

(c) Notwithstanding the foregoing provisions of this *Section 1.7*, the Trustor may develop the Project in the manner contemplated by the Disbursement and Administration Agreement, the Credit Agreement, the Guaranty and the other Financing Agreements.

1.8 *Leases.*

(a) Trustor represents, warrants and covenants that:

(i) except for the assignment effected hereby and in the other Financing Agreements, Trustor has not executed any assignment or pledge of any of Space Leases, the Rents, or of Trustor's right, title and interest in the same; and

(ii) this Deed of Trust does not and will not constitute a violation or default under any Space Lease, and is and shall at all times constitute a valid lien on Trustor's interests in the Space Leases.

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(b) Trustor shall not enter into any Space Lease or any modifications or amendments to any Space Lease, either orally or in writing, unless such Space Lease complies with the requirements of the Credit Agreement and the Guaranty.

(c) After an Event of Default, upon the request of Administrative Agent Trustor shall deliver to Beneficiary executed copies of all Space Leases.

1.9 *Further Encumbrance.*

(a) Trustor covenants that at all times prior to the discharge of the Obligations, except for Permitted Liens and Permitted Dispositions, Trustor shall neither make nor suffer to exist, nor enter into any agreement for, any sale, assignment, exchange, mortgage, transfer, Lien, hypothecation or encumbrance of all or any part of the Trust Estate, including, without limitation, the Rents. As used herein, "transfer" includes the actual transfer or other disposition, whether voluntary or involuntary, by law, or otherwise, except those transfers specifically permitted herein, provided, however, that "transfer" shall not include the granting of utility or other beneficial easements with respect to the Trust Estate which have been or are granted by Trustor and are reasonably necessary to the construction, maintenance or operation of the Project.

(b) Any Permitted Lien consisting of the lien of a deed of trust which is junior to the lien of the Loan Documents (including the Security Documents) (a "Subordinate Deed of Trust") shall be permitted hereunder so long as there shall have been delivered to Beneficiary, not less than thirty (30) days prior to the date thereof, a copy thereof which shall contain express covenants in form and substance satisfactory to Beneficiary to the effect that: (i) the Subordinate Deed of Trust is in all respects subject and subordinate to this Deed of Trust; (ii) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Trust Estate shall be named as a party defendant nor shall any action be taken with respect to the Trust Estate which would terminate any occupancy or tenancy of the Trust Estate, or any portion thereof, without the consent of Beneficiary; (iii) any Rents, if collected through a receiver or by the holder of the Subordinate Deed of Trust, shall be applied first to the obligations secured by this Deed of Trust, including principal and interest due and owing on or to become due and owing on the Notes, the Guaranty or the other Loan Documents, and then to the payment of maintenance expenses, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operation, and maintenance of the Trust Estate; and (iv) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust, prompt notice of the commencement thereof shall be given to Beneficiary.

(c) Trustor agrees that in the event the ownership of the Trust Estate or any part thereof becomes vested in a person other than Trustor, Beneficiary may, without notice to Trustor, deal in any way with such successor or successors in interest with reference to this Deed of Trust, the Notes, the Guaranty, the other Loan Documents and other Obligations hereby secured without in any way vitiating or discharging Trustor's or any guarantor's, surety's or endorser's liability hereunder or upon the obligations hereby secured. No sale of the Trust Estate and no forbearance to any person with respect to this Deed of Trust and no extension to any person of the time for payment of the Obligations, and other sums hereby secured given by Beneficiary shall operate to release, discharge, modify, change or affect the original liability of Trustor, or such guarantor, surety or endorser either in whole or in part.

(d) Trustor covenants and agrees to comply with all of the terms and conditions set forth in any FF&E Financing Agreement. If Trustor shall fail to make any payment required to be made by it under any FF&E Financing Agreement, except where Trustor is contesting such payment in good faith, then the Beneficiary shall be entitled to make such payment on Trustor's behalf and any and all sums so expended by the Beneficiary shall be secured by this Deed of Trust and shall be repaid by Trustor upon demand, together with interest thereon at the interest at the rate applicable to overdue principal set forth in the Credit Agreement from the date of advance.

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1.10 *Partial Releases of Trust Estate.*

(a) Trustor may from time to time make a Permitted Disposition including, but not limited to, (i) transferring a portion of the Trust Estate (including any temporary taking) to any person legally empowered to exercise the power of eminent domain, or pursuant to dedication agreements that are now in effect or entered into in the future in connection with the development of the Project, (ii) granting utility easements reasonably necessary or desirable for the construction and/or operation of the Project, which grant or transfer is for the benefit of the Trust Estate, or (iii) transferring a portion of the Trust Estate as permitted pursuant to the Disbursement and Administration Agreement. In each such case, Beneficiary shall execute and deliver any instruments necessary or appropriate to effectuate or confirm any such transfer or grant, free from the lien of this Deed of Trust, *provided, however*, that Beneficiary shall execute a lien release or subordination agreement, as appropriate, for matters described in clauses (i) and (iii) above only if:

(A) Such transfer, grant or release is not prohibited by the Credit Agreement or the Guaranty and all conditions precedent contained in the Credit Agreement and the Guaranty for such transfer, grant or release, if any, shall have been satisfied;

(B) Beneficiary and Trustee shall have received a counterpart of the instrument pursuant to which such transfer, grant or release is to be made, and each instrument which Beneficiary or Trustee is requested to execute in order to effectuate or confirm such transfer, grant or release;

(C) In the case of a transfer to a person legally empowered to exercise the power of eminent domain, which transfer involves property whose value is greater than \$5,000,000, Beneficiary and Trustee shall have received an opinion of counsel, who may be counsel to Trustor, to the effect that the assignee or grantee of the portion of the Trust Estate being transferred is legally empowered to take such portion under the power of eminent domain; and

(D) Beneficiary and Trustee shall have received such other instruments, certificates (including evidence of authority) and opinions as Beneficiary or Trustee may reasonably request, including, but not limited to, opinions that the proposed release is permitted by this *Section 1.10*.

(b) Any consideration received for a transfer to any person empowered to exercise the right of eminent domain shall be subject to *Section 1.6* hereof.

1.11 *Further Assurances.*

(a) At its sole cost and without expense to Trustee or Beneficiary, and subject in all events to compliance with the Nevada Gaming Laws and other applicable Legal Requirements, Trustor shall do, execute, acknowledge and deliver any and all such further acts, deeds, conveyances, notices, requests for notices, financing statements, continuation statements, certificates, assignments, notices of assignments, agreements, instruments and further assurances, and shall mark any chattel paper, deliver any chattel paper or instruments to Beneficiary and take any other actions that are necessary, prudent, or reasonably requested by Beneficiary or Trustee to perfect or continue the perfection and first priority of Beneficiary's security interest in the Trust Estate, to protect the Trust Estate against the rights, claims, or interests of third persons other than holders of Permitted Liens or to effect the purposes of this Deed of Trust, including the security agreement and the absolute assignment of Rents contained herein, or for the filing, registering or recording thereof.

(b) Trustor shall forthwith upon the execution and delivery of this Deed of Trust, and thereafter from time to time, cause this Deed of Trust and each instrument of further assurance to be filed, indexed, registered, recorded, given or delivered in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the title of Trustee and/or Beneficiary to, the Trust Estate.

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1.12 ***Security Agreement and Financing Statements.*** Trustor (as debtor) hereby grants to Beneficiary (as creditor and secured party) a present and future security interest in all Tangible Collateral, Intangible Collateral, FF&E, Improvements, all other personal property now or hereafter owned or leased by Trustor or in which Trustor has or will have any interest, to the extent that such property constitutes a part of the Trust Estate (whether or not such items are stored on the premises or elsewhere), Proceeds of the foregoing comprising a portion of the Trust Estate and all proceeds of insurance policies and consideration awards arising therefrom and all proceeds, products, substitutions, and accessions therefor and thereto, subject to Beneficiary's rights to treat such property as real property as herein provided (collectively, the "***Personal Property***"). Trustor shall execute and/or deliver any and all documents and writings, including without limitation financing statements pursuant to the UCC, as may be necessary or prudent to preserve and maintain the priority of the security interest granted hereby on property which may be deemed subject to the foregoing security agreement or as Beneficiary may reasonably request, and shall pay to Beneficiary on demand any reasonable expenses incurred by Beneficiary in connection with the preparation, execution and filing of any such documents. Trustor hereby authorizes and empowers Beneficiary to file, on Trustor's behalf, all financing statements and refiling and continuations thereof as advisable to create, preserve and protect said security interest. Trustor acknowledges and agrees that it is not authorized to, and will not, authenticate or file, or authorize the filing of, any financing statements or other record with respect to the Personal Property (including any amendments thereto, or continuation or termination statements thereof), except as permitted by the Guaranty. Trustor approves and ratifies any filing or recording of records made by or on behalf of Beneficiary in connection with the perfection of the security interest in favor of Beneficiary hereunder. This Deed of Trust constitutes both a real property deed of trust and a "security agreement," within the meaning of the UCC, and the Trust Estate includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Trust Estate. Trustor by executing and delivering this Deed of Trust has granted to Beneficiary, as security of the Obligations, a security interest in the Trust Estate.

(a) ***Fixture Filing.*** Without in any way limiting the generality of the immediately preceding paragraph or of the definition of the Trust Estate, this Deed of Trust constitutes a fixture filing under Sections 9-334 and 9-502 of the UCC (NRS 104.9334 and 104.9502). For such purposes, (i) the "debtor" is Trustor and its address is the address given for it in the initial paragraph of this Deed of Trust; (ii) the "secured party" is Beneficiary, and its address for the purpose of obtaining information is the address given for it in the initial paragraph of this Deed of Trust; (iii) the real estate to which the fixtures are or are to become attached is Trustor's interest in the Land; and (iv) the record owner of such real estate is Trustor.

(b) ***Remedies.*** This Deed of Trust shall be deemed a security agreement as defined in the UCC and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall include any or all of (i) those prescribed herein, and (ii) those available under applicable law, and (iii) those available under the UCC, all at Beneficiary's sole election. In addition, a photographic or other reproduction of this Deed of Trust shall be sufficient as a financing statement for filing wherever filing may be necessary to perfect or continue the security interest granted herein.

(c) ***Derogation of Real Property.*** It is the intention of the parties that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in anyway derogating from or impairing the express declaration and intention of the parties hereto as hereinabove stated that everything used in connection with the production of income from the Trust Estate and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real property encumbered by this Deed of Trust irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial

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numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. It is the intention of the parties that the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Trustor's interest as lessors in any present or future Space Lease or rights to Rents, shall never be construed as in anyway altering any of the rights of Beneficiary as determined by this Deed of Trust or impugning the priority of Beneficiary's real

property lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of Beneficiary in the event any court or judge shall at any time hold with respect to the matters set forth in the foregoing clauses (1), (2) and (3) that notice of Beneficiary's priority of interest to be effective against a particular class of persons, including but not limited to, the federal government and any subdivisions or entity of the federal government, must be filed in the UCC records.

(d) **Priority; Permitted Financing of Tangible Collateral.** All Personal Property of any nature whatsoever which is subject to the provisions of this security agreement shall be purchased or obtained by Trustor in its name and free and clear of any lien or encumbrance, except for Permitted Liens and the lien hereof, for use only in connection with the business and operation of the Project, and shall be and at all times remain free and clear of any lease or similar arrangement, chattel financing, installment sale agreement, security agreement and any encumbrance of like kind, so that Beneficiary's security interest shall attach to and vest in Trustor for the benefit of Beneficiary, with the priority herein specified, immediately upon the installation or use of the Personal Property at the Land and Trustor warrants and represents that Beneficiary's security interest in the Personal Property is a validly attached and binding security interest, properly perfected and prior to all other security interests therein except as otherwise permitted in this Deed of Trust. The foregoing shall not be construed as limiting Trustor's rights to transfer Personal Property pursuant to Permitted Dispositions or to obtain releases of Personal Property from the Lien of this Deed of Trust pursuant to *Section 1.10* hereof.

(e) **Preservation of Contractual Rights of Collateral.** Trustor shall, prior to delinquency, default, or forfeiture, perform all obligations and satisfy all material conditions required on its part to be satisfied to preserve its rights and privileges under any contract, lease, license, permit, or other authorization (i) under which it holds any Tangible Collateral or (ii) which constitutes part of the Intangible Collateral, except where Trustor is contesting such obligations in good faith.

(f) **Removal of Collateral.** Except for damaged or obsolete Tangible Collateral which is either no longer usable or which is removed temporarily for repair or improvement or removed for replacement on the Trust Estate with Tangible Collateral of similar function or as otherwise permitted herein, none of the Tangible Collateral shall be removed from the Trust Estate without Beneficiary's prior written consent.

(g) **Change of Name.** Trustor shall not change its corporate (or other entity) or business name, or do business within the State of Nevada under any name other than such name, or any trade name(s) other than those as to which Trustor gives prior written notice to Beneficiary of its intent to use such trade names, or any other business names (if any) specified in the financing statements delivered to Beneficiary for filing in connection with the execution hereof, without, in each case, providing Beneficiary with the additional financing statement(s) and any other similar documents deemed reasonably necessary by Beneficiary to assure that its security interest remains perfected and of undiminished priority in all such Personal Property notwithstanding such name change.

1.13 **Assignment of Leases and Rents.** Subject to Nevada Gaming Laws and other applicable Legal Requirements, the assignment of Leases and Rents set out above in Granting Clause (G) shall constitute an absolute and present assignment to Beneficiary, subject to the license herein given to Trustor to collect the Rents, and shall be fully operative without any further action on the part of any party, and specifically Beneficiary shall be entitled upon the occurrence of an Event of Default hereunder to all Rents and to enter upon the Land and the Improvements to collect such Rents, provided, however, that Beneficiary shall not be obligated to take possession of the Trust Estate, or any portion thereof. The absolute assignment contained in Granting Clause (G) shall not be deemed to impose upon Beneficiary any of the obligations or duties of Trustor provided in any such Space Lease (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease in the event that any lessee shall have been joined as a party defendant in any action to foreclose this Deed of Trust and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Trust Estate or any part thereof).

1.14 **Expenses.**

(a) Trustor shall pay when due and payable all out-of-pocket costs, including without limitation, those reasonable appraisal fees, recording fees, taxes, abstract fees, title policy fees, escrow fees, attorneys' and paralegal fees, travel expenses, fees for inspecting architect(s) and engineer(s) and all other costs and expenses of every character which may hereafter be incurred by Beneficiary or any assignee of Beneficiary in connection with the preparation and execution of the Guaranty and the other Loan Documents (including the Security Documents) to which Trustor is a party or instruments, agreements or documents of further assurance, the funding of the indebtedness secured hereby, and the enforcement of the Guaranty or any other Loan Document (including any Security Document) to which Trustor is a party. Other than costs associated with the enforcement of any Loan Document, all such costs shall be itemized in reasonable detail; and

(b) Trustor shall, upon demand by Beneficiary, reimburse Beneficiary or any assignee of Beneficiary for all such reasonable expenses which have been incurred or which shall be incurred by it; and

(c) Trustor shall indemnify Beneficiary with respect to any transaction or matter in any way connected with any portion of the Trust Estate, this Deed of Trust, including any occurrence at, in, on, upon or about the Trust Estate (including any personal injury, loss of life, or property damage), or Trustor's use, occupancy, or operation of the Trust Estate, or the filing or enforcement of any mechanic's lien, or otherwise caused in whole or in part by any act, omission or negligence occurring on or at the Trust Estate, including failure to comply with any Legal Requirement or with any requirement of this Deed of Trust that applies to Trustor, except to the extent resulting from the gross negligence, fraud or willful misconduct of Trustee or Beneficiary. If Beneficiary is a party to any litigation as to which either Trustor is required to indemnify Beneficiary (or is made a defendant in any action of any kind against Trustor or relating directly or indirectly to any portion of the Trust Estate) then, at Beneficiary's option, Trustor shall undertake Beneficiary's defense, using counsel reasonably satisfactory to Beneficiary (and any settlement shall be subject to Beneficiary's consent, which consent shall not be unreasonably withheld), and in any case shall indemnify Beneficiary against such litigation. Trustor shall pay all reasonable costs and expenses, including reasonable legal costs, that Beneficiary pays or incurs in connection with any such litigation. Any amount payable under any indemnity in this Deed of Trust shall be a demand obligation, shall be added to, and become a part of, the secured obligations under this Deed of Trust, shall be secured by this Deed of Trust and, if not paid promptly following demand therefor (which demand shall, unless associated with Loan Document enforcement actions, set forth in reasonable detail an itemization of the amount so demanded) shall bear interest at the interest rate specified in the Credit Agreement. Such indemnity shall survive any release of this Deed of Trust and any foreclosure.

1.15 **Beneficiary's Cure of Trustor's Default.** If Trustor defaults hereunder in the payment of any tax, assessment, lien, encumbrance or other Imposition, in its obligation to furnish insurance hereunder, or in the performance or observance of any other covenant, condition or term of this Deed of Trust or any other Financing Agreement or any FF&E Financing Agreement, Beneficiary may, but is not obligated to, to preserve its interest in the Trust Estate, perform or observe the same, and all payments made (whether such payments are regular or accelerated payments) and reasonable costs and expenses incurred or paid by Beneficiary in connection therewith shall become due and payable immediately. The amounts so incurred or paid by Beneficiary, together with interest thereon at the interest rate applicable to overdue principal set forth in the Credit Agreement, from the date incurred until paid by Trustor, shall be added to the indebtedness and secured by the lien of this Deed of Trust. Beneficiary, is hereby empowered to enter and to authorize others to enter upon the Land or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Trustor or any person in possession holding under Trustor. No exercise of any rights under this Section 1.15 by Beneficiary shall cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

1.16 **Use of Land.** Trustor covenants that the Trust Estate shall be used and operated in a manner consistent with the requirements of the Loan Documents.

1.17 **Compliance with Permitted Lien Agreements.** Trustor shall comply with each and every material obligation contained in any agreement pertaining to a Permitted Lien.

1.18 **Defense of Actions.** Trustor shall appear in and defend any action or proceeding affecting or purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and shall pay all costs and expenses, including cost of title search and insurance or other evidence of title, preparation of survey, and reasonable attorneys' fees in any such action or proceeding in which Beneficiary or Trustee may appear or may be joined as a party and in any suit brought by Beneficiary based upon or in connection with this Deed of Trust, the Guaranty or any other Loan Document to which Trustor is a party. Nothing contained in this section shall, however, limit the right of Beneficiary to appear in such action or proceeding with counsel of its own choice, either on its own behalf or on behalf of Trustor.

1.19 **Affiliates.**

(a) **Subject to Trust Deed.** Subject to compliance with the requirements of applicable Nevada Gaming Laws, Trustor shall cause all of its Affiliates in any way involved with the operation of the Trust Estate or the Project to observe the covenants and conditions of this Deed of Trust to the extent necessary to give the full intended effect to such covenants and conditions and to protect and preserve the security of Beneficiary hereunder. Trustor shall, at Beneficiary's request, cause any such Affiliate to execute and deliver to Beneficiary or Trustee such further instruments or documents as Beneficiary may reasonably deem necessary to effectuate the terms of this Section 1.19.

(b) **Restriction on Use of Subsidiary or Affiliate.** Except as permitted under the Credit Agreement, the Notes, the Guaranty or the other Loan Documents (including any Security Document), Trustor shall not use any Affiliate in the operation of the Trust Estate or the Project if such use would in any way impair the security for the Obligations or circumvent any covenant or condition of this Deed of Trust, the Guaranty or of any other Loan Document.

1.20 **Title Insurance.** On the Closing Date, Trustor shall cause to be delivered to Trustee at Trustor's expense, one or more ALTA extended coverage Lender's Policies of Title Insurance showing fee title to the real property situated in the County of Clark, State of Nevada, more specifically described in Schedule A attached hereto, vested in Trustor and the lien of this Deed of Trust to be a

perfected lien, prior to any and all encumbrances other than Permitted Encumbrances (excluding, however, any such non-Permitted Encumbrances for which the Title Insurer has agreed to provide an endorsement or affirmative coverage protecting the lien of this Deed of Trust against such non-Permitted Encumbrances).

ARTICLE TWO

GUARANTY PROVISIONS

2.1 **Interaction with Guaranty**

(a) **Incorporation by Reference.** All terms, covenants, conditions, provisions and requirements of the Guaranty are incorporated by reference in this Deed of Trust.

(b) **Conflicts.** In the event of any conflict or inconsistency between the provisions of this Deed of Trust and those of the Guaranty, Credit Agreement or the Disbursement and Administration Agreement, the provisions of the Guaranty, Credit Agreement or the Disbursement and Administration Agreement, as applicable, shall govern.

2.2 **Other Collateral.** This Deed of Trust is one of a number of security agreements delivered by or on behalf of Trustor and other Persons pursuant to the Credit Agreement and the other Loan Documents (including the Security Documents) and securing the Obligations secured hereunder. All potential junior Lien claimants are placed on notice that, under any of the Loan Documents (including the Security Documents) (including a separate future unrecorded agreement between Trustor and Beneficiary), other collateral for the Obligations secured hereunder (*i.e.*, collateral other than the Trust Estate) may, under certain circumstances, be released without a corresponding reduction in the total principal amount secured by this Deed of Trust. Such a release would decrease the amount of collateral securing the same indebtedness, thereby increasing the burden on the remaining Trust Estate created and continued by this Deed of Trust. No such release shall impair the priority of the lien of this Deed of Trust. By accepting its interest in the Trust Estate, each and every junior Lien claimant shall be deemed to have acknowledged the possibility of, and consented to, any such release. Nothing in this paragraph shall impose any obligation upon Beneficiary.

ARTICLE THREE

DEFAULTS

3.1 **Event of Default.** The term "Event of Default," wherever used in this Deed of Trust, shall mean any of (i) one or more of the events of default listed in the Credit Agreement or the Guaranty or (ii) so long as the Disbursement and Administration Agreement is in effect, one or more of the events of default listed

in the Disbursement and Administration Agreement (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body).

ARTICLE FOUR

REMEDIES

4.1 **Acceleration of Maturity.** If an Event of Default occurs, Beneficiary may (except that such acceleration shall be automatic if the Event of Default is caused by Borrower's or Trustor's Bankruptcy), in accordance with the Loan Documents, declare the Obligations to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become due and payable without demand, presentment, notice or other requirements of any kind (all

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of which Trustor waives) notwithstanding anything in this Deed of Trust or any Loan Document or applicable law to the contrary.

4.2 **Protective Advances.** If Borrower or Trustor fails to make any payment or perform any other obligation under the Notes, Credit Agreement, Guaranty or any other Financing Agreement, then without thereby limiting Beneficiary's other rights or remedies, waiving or releasing any of Trustor's obligations, or imposing any obligation on Beneficiary, Beneficiary may either advance any amount owing or perform any or all actions that Beneficiary considers necessary or appropriate to cure such default. All such advances shall constitute "Protective Advances." No sums advanced or performance rendered by Beneficiary shall cure, or be deemed a waiver of any Event of Default.

4.3 **Institution of Equity Proceedings.** If an Event of Default occurs, Beneficiary may institute an action, suit or proceeding in equity for specific performance of this Deed of Trust, the Notes, the Guaranty or any other Loan Document (including any Security Document), all of which shall be specifically enforceable by injunction or other equitable remedy. Trustor waives any defense based on laches or any applicable statute of limitations.

4.4 **Beneficiary's Power of Enforcement.**

(a) If an Event of Default occurs, Beneficiary shall be entitled, at its option and in its sole and absolute discretion, to prepare and record on its own behalf, or to deliver to Trustee for recording, if appropriate, written declaration of default and demand for sale and written Notice of Breach and Election to Sell (NRS 107.080(3)) (or other statutory notice) to cause the Trust Estate to be sold to satisfy the obligations hereof, and in the case of delivery to Trustee, Trustee shall cause said notice to be filed for record.

(b) After the lapse of such time as may then be required by law following the recordation of said Notice of Breach and Election to Sell, and notice of sale having been given as then required by law, including compliance with all applicable Nevada Gaming Laws, Trustee without demand on Trustor, shall sell the Trust Estate or any portion thereof at the time and place fixed by it in said notice, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder, of cash in lawful money of the United States payable at the time of sale. Trustee may, for any cause it deems expedient, postpone the sale of all or any portion of said property until it shall be completed and, in every case, notice of postponement shall be given by public announcement thereof at the time and place last appointed for the sale and from time to time thereafter Trustee may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall execute and deliver to the purchaser its Deed, Bill of Sale, or other instrument conveying said property so sold, but without any covenant or warranty, express or implied. The recitals in such instrument of conveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale.

(c) After deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including, without limitation, costs of evidence of title and reasonable attorneys' fees and other legal expenses of Trustee or Beneficiary in connection with a sale, Trustee shall apply the proceeds of such sale to payment of all sums expended under the terms hereof not then repaid, with accrued interest at the rate applicable to overdue principal set forth in the Credit Agreement to the payment of all other sums then secured hereby and the remainder, if any, to the person or persons legally entitled thereto as provided in NRS 40.462.

(d) Subject to compliance with applicable Nevada Gaming Laws, if any Event of Default occurs, Beneficiary may, either with or without entry or taking possession of the Trust Estate, and without regard to whether or not the indebtedness and other sums secured hereby shall be due and without prejudice to the right of Beneficiary thereafter to bring an action or proceeding to foreclose or any other action for any default existing at the time such earlier action was commenced, proceed by any

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appropriate action or proceeding: (1) to enforce payment of the Obligations, to the extent permitted by law, or the performance of any term hereof or any other right; (2) to foreclose this Deed of Trust in any manner provided by law for the foreclosure of mortgages or deeds of trust on real property and to sell, as an entirety or in separate lots or parcels, the Trust Estate or any portion thereof pursuant to the laws of the State of Nevada or under the judgment or decree of a court or courts of competent jurisdiction, and Beneficiary shall be entitled to recover in any such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees in such amount as shall be awarded by the court; (3) to exercise any or all of the rights and remedies available to it under the Loan Documents; and (4) to pursue any other remedy available to it. Beneficiary shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Beneficiary may determine.

(e) The remedies described in this Section 4.4 may be exercised with respect to all or any portion of the Personal Property, either simultaneously with the sale of any real property encumbered hereby or independent thereof. Beneficiary shall at any time be permitted to proceed with respect to all or any portion of the Personal Property in any manner permitted by the UCC. Trustor agrees that Beneficiary's inclusion of all or any portion of the Personal Property (and all personal property that is subject to a security interest in favor, or for the benefit, of Beneficiary) in a sale or other remedy exercised with respect to the real property encumbered hereby, as permitted by the UCC, is a commercially reasonable disposition of such property.

4.5 **Beneficiary's Right to Enter and Take Possession, Operate and Apply Income.**

(a) Subject to compliance with applicable Nevada Gaming Laws, if an Event of Default occurs, (i) Trustor, upon demand of Beneficiary, shall forthwith surrender to Beneficiary the actual possession and, if and to the extent permitted by law, Beneficiary itself, or by such officers or agents as it may appoint, may enter and take possession of all the Trust Estate including the Personal Property, without liability for trespass, damages or otherwise, and may exclude Trustor and its agents and employees wholly therefrom and may have joint access with Trustor to the books, papers and accounts of Trustor; and (ii) Trustor shall pay monthly in advance to Beneficiary on Beneficiary's entry into possession, or to any receiver appointed to collect the Rents, all Rents then due and payable.

(b) If Trustor shall for any reason fail to surrender or deliver the Trust Estate, the Personal Property or any part thereof after Beneficiary's demand, Beneficiary may obtain a judgment or decree conferring on Beneficiary or Trustee the right to immediate possession or requiring Trustor to deliver immediate possession of all or part of such property to Beneficiary or Trustee and Trustor hereby specifically consents to the entry of such judgment or decree. Trustor shall pay to Beneficiary or Trustee, upon demand, all reasonable costs and expenses of obtaining such judgment or decree and reasonable compensation to Beneficiary or Trustee, their attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Deed of Trust.

(c) Subject to compliance with applicable Nevada Gaming Laws, upon every such entering upon or taking of possession, Beneficiary or Trustee may hold, store, use, operate, manage and control the Trust Estate and conduct the business thereof, and, from time to time in its sole and absolute discretion and without being under any duty to so act:

- (1) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;
- (2) insure or keep the Trust Estate insured;
- (3) manage and operate the Trust Estate and exercise all the rights and powers of Trustor in their name or otherwise with respect to the same;

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(4) enter into agreements with others to exercise the powers herein granted Beneficiary or Trustee, all as Beneficiary or Trustee from time to time may determine; and, subject to the absolute assignment of the Leases and Rents to Beneficiary, Beneficiary or Trustee may collect and receive all the Rents, including those past due as well as those accruing thereafter; and shall apply the monies so received by Beneficiary or Trustee in such priority as Beneficiary may determine to (1) the payment of interest and principal due and payable on the Notes or the other Loan Documents, (2) the deposits for taxes and assessments and insurance premiums due, (3) the cost of insurance, taxes, assessments and other proper charges upon the Trust Estate or any part thereof; (4) the compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary or Trustee; and (5) any other charges or costs required to be paid by Trustor under the terms hereof; and

- (5) rent or sublet the Trust Estate or any portion thereof for any purpose permitted by this Deed of Trust.

Beneficiary or Trustee shall surrender possession of the Trust Estate and the Personal Property to Trustor only when all that is due upon such interest and principal, tax and insurance deposits, and all amounts under any of the terms of the Credit Agreement or this Deed of Trust, shall have been paid and all defaults made good. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.6 Leases. Beneficiary is authorized to foreclose this Deed of Trust subject to the rights of any tenants of the Trust Estate, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights shall not be, nor be asserted by Trustor to be, a defense to any proceedings instituted by Beneficiary to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Trust Estate, or any portion thereof. Unless otherwise agreed by Beneficiary in writing, all Space Leases executed subsequent to the date hereof, or any part thereof, shall be subordinate and inferior to the lien of this Deed of Trust; provided, however that (i) in accordance with the terms of the Loan Documents, Beneficiary may be required to execute a non-disturbance and attornment agreement in connection with certain Space Leases; and (ii) from time to time Beneficiary may execute and record among the land records of the jurisdiction where this Deed of Trust is recorded, subordination statements with respect to such of said Space Leases as Beneficiary may designate in its sole discretion, whereby the Space Leases so designated by Beneficiary shall be made superior to the lien of this Deed of Trust for the term set forth in such subordination statement. From and after the recordation of such subordination statements, and for the respective periods as may be set forth therein, the Space Leases therein referred to shall be superior to the lien of this Deed of Trust and shall not be affected by any foreclosure hereof. All such Space Leases shall contain a provision to the effect that the Trustor and Space Lessee recognize the right of Beneficiary to elect and to effect such subordination of this Deed of Trust and consents thereto.

4.7 Purchase by Beneficiary. Upon any foreclosure sale (whether judicial or nonjudicial), Beneficiary may bid for and purchase the property subject to such sale and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

4.8 Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws. Trustor agrees to the full extent permitted by law that if an Event of Default occurs, neither Trustor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust or the absolute sale of the Trust Estate or any portion thereof or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof, and Trustor for itself and all who may at any time claim through or under it, hereby

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waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Trust Estate marshalled upon any foreclosure of the lien hereof and agrees that Trustee or any court having jurisdiction to foreclose such lien may sell the Trust Estate in part or as an entirety.

4.9 Receiver. If an Event of Default occurs, Beneficiary, to the extent permitted by law and subject to compliance with all applicable Nevada Gaming Laws, and without regard to the value, adequacy or occupancy of the security for the indebtedness and other sums secured hereby, shall be entitled as a matter of

right if it so elects to the appointment of a receiver to enter upon and take possession of the Trust Estate and to collect all Rents and apply the same as the court may direct, and such receiver may be appointed by any court of competent jurisdiction upon application by Beneficiary. Beneficiary may have a receiver appointed without notice to Trustor or any third party, and Beneficiary may waive any requirement that the receiver post a bond. Beneficiary shall have the power to designate and select the Person who shall serve as the receiver and to negotiate all terms and conditions under which such receiver shall serve. Any receiver appointed on Beneficiary's behalf may be an Affiliate of Beneficiary. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Deed of Trust. The right to enter and take possession of and to manage and operate the Trust Estate and to collect all Rents, whether by a receiver or otherwise, shall be cumulative to any other right or remedy available to Beneficiary under this Deed of Trust, the Guaranty or the other Loan Documents or otherwise available to Beneficiary and may be exercised concurrently therewith or independently thereof. Beneficiary shall be liable to account only for such Rents (including, without limitation, security deposits) actually received by Beneficiary, whether received pursuant to this section or any other provision hereof. Notwithstanding the appointment of any receiver or other custodian, Beneficiary shall be entitled as pledgee to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Deed of Trust to, Beneficiary.

4.10 Suits to Protect the Trust Estate. Beneficiary shall have the power and authority to institute and maintain any suits and proceedings as Beneficiary, in its sole and absolute discretion, may deem advisable (a) to prevent any impairment of the Trust Estate by any acts which may be unlawful or in violation of this Deed of Trust, (b) to preserve or protect its interest in the Trust Estate, or (c) to restrain the enforcement of or compliance with any legislation or other Legal Requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Beneficiary's interest.

4.11 Proofs of Claim. In the case of any receivership, Insolvency, Bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Trustor, or, to the extent the same would result in an Event of Default hereunder, any Subsidiary, or any guarantor, co-maker or endorser of any of Trustor's obligations, its creditors or its property, Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim or other documents as it may deem to be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Trustor under the Loan Documents, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Trustor after such date.

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4.12 Trustor to Pay the Obligations on Any Default in Payment; Application of Monies by Beneficiary.

(a) In case of a foreclosure sale of all or any part of the Trust Estate and of the application of the proceeds of sale to the payment of the sums secured hereby, Beneficiary shall be entitled to enforce payment from Trustor of any additional amounts then remaining due and unpaid with respect to the Obligations and to recover judgment against Trustor for any portion thereof remaining unpaid, with interest at the rate applicable to overdue principal as set forth in the Credit Agreement.

(b) Trustor hereby agrees to the extent permitted by law, that no recovery of any such judgment by Beneficiary or other action by Beneficiary and no attachment or levy of any execution upon any of the Trust Estate or any other property shall in any way affect the Lien and security interest of this Deed of Trust upon the Trust Estate or any part thereof or any Lien, rights, powers or remedies of Beneficiary hereunder, but such Lien, rights, powers and remedies shall continue unimpaired as before.

(c) Any monies collected or received by Beneficiary under this Section 4.12 shall be first applied to the payment of reasonable compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary, and the balance remaining shall be applied to the Obligations.

(d) The provisions of this section shall not be deemed to limit or otherwise modify the provisions of any guaranty of the indebtedness evidenced by the Notes or the other Loan Documents.

4.13 Delay or Omission; No Waiver. No delay or omission of Beneficiary or any Bank to exercise any right, power or remedy upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Beneficiary whether contained herein or in the other Loan Documents or otherwise available to Beneficiary may be exercised from time to time and as often as may be deemed expedient by Beneficiary.

4.14 No Waiver of One Default to Affect Another. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If Beneficiary or the required percentage of the Banks (as determined pursuant to the Credit Agreement), to the extent applicable under the Credit Agreement, (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Notes, the Credit Agreement, this Deed of Trust, the Guaranty, the Disbursement and Administration Agreement or any other Loan Document (including any Security Document); (d) releases any part of the Trust Estate from the lien or security interest of this Deed of Trust or any other instrument securing the Obligations; (e) consents to the filing of any map, plat or replat of the Land (to the extent such consent is required); (f) consents to the granting of any easement on the Land (to the extent such consent is required); or (g) makes or consents to any agreement changing the terms of this Deed of Trust or any other Loan Document subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability of Trustor under the Guaranty or any other Loan Document (including any Security Document) or otherwise, or any subsequent purchaser of the Trust Estate or any part thereof or any maker, co-signer, surety or guarantor. No such act or omission shall preclude Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by Beneficiary, shall the lien or security interest of this Deed of Trust be altered thereby, except to the extent expressly provided in any releases, maps, easements or subordinations described in clause (d), (e), (f) or (g) above of this Section 4.14. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Trust Estate, Beneficiary, without notice to any person, firm or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Trust Estate or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it

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might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder, or waiving its right to declare such sale or transfer an Event of Default as provided herein. Notwithstanding anything to the contrary contained in this Deed of Trust or any other Loan Document (including any Security Document), (i) in the case of any non-monetary Event of Default, Beneficiary may continue to accept payments secured hereunder without thereby waiving the existence of such or any other Event of Default and (ii) in the case of any monetary Event of Default, Beneficiary may accept partial payments of any sums secured hereunder without thereby waiving the existence of such Event of Default if the partial payment is not sufficient to completely cure such Event of Default.

4.15 Discontinuance of Proceedings; Position of Parties Restored. If Beneficiary shall have proceeded to enforce any right or remedy under this Deed of Trust by foreclosure, entry of judgment or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Beneficiary, then and in every such case Trustor and Beneficiary shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Beneficiary shall continue as if no such proceedings had occurred or had been taken.

4.16 Remedies Cumulative. No right, power or remedy, including without limitation remedies with respect to any security for Obligations, conferred upon or reserved to Beneficiary by this Deed of Trust or any other Loan Document (including any Security Document) is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or any other Loan Document (including any Security Document), now or hereafter existing at law, in equity or by statute, and Beneficiary shall be entitled to resort to such rights, powers, remedies or security as Beneficiary shall in its sole and absolute discretion deem advisable.

4.17 Interest After Event of Default. If an Event of Default shall have occurred and is continuing, all sums outstanding and unpaid under the Obligations shall, at Beneficiary's option, bear interest at the rate applicable to overdue principal set forth in the Credit Agreement until such Event of Default has been cured. Trustor's obligation to pay such interest shall be secured by this Deed of Trust.

4.18 Foreclosure; Expenses of Litigation. If Trustee forecloses, reasonable attorneys' fees for services in the supervision of said foreclosure proceeding shall be allowed to the Trustee and Beneficiary as part of the foreclosure costs. In the event of foreclosure of the lien hereof, there shall be allowed and included as additional indebtedness all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after foreclosure sale or entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and guarantees, and similar data and assurances with respect to title as Beneficiary may deem reasonably advisable either to prosecute such suit or to evidence to a bidder at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Trust Estate or any portion thereof. All expenditures and expenses of the nature in this section mentioned, and such expenses and fees as may be incurred in the protection of the Trust Estate and the maintenance of the lien and security interest of this Deed of Trust, including the fees of any attorney employed by Beneficiary in any litigation or proceeding affecting this Deed of Trust, the Guaranty or any other Loan Document (including any Security Document), the Trust Estate or any portion thereof, including, without limitation, civil, probate, appellate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Trustor, with interest thereon at the rate applicable to overdue principal set forth in the Credit Agreement, and shall be secured by this Deed of Trust. Trustee waives its right to any statutory fee in connection with any

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judicial or nonjudicial foreclosure of the lien hereof and agrees to accept a reasonable fee for such services.

4.19 Deficiency Judgments. If after foreclosure of this Deed of Trust or Trustee's sale hereunder, there shall remain any deficiency with respect to any Obligations, and Beneficiary shall institute any proceedings to recover such deficiency or deficiencies, all such amounts shall continue to bear interest at the rate applicable to overdue principal set forth in the Credit Agreement. Trustor waives any defense to Beneficiary's recovery against Trustor of any deficiency after any foreclosure sale of the Trust Estate. Trustor expressly waives any defense or benefits that may be derived from any statute granting Trustor any defense to any such recovery by Beneficiary. In addition, Beneficiary and Trustee shall be entitled to recovery of all of their reasonable costs and expenditures (including without limitation any court imposed costs) in connection with such proceedings, including their reasonable attorneys' fees, appraisal fees and the other costs, fees and expenditures referred to in Section 4.18 above. This provision shall survive any foreclosure or sale of the Trust Estate, any portion thereof and/or the extinguishment of the lien hereof.

4.20 Waiver of Jury Trial. Beneficiary and Trustor each waive any right to have a jury participate in resolving any dispute whether sounding in contract, tort or otherwise arising out of, connected with, related to or incidental to the relationship established between them in connection with the Obligations. Any such disputes shall be resolved in a bench trial without a jury.

4.21 Exculpation of Beneficiary. The acceptance by Beneficiary of the assignment contained herein with all of the rights, powers, privileges and authority created hereby shall not, prior to entry upon and taking possession of the Trust Estate by Beneficiary, be deemed or construed to make Beneficiary a "mortgagee in possession"; nor thereafter or at any time or in any event obligate Beneficiary to appear in or defend any action or proceeding relating to the Space Leases, the Rents or the Trust Estate, or to take any action hereunder or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under any Space Lease or to assume any obligation or responsibility for any security deposits or other deposits except to the extent such deposits are actually received by Beneficiary, nor shall Beneficiary, prior to such entry and taking, be liable in any way for any injury or damage to person or property sustained by any Person in or about the Trust Estate.

ARTICLE FIVE

RIGHTS AND RESPONSIBILITIES OF TRUSTEE; OTHER PROVISIONS RELATING TO TRUSTEE

Notwithstanding anything to the contrary in this Deed of Trust, Trustor and Beneficiary agree as follows.

5.1 Exercise of Remedies by Trustee. To the extent that this Deed of Trust or applicable law, including all applicable Nevada Gaming Laws, authorizes or empowers, or does not require approval for, Beneficiary to exercise any remedies set forth in Article Four hereof or otherwise, or perform any acts in connection therewith, Trustee (but not to the exclusion of Beneficiary unless so required under the law of the State of Nevada) shall have the power to exercise any or all such remedies, and to perform any acts provided for in this Deed of Trust in connection therewith, all for the benefit of Beneficiary and on Beneficiary's behalf in accordance with applicable law of the State of Nevada. In connection therewith, Trustee: (a) shall not exercise, or waive the exercise of, any

Beneficiary's remedies (other than any rights of Trustee to any indemnity or reimbursement), except at Beneficiary's request, and (b) shall exercise, or waive the exercise of, any or all of Beneficiary's remedies at Beneficiary's request, and in accordance with Beneficiary's directions as to the manner of such exercise or waiver. Trustee may, however, decline to follow Beneficiary's request or direction if Trustee shall be

advised by counsel that the action or proceeding, or manner thereof, so directed may not lawfully be taken or waived.

5.2 *Rights and Privileges of Trustee.* To the extent that this Deed of Trust requires Trustor to indemnify Beneficiary or reimburse Beneficiary for any expenditures Beneficiary may incur, Trustee shall be entitled to the same indemnity and the same rights to reimbursement of expenses as Beneficiary, subject to such limitations and conditions as would apply in the case of Beneficiary. To the extent that this Deed of Trust negates or limits Beneficiary's liability as to any matter, Trustee shall be entitled to the same negation or limitation of liability. To the extent that Trustor, pursuant to this Deed of Trust, appoints Beneficiary as Trustor's attorney in fact for any purpose, Beneficiary or (when so instructed by Beneficiary) Trustee shall be entitled to act on Trustor's behalf without joinder or confirmation by the other.

5.3 *Resignation or Replacement of Trustee.* Trustee may resign by an instrument in writing addressed to Beneficiary, and Trustee may be removed at any time with or without cause (i.e., in Beneficiary's sole and absolute discretion) by an instrument in writing executed by Beneficiary. In case of the death, resignation, removal or disqualification of Trustee or if for any reason Beneficiary shall deem it desirable to appoint a substitute, successor or replacement Trustee to act instead of Trustee originally named (or in place of any substitute, successor or replacement Trustee), then Beneficiary shall have the right and is hereby authorized and empowered to appoint a successor, substitute or replacement Trustee, without any formality other than appointment and designation in writing executed by Beneficiary, which instrument shall be recorded if required by the law of the State of Nevada. The law of the State of Nevada (including, without limitation, the Nevada Gaming Laws) shall govern the qualifications of any Trustee. The authority conferred upon Trustee by this Deed of Trust shall automatically extend to any and all other successor, substitute and replacement Trustee(s) successively until the obligations secured hereunder have been paid in full or the Trust Estate has been sold hereunder or released in accordance with the provisions of the Guaranty and the other Loan Documents (including the Security Documents). Beneficiary's written appointment and designation of any Trustee shall be full evidence of Beneficiary's right and authority to make the same and of all facts therein recited. No confirmation, authorization, approval or other action by Trustor shall be required in connection with any resignation or other replacement of Trustee.

5.4 *Authority of Beneficiary.* If Beneficiary is a banking corporation, state banking corporation or a national banking association and the instrument of appointment of any successor or replacement Trustee is executed on Beneficiary's behalf by an officer of such corporation, state banking corporation or national banking association, then such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of Beneficiary.

5.5 *Effect of Appointment of Successor Trustee.* Upon the appointment and designation of any successor, substitute or replacement Trustee, and subject to compliance with applicable Nevada Gaming Laws and other applicable laws, Trustee's entire estate and title in the Trust Estate shall vest in the designated successor, substitute or replacement Trustee. Such successor, substitute or replacement Trustee shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon Trustee. All references herein to Trustee shall be deemed to refer to Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder.

5.6 *Confirmation of Transfer and Succession.* Upon the written request of Beneficiary or of any successor, substitute or replacement Trustee, any former Trustee ceasing to act shall execute and deliver an instrument transferring to such successor, substitute or replacement Trustee all of the right, title, estate and interest in the Trust Estate of Trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon Trustee, and shall duly assign, transfer and

deliver all properties and moneys held by said Trustee hereunder to said successor, substitute or replacement Trustee.

5.7 *Exculpation.* Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or otherwise be responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence, willful misconduct or knowing violation of law. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law). Trustee shall be under no liability for interest on any moneys received by it hereunder.

5.8 *Endorsement and Execution of Documents.* Upon Beneficiary's written request, Trustee shall, without liability or notice to Trustor, execute, consent to, or join in any instrument or agreement in connection with or necessary to effectuate the purposes of the Guaranty and the other Loan Documents (including the Security Documents). Trustor hereby irrevocably designates Trustee as its attorney in fact to execute, acknowledge and deliver, on Trustor's behalf and in Trustor's name, all instruments or agreements necessary to implement any provision(s) of this Deed of Trust or to further perfect the lien created by this Deed of Trust on the Trust Estate. This power of attorney shall be deemed to be coupled with an interest and shall survive any disability of Trustor.

5.9 *Multiple Trustees.* If Beneficiary appoints multiple trustees, then any Trustee, individually, may exercise all powers granted to Trustee under this instrument, without the need for action by any other Trustee(s).

5.10 *Terms of Trustee's Acceptance.* Trustee accepts the trust created by this Deed of Trust upon the following terms and conditions:

(a) **Delegation.** Trustee may exercise any of its powers through appointment of attorney(s) in fact or agents.

(b) **Counsel.** Trustee may select and employ legal counsel (including any law firm representing Beneficiary). Trustor shall reimburse all reasonable legal fees and expenses that Trustee may thereby incur.

(c) **Security.** Trustee shall be under no obligation to take any action upon any Event of Default unless furnished security or indemnity, in form satisfactory to Trustee, against costs, expenses, and liabilities that Trustee may incur.

(d) **Costs and Expenses.** Trustor shall reimburse Trustee, as part of the Obligations secured hereunder, for all reasonable disbursements and expenses (including reasonable legal fees and expenses) incurred by reason of and as provided for in this Deed of Trust, including any of the foregoing incurred in Trustee's administering and executing the trust created by this Deed of Trust, in complying with all applicable Nevada Gaming Laws and performing Trustee's duties and exercising Trustee's powers under this Deed of Trust.

(e) **Release.** Upon full and indefeasible payment and performance of the Obligations secured hereunder, Beneficiary shall request that Trustee release this Deed of Trust. Upon receipt of such request Trustee shall release this Deed of Trust to Trustor. Trustor shall pay all costs of recordation, if any.

ARTICLE SIX

MISCELLANEOUS PROVISIONS

6.1 **Heirs, Successors and Assigns Included in Parties.** Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included, and subject to the limitations set forth in Section 1.9, all covenants and agreements contained in this Deed of Trust, by or on behalf of Trustor or Beneficiary shall bind and inure to the benefit of its heirs, successors and assigns, whether so expressed or not.

6.2 **Addresses for Notices, Etc.** Any notice, report, demand or other instrument authorized or required to be given or furnished under this Deed of Trust to Trustor or Beneficiary shall be deemed given or furnished (i) when addressed to the party intended to receive the same, at the address of such party set forth below, and delivered by hand at such address or (ii) three (3) days after the same is deposited in the United States mail as first class certified mail, return receipt requested, postage paid, whether or not the same is actually received by such party:

| | |
|-----------------|--|
| Beneficiary: | Deutsche Bank Trust Company Americas 31 West 52 nd Street, 7 th Floor New York, New York 10019 Attn: Jeff Baevsky |
| With a copy to: | Latham & Watkins 701 B. Street, Suite 2100 San Diego, California 92101 Attn: Sony Ben-Moshe, Esq. |
| Trustor: | Palo, LLC 3145 Las Vegas Boulevard South Las Vegas, Nevada 89109 Attn: Legal Department |
| With a copy to: | Irell & Manella LLP 1800 Avenue of the Stars, Suite 900 Los Angeles, California 90067 Attn: C. Kevin McGeehan |
| Trustee: | Nevada Title Company 2500 North Buffalo, Suite 150 Las Vegas, Nevada 89128 Attn: Robbie Graham |

6.3 **Change of Notice Address.** Any Person may change the address to which any such notice, report, demand or other instrument is to be delivered or mailed to that person, by furnishing written notice of such change to the other parties, but no such notice of change shall be effective unless and until received by such other parties.

6.4 **Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Deed of Trust are for convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

6.5 **Invalid Provisions to Affect No Others.** In the event that any of the covenants, agreements, terms or provisions contained herein or in the Notes, the Credit Agreement, the Guaranty or any other Loan Document (including the Security Documents) shall be invalid, illegal or unenforceable in any respect, the validity of the lien hereof and the remaining covenants, agreements, terms or provisions contained herein or in the Notes, the Credit Agreement, the Guaranty or any other Loan Document (including the Security Documents) shall be in no way affected, prejudiced or disturbed thereby. To the

extent permitted by law, Trustor waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

6.6 **Changes and Priority Over Intervening Liens.** Neither this Deed of Trust nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Trustor and Beneficiary relating to this Deed of Trust shall be superior to the rights of the holder of any intervening lien or encumbrance.

6.7 **Estoppel Certificates.** Within ten (10) Business Days after Beneficiary's written request, Trustor shall from time to time execute a certificate, in recordable form (an "Estoppel Certificate"), stating, except to the extent it would be inaccurate to so state: (a) the current amount of the Obligations secured

hereunder and all elements thereof, including principal, interest, and all other elements; (b) that Trustor has no defense, offset, claim, counterclaim, right of recoupment, deduction, or reduction against any of the Obligations secured hereunder; (c) that neither the Guaranty, this Deed of Trust nor any other Loan Documents (including the Security Documents) to which it is a party have been amended, whether orally or in writing; (d) that Trustor has no claims against Beneficiary of any kind; (e) that any power of attorney granted to Beneficiary is in full force and effect; and (f) such other matters relating to this Deed of Trust, the Guaranty or any other Loan Document (including any Security Document) to which it is a party and the relationship of Trustor and Beneficiary as Beneficiary shall request. In addition, the Estoppel Certificate shall set forth the reasons why it would be inaccurate to make any of the foregoing assurances.

6.8 Waiver of Setoff and Counterclaim. All Obligations shall be payable without setoff, counterclaim or any deduction whatsoever. Trustor hereby waives the right to assert a counterclaim (other than a compulsory counterclaim) in any action or proceeding brought against it by Beneficiary and/or any Bank under the Loan Documents, or arising out of or in any way connected with this Deed of Trust or the other Loan Documents (including the Security Documents) or the Obligations.

6.9 Governing Law. The Credit Agreement, the Notes and the Guaranty provide that they are governed by, and construed and enforced in accordance with, the laws of the State of New York. This Deed of Trust shall also be construed under and governed by the laws of the State of New York; provided, however, that (i) the terms and provisions of this Deed of Trust pertaining to the priority, perfection, enforcement or realization by Beneficiary of its respective rights and remedies under this Deed of Trust with respect to the Trust Estate shall be governed and construed and enforced in accordance with the internal laws of the State of Nevada (the "State") without giving effect to the conflicts-of-law rules and principles of the State; (ii) Trustor agrees that to the extent deficiency judgments are available under the laws of the State after a foreclosure (judicial or nonjudicial) of the Trust Estate, or any portion thereof, or any other realization thereon by Beneficiary or any Bank under the Loan Documents, Beneficiary or such Bank, as the case may be, shall have the right to seek such a deficiency judgment against Trustor in the State; and (iii) Trustor agrees that if Beneficiary or any Bank under the Loan Documents obtains a deficiency judgment in another state against Trustor, then Beneficiary or such Bank, as the case may be, shall have the right to enforce such judgment in the State to the extent permitted under the laws of the State, as well as in other states.

6.10 Required Notices. Trustor shall notify Beneficiary promptly of the occurrence of any of the following and shall immediately provide Beneficiary a copy of the notice or documents referred to: (i) receipt of notice from any Governmental Authority relating to all or any material part of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (ii) receipt of any notice from any tenant leasing all or any material portion of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iii) receipt of notice from the holder of any Permitted Lien relating to a default or act, omission or circumstance

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which would result in a default after notice or passage of time or both; (iv) the commencement of any proceedings or the entry of any judgment, decree or order materially affecting all or any portion of the Trust Estate or which involve the potential liability of Trustor or its Affiliates in an amount in excess of \$25,000,000 (other than for personal injury actions and related property damage suits which are covered by such insurance); or (v) commencement of any judicial or administrative proceedings or the entry of any judgment, decree or order by or against or otherwise affecting Trustor or any Affiliate of Trustor, a material portion of the Trust Estate, or a material portion of the Personal Property, or any other action by any creditor or lessor thereof as a result of any default under the terms of any lease.

6.11 Reconveyance. Upon written request of Trustor when the Obligations secured hereby have been satisfied in full, Beneficiary shall cause Trustee to reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

6.12 Attorneys' Fees. Without limiting any other provision contained herein, Trustor agrees to pay all costs of Beneficiary or Trustee incurred in connection with the enforcement of this Deed of Trust, the Guaranty or the other Loan Documents to which it is a party, including without limitation all reasonable attorneys' fees whether or not suit is commenced, and including, without limitation, fees incurred in connection with any probate, appellate, bankruptcy, deficiency or any other litigation proceedings, all of which sums shall be secured hereby.

6.13 Late Charges. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to collect any late charge thereon or interest thereon at the interest rate on the Notes or as otherwise specified in the Credit Agreement, if so provided, not then paid or its right either to require prompt payment when due of all other sums so secured or to declare default for failure to pay any amounts not so paid.

6.14 Cost of Accounting. Trustor shall pay to Beneficiary, for and on account of the preparation and rendition of any accounting, which Trustor may be entitled to require under any law or statute now or hereafter providing therefor, the reasonable costs thereof.

6.15 Right of Entry. Subject to compliance with applicable Nevada Gaming Laws, Beneficiary may at any reasonable time or times and on reasonable prior written notice to Trustor make or cause to be made entry upon and inspections of the Trust Estate or any part thereof in person or by agent.

6.16 Corrections. Trustor shall, upon request of Beneficiary or Trustee, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust (including, but not limited to, in the exhibits and schedules attached hereto) or in the execution or acknowledgement hereof, and shall execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Trustee to carry out more effectively the purposes of this Deed of Trust, to subject to the lien and security interest hereby created any of Trustor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.

6.17 Statute of Limitations. To the fullest extent allowed by the law, the right to plead, use or assert any statute of limitations as a plea or defense or bar of any kind, or for any purpose, to any debt, demand or obligation secured or to be secured hereby, or to any complaint or other pleading or proceeding filed, instituted or maintained for the purpose of enforcing this Deed of Trust or any rights hereunder, is hereby waived by Trustor.

6.18 Subrogation. Should the proceeds of any loan or advance made by Beneficiary or any Bank under the Credit Agreement, repayment of which is hereby secured, or any part thereof, or any amount paid out or advanced by Beneficiary or any Bank under the Credit Agreement, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior or superior lien or

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encumbrance upon the Trust Estate, or any part thereof, then, as additional security hereunder, Trustee, on behalf of Beneficiary, shall be subrogated to any and all rights, superior titles, liens, and equities owned or claimed by any owner or holder of said outstanding liens, charges, and indebtedness, however remote, regardless of whether said liens, charges, and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

6.19 **Joint and Several Liability.** All obligations of Trustor hereunder, if more than one, are joint and several. Recourse for deficiency after sale hereunder may be had against the property of Trustor, without, however, creating a present or other lien or charge thereon.

6.20 **Homestead.** Trustor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Trust Estate as against the collection of the Obligations, or any part hereof.

6.21 **Context.** In this Deed of Trust, whenever the context so requires, the neuter includes the masculine and feminine, and the singular including the plural, and vice versa.

6.22 **Time.** Time is of the essence of each and every term, covenant and condition hereof. Unless otherwise specified herein, any reference to "days" in this Deed of Trust shall be deemed to mean "calendar days."

6.23 **Interpretation.** As used in this Deed of Trust unless the context clearly requires otherwise: The terms "herein" or "hereunder" and similar terms without reference to a particular section shall refer to the entire Deed of Trust and not just to the section in which such terms appear; the term "lien" shall also mean a security interest, and the term "security interest" shall also mean a lien.

6.24 **Effect of NRS 107.030.** To the extent not inconsistent herewith, the provisions of NRS 107.030 (1), (3), (5), (6), (8) and (9) are included herein by reference.

6.25 **Amendments.** This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought and only as permitted by the provisions of the Guaranty.

6.26 **No Conflicts.** In the event that any of the provisions contained here conflict with the Palo Security Agreement, the provisions contained in the Palo Security Agreement shall prevail.

ARTICLE SEVEN

POWER OF ATTORNEY

7.1 **Grant of Power.** Subject to compliance with applicable Nevada Gaming Laws, Trustor irrevocably appoints Beneficiary and any successor thereto as its attorney-in-fact, with full power and authority, including the power of substitution, exercisable only during the continuance of an Event of Default to act for Trustor in its name, place and stead as hereinafter provided:

7.1.1 **Possession and Completion.** To take possession of the Land and the Project, remove all employees, contractors and agents of Trustor therefrom, complete or attempt to complete the work of construction, and market, sell or lease the Land and the Project.

7.1.2 **Plans.** To make such additions, changes and corrections in the current Plans and Specifications as may be necessary or desirable, in Beneficiary's reasonable discretion, or as it deems proper to complete the Project.

7.1.3 **Employment of Others.** To employ such contractors, subcontractors, suppliers, architects, inspectors, consultants, property managers and other agents as Beneficiary, in its discretion, deems proper for the completion of the Project, for the protection or clearance of title

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to the Land or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.4 **Security Guards.** To employ watchmen to protect the Land and the Project from injury.

7.1.5 **Compromise Claims.** To pay, settle or compromise all bills and claims then existing or thereafter arising against Trustor, which Beneficiary, in its discretion, deems proper for the protection or clearance of title to the Land or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.6 **Legal Proceedings.** To prosecute and defend all actions and proceedings in connection with the Land or the Project.

7.2 **Other Acts.** To execute, acknowledge and deliver all other instruments and documents in the name of Trustor that are necessary or desirable, to exercise Trustor's rights under all contracts concerning the Land or the Project, including, without limitation, under any Space Leases, and to do all other acts with respect to the Land or the Project that Trustor might do on its own behalf, as Beneficiary, in its reasonable discretion, deems proper.

ARTICLE EIGHT

GUARANTOR PROVISIONS

8.1 **Absolute and Unconditional Obligations.** All rights of Administrative Agent and all obligations of Trustor hereunder shall be absolute and unconditional irrespective of (i) any lack of validity, legality or enforceability of the Credit Agreement, any Note, or any other Loan Document, (ii) the failure of any Bank or any holder of any of the Obligations to assert any claim or demand or to enforce any right or remedy against Borrower, Trustor or any other Person (including any other guarantor of the Obligations) under the provisions of the Credit Agreement, any Note, any other Loan Document or otherwise or to exercise any right or remedy against any other guarantor of, or collateral securing, any of the Obligations, (iii) any change in the time, manner or place of payment of, or in

any other term of, all of the Obligations, or any other extension or renewal of any Obligation, (iv) any reduction, limitation, impairment or termination of any of the Obligations for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to, and Trustor hereby waives any right to or claim of, any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, nongenuineness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, any Obligation, (v) any amendment to, rescission, waiver, or other modification of, or any consent to departure from, any of the terms of the Credit Agreement, any Note or any other Loan Document, (vi) any sale, exchange, release or surrender of, realization upon or other manner or order of dealing with any property by whomsoever pledged or mortgaged to secure or howsoever securing the Obligations or any liabilities or obligations (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof and/or any offset there against, (vii) the application of any sums by whomsoever paid or howsoever realized to any obligations and liabilities of Borrower or any other Person to the Banks under the Loan Documents in the manner provided therein regardless of what obligations and liabilities remain unpaid, (viii) any action or failure to act in any manner referred to in this Deed of Trust which may deprive Trustor of its right to subrogation against Borrower or any other Person to recover full indemnity for any payments or performances made pursuant to this Deed of Trust or of its right of contribution against any other party and (ix) any other circumstance which might otherwise constitute a defense available to, or a legal or equitable discharge of, Borrower, any other Person, Trustor, any surety or any guarantor.

8.2 **Waiver.** Trustor hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or

remedies, including (i) any right to require Administrative Agent or any other Bank to proceed against Borrower or any other Person or to proceed against or exhaust any security held by Administrative Agent or any other Bank at any time or to pursue any other remedy in Administrative Agent's or any other Bank's power before proceeding against Trustor, (ii) any defense that may arise by reason of the incapacity, lack of power or authority, death, dissolution, merger, termination or disability of Borrower or any other Person or the failure of Administrative Agent or any other Bank to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of Borrower or any other Person, (iii) demand, presentment, protest and notice of any kind except as provided herein, including notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Borrower, Administrative Agent, any other Bank, any endorser or creditor of Borrower, Trustor or on the part of any other Person under this or any other instrument in connection with any obligation or evidence of indebtedness held by Administrative Agent or any other Bank as collateral or in connection with any Obligation, (iv) any defense based upon an election of remedies by Administrative Agent or any other Bank, including an election to proceed by non-judicial rather than judicial foreclosure, which destroys or otherwise impairs the subrogation rights of Trustor, the right of Trustor to proceed against Borrower or any other Person for reimbursement, or both, (v) any defense based on any offset against any amounts which may be owed by any Person to Trustor for any reason whatsoever, (vi) any defense based on any act, failure to act, delay or omission whatsoever on the part of Borrower or any other Person of the failure by Borrower or any other Person to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the Loan Documents, (vii) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal, provided, that, upon payment or performance in full of the Obligations, this Deed of Trust shall no longer be of any force or effect, (viii) any defense, setoff or counterclaim which may at any time be available to or asserted by Borrower or any other Person against Administrative Agent, any other Bank or any other Person under the Loan Documents, (ix) any duty on the part of Administrative Agent or any other Bank to disclose to Trustor any facts Administrative Agent or any other Bank may now or hereafter know about Borrower or any other Person, regardless of whether Administrative Agent or such Bank have reason to believe that any such facts materially increase the risk beyond that which Trustor intends to assume, or have reason to believe that such facts are unknown to Trustor, or have a reasonable opportunity to communicate such facts to Trustor, since Trustor acknowledges that Trustor is fully responsible for being and keeping informed of the financial condition of Borrower and any other Person liable for the Obligations and of all circumstances bearing on the risk of non-payment or non-performance of any obligations and liabilities hereby guaranteed, (x) the fact that Trustor may at any time in the future dispose of all or part of its direct or indirect interest in Borrower or any other Person or otherwise cease to be an Affiliate of Borrower or any other Person, as the case may be, (xi) any defense based on any change in the time, manner or place of any payment or performance under, or in any other term of, the Loan Documents or any other amendment, renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of the Loan Documents, (xii) any defense arising because of Administrative Agent's or any other Bank's election, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code, and (xiii) any defense based upon any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code. To the fullest extent permitted by NRS 40.485 (1) and (2), the provisions of NRS 40.430 are waived.

8.3 **Net Worth Limitation.** If, notwithstanding the representation and warranty set forth in Section 1.2(b) hereof or anything to the contrary herein, enforcement of the liability of Trustor under this Deed of Trust for the full amount of the Obligations would be an unlawful or voidable transfer under any applicable fraudulent conveyance or fraudulent transfer law or any comparable law, then the liability of Trustor hereunder shall be reduced to the highest amount for which such liability may then be enforced without giving rise to an unlawful or voidable transfer under any such law.

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IN WITNESS WHEREOF, Trustor has executed this Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing as of the day and year first above written.

TRUSTOR:

PALO, LLC,
a Nevada limited liability company,

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC
a Nevada limited liability company,
its sole member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn
Title: *Managing Member*

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SCHEDULE A

DESCRIPTION OF LAND

QuickLinks

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Recording requested by and recorded counterparts should be returned to:

Sony Ben-Moshe, Esq.
Latham & Watkins
701 B Street, Suite 2100
San Diego, California 92101

Mail Property Tax Statements to:

Wynn Resorts Holdings, LLC
Legal Department
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

MADE BY

**WYNN RESORTS HOLDINGS, LLC,
a Nevada limited liability company,
as Trustor,**

to

**Nevada Title Company,
a Nevada corporation,
as Trustee,
for the benefit of**

**DEUTSCHE BANK TRUST COMPANY AMERICAS,
IN ITS CAPACITY AS ADMINISTRATIVE AGENT FOR THE BENEFIT OF THE BANKS,
AS BENEFICIARY**

THIS INSTRUMENT IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS OF CLARK COUNTY, NEVADA UNDER THE NAMES OF WYNN RESORTS HOLDINGS, LLC AS "DEBTOR" AND DEUTSCHE BANK TRUST COMPANY AMERICAS AS "SECURED PARTY."

THIS INSTRUMENT IS A "CONSTRUCTION MORTGAGE" AS THAT TERM IS DEFINED IN SECTION 104.9334(8) OF THE NEVADA REVISED STATUTES AND SECURES AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT UPON LAND.

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SCHEDULE A DESCRIPTION OF THE LAND

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (hereinafter called "**Deed of Trust**") is made and effective as of July 2, 2002, by WYNN RESORTS HOLDINGS, LLC, a Nevada limited liability company (together with all successors and assigns of the Trust Estate (as hereinafter defined), "**Trustor**"), whose address is 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109, to Nevada Title Company, a Nevada corporation, whose address is 2500 North Buffalo, Suite 150, Las Vegas, Nevada 89128, as Trustee ("**Trustee**"), for the benefit of DEUTSCHE BANK TRUST COMPANY AMERICAS ("**Beneficiary**"), in its capacity as Administrative Agent under (i) that certain Amended and Restated Commitment Letter (as the same may be amended or modified from time to time, the "**Commitment Letter**") dated as of June 14, 2002, among Trustor (formerly known as Wynn Resorts, LLC), Beneficiary, Deutsche Bank Securities Inc., Bank of America, N.A., Banc of America Securities LLC, Bear Stearns Corporate Lending, Inc., Bear, Stearns & Co. Inc., Valvino Lamore, LLC, a Nevada limited liability company, and Wynn Las Vegas, LLC, a Nevada limited liability company ("**Borrower**"), and that certain Credit Agreement (as the same may be amended or modified from time to time, the "**Credit Agreement**") to be entered into in connection with and in furtherance of the Commitment Letter among Borrower, Beneficiary and the other parties signatory thereto (such other parties, together with Beneficiary and Deutsche Bank Securities Inc., the "**Banks**") pursuant to which the Banks have agreed to lend to Borrower an aggregate principal amount of \$1,000,000,000 and (ii) that certain Guaranty (as the same may be amended or modified from time to time, the "**Guaranty**") to be entered into in connection with and in furtherance of the Commitment Letter and the Credit Agreement by Trustor for the benefit of Beneficiary on behalf of the Banks pursuant to which Trustor will guaranty the payment and performance of all obligations of Borrower under the Credit Agreement and the other Loan Documents.

THIS INSTRUMENT SECURES FUTURE ADVANCES. THE MAXIMUM AMOUNT OF PRINCIPAL TO BE SECURED HEREBY IS \$1,000,000,000. THIS INSTRUMENT IS TO BE GOVERNED BY THE PROVISIONS OF NRS 106.300 THROUGH NRS 106.400 INCLUSIVE.

THE OBLIGATIONS SECURED HEREBY INCLUDE REVOLVING CREDIT OBLIGATIONS WHICH PERMIT BORROWING, REPAYMENT AND REBORROWING. INTEREST ON OBLIGATIONS SECURED HEREBY ACCRUES AT A RATE WHICH MAY FLUCTUATE FROM TIME TO TIME.

DEFINITIONS—As used in this Deed of Trust, the following terms have the meanings hereinafter set forth:

"**Accounts Receivable**" shall have the meaning set forth in Section 9-102 (NRS 104.9102) of the UCC for the term "account."

"**Appurtenant Rights**" means all and singular tenements, hereditaments, rights, reversions, remainders, development rights, privileges, benefits, easements (in gross or appurtenant), rights-of-way, gores or strips of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, and all appurtenances whatsoever and claims or demands of Trustor at law or in equity in any way belonging, benefiting, relating or appertaining to the Land, the airspace over the Land, the Improvements or any of the Trust Estate encumbered by this Deed of Trust, or which hereinafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Trustor.

"**Bankruptcy**" means, with respect to any Person, that (i) a court having jurisdiction in the Trust Estate shall have entered a decree or order for relief in respect of such Person in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order has not been stayed; or any other similar relief shall have

been granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against such Person, under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the Trust Estate for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over such Person, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of such Person, for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of such Person, and any such event described in this clause (ii) shall continue for 60 days unless dismissed, bonded or discharged; or (iii) such Person shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or such Person shall make any assignment for the benefit of creditors, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable or if the fair market value of its assets does not exceed its aggregate liabilities; or (iv) such Person shall, or the Board of Directors of such Person (or any committee thereof) shall, adopt any resolution or otherwise authorize any action to approve any of the actions referred to in clause (iii) above.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute thereto.

"Business Day" means any day that is not a Saturday, a Sunday or a day on which banking institutions in the State of Nevada or the City of New York are not required to be open.

"Deed of Trust" means this Deed of Trust as it may be amended, increased or modified from time to time.

"Disbursement and Administration Agreement" means that certain Master Disbursement and Administration Agreement to be entered into on even date with the Credit Agreement, among Borrower, Beneficiary, the trustee for holders of mortgage notes to be issued in connection with the financing of the Project, a disbursement agent to be named therein and the other parties signatory thereto, as the same may hereafter be amended or modified in accordance with its terms and the terms of the Credit Agreement.

"Event of Default" has the meaning set forth in Section 3.1 hereof.

"FF&E" means all furniture, fixtures, equipment, appurtenances and personal property now or in the future contained in, used in connection with, attached to, or otherwise useful or convenient to the use, operation, or occupancy of, or placed on, but unattached to, any part of the Land or Improvements whether or not the same constitutes real property or fixtures in the State of Nevada, including all removable window and floor coverings, all furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator and escalator plants, cooking facilities, vacuum cleaning systems, public address and communications systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings, fixtures, and building materials, all gaming and financial equipment, computer equipment, calculators, adding machines, gaming tables, video game and slot machines, and any other electronic equipment of every nature used or located on any part of the Land or Improvements, together with all Venetian blinds, shades, draperies, drapery and curtain rods, brackets, bulbs, cleaning apparatus, mirrors, lamps, ornaments, cooling apparatus and equipment, ranges and ovens, garbage disposals, dishwashers, mantels, and any and all such property which is at any time installed in, affixed to or placed upon the Land or Improvements.

"FF&E Financing Agreement" means any financing agreement entered into by Trustor (i) the proceeds of which are used by Trustor for the acquisition or lease of FF&E, (ii) pursuant to which Trustor grants to the lender or lessor thereunder a security interest in the FF&E so acquired or leased and (iii) which is permitted by the Credit Agreement and the Guaranty.

"Governmental Authority" means any agency, authority, board, bureau, commission, department, office, public entity, or instrumentality of any nature whatsoever of the United States federal or foreign government, any state, province or any city or other political subdivision or otherwise, whether now or hereafter in existence, or any officer or official thereof, including, without limitation, any Nevada Gaming Authority.

"Imposition" means any taxes, assessments, water rates, sewer rates, maintenance charges, other governmental impositions and other charges now or hereafter levied or assessed or imposed against the Trust Estate or any part thereof.

"Improvements" means (1) all the buildings, structures, facilities and improvements of every nature whatsoever now or hereafter situated on the Land or any real property encumbered hereby, and (2) all fixtures, machinery, appliances, goods, building or other materials, equipment, including without limitation all gaming equipment and devices, and all machinery, equipment, engines, appliances and fixtures for generating or distributing air, water, heat, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse or garbage; all wall-beds, wall-safes, built-in furniture and installations, shelving, lockers, partitions, doorstops, vaults, motors, elevators, dumb-waiters, awnings, window shades, Venetian blinds, light fixtures, fire hoses and brackets and boxes for the same, fire sprinklers, alarm, surveillance and security systems, computers, drapes, drapery rods and brackets, mirrors, mantels, screens, linoleum, carpets and carpeting, plumbing, bathtubs, sinks, basins, pipes, faucets, water closets, laundry equipment, washers, dryers, ice-boxes and heating units; all kitchen and restaurant equipment, including but not limited to silverware, dishes, menus, cooking utensils, stoves, refrigerators, ovens, ranges, dishwashers, disposals, water heaters, incinerators, furniture, fixtures and furnishings, communication systems, and equipment; all cocktail lounge supplies, including but not limited to bars, glassware, bottles and tables used in connection with the Land; all chaise lounges, hot tubs, swimming pool heaters and equipment and all other recreational equipment (computerized and otherwise), beauty and barber equipment, and maintenance supplies used in connection with the Land; all amusement rides and attractions attached to the Land, all specifically designed installations and furnishings, and all furniture, furnishings and personal property of every nature whatsoever now or hereafter owned or leased by Trustor or in which Trustor has any rights or interest and located in or on, or attached to, or used or intended to be used or which are now or may hereafter be appropriated for use on or in connection with the operation of the Land or any real or personal property encumbered hereby or any other Improvements, or in connection with any construction being conducted or which may be conducted thereon, and all extensions, additions, accessions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing, and all of the right, title and interest of Trustor in and to any such property, which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and improvements and a part of the real property hereby encumbered.

"Insolvent" means with respect to any person or entity, that such person or entity shall be deemed to be insolvent if it shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable and/or if the fair market value of its assets does not exceed its aggregate liabilities.

"Intangible Collateral" means (a) the rights to use all names and all derivations thereof now or hereafter used by Trustor in connection with the Land or Improvements, including, without limitation, the name "Le Reve", including any variations thereon, together with the goodwill associated therewith, and all names, logos, and designs used by Trustor, or in connection with the Land or in which Trustor

has rights, with the exclusive right to use such names, logos and designs wherever they are now or hereafter used in connection with the Project (or in connection with the marketing of the Project), and any and all other trade names, trademarks or service marks, whether or not registered, now or hereafter used in the operation of the Project, including, without limitation, any interest as a lessee, licensee or franchisee, and, in each case, together with the goodwill associated therewith; (b) subject to the absolute assignment contained herein, the Rents; (c) any and all books, records, customer lists, concession agreements, supply or service contracts, licenses, permits, governmental approvals (to the extent such licenses, permits and approvals may be pledged under applicable law), signs, goodwill, casino and hotel credit and charge records, supplier lists, checking accounts, safe deposit boxes (excluding the contents of such deposit boxes owned by persons other than Trustor and its subsidiaries), cash, instruments, chattel papers, including inter-company notes and pledges, documents, unearned premiums, deposits, refunds, including but not limited to income tax refunds, prepaid expenses, rebates, tax and insurance escrow and impound accounts, if any, actions and rights in action, and all other claims, including without limitation condemnation awards and insurance proceeds, and all other contract rights and general intangibles resulting from or used in connection with the operation and occupancy of the Trust Estate and the Improvements and in which Trustor now or hereafter has rights; and (d) general intangibles, vacation license resort agreements or other time share license or right to use agreements, including without limitation all rents, issues, profits, income and maintenance fees resulting therefrom, whether any of the foregoing is now owned or hereafter acquired.

"Land" means the real property situated in the County of Clark, State of Nevada, more specifically described in *Schedule A* attached hereto and incorporated herein by reference, including any after acquired title thereto.

"Legal Requirements" means all applicable restrictive covenants, applicable zoning and subdivision ordinances and building codes, all applicable health and Environmental Laws and regulations, all applicable gaming laws and regulations, and all other applicable laws, ordinances, rules, regulations, judicial decisions, administrative orders, and other requirements of any Governmental Authority having jurisdiction over Trustor, the Trust Estate and/or any Affiliate of Trustor, in effect either at the time of execution of this Deed of Trust or at any time during the term hereof, including, without limitation, all Environmental Laws and Nevada Gaming Laws.

"Notes" means, collectively, those certain Promissory Note(s) to be issued pursuant to the Credit Agreement, as the same may be amended or replaced from time to time in accordance with its terms.

"NRS" means the Nevada Revised Statutes as in effect from time to time.

"Obligations" means (i) the payment and performance by Borrower of each covenant and agreement of Borrower contained in the Commitment Letter, the Credit Agreement, the Notes and the other Loan Documents (including the Security Documents) and (ii) the payment and performance by Trustor of each covenant and agreement of Trustor contained in the Guaranty, this Deed of Trust and the other Loan Documents.

"Permitted Dispositions" means (a) the sale, transfer, lease or other disposition of assets in the Trust Estate, in the ordinary course of business, of inventory held in the ordinary course of business (b) the dispositions set forth in *Section 1.10* hereof and (c) other sales, transfers, leases or other dispositions of assets in the Trust Estate, including entering into Space Leases; *provided* that all applicable provisions of the Loan Documents, including the Guaranty, are complied with.

"Personal Property" has the meaning set forth in *Section 1.12* hereof.

"Proceeds" has the meaning assigned to it under the UCC and, in any event, shall include but not be limited to (i) any and all proceeds of any insurance (including without limitation property casualty and title insurance), indemnity, warranty or guaranty payable from time to time with respect to any of the Trust Estate; (ii) any and all proceeds in the form of accounts, security deposits, tax escrows (if

any), down payments (to the extent the same may be pledged under applicable law), collections, contract rights, documents, instruments, chattel paper, liens and security instruments, guarantees or general intangibles relating in whole or in part to the Project and all rights and remedies of whatever kind or nature Trustor may hold or acquire for the purpose of securing or enforcing any obligation due Trustor thereunder; (iii) any and all payments in any form whatsoever made or due and payable from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Trust Estate by any Governmental Authority; (iv) subject to the absolute assignment contained herein, the Rents or other benefits arising out of, in connection with or pursuant to any Space Lease of the Trust Estate; and (v) any and all other amounts from time to time paid or payable in connection with any of the Trust Estate; *provided, however*, that the Trustor is not authorized to dispose of any of the Trust Estate unless such disposition is a Permitted Disposition.

"Project" means the resort-hotel-casino-mall complex proposed to be constructed in Clark County, Nevada as described in the Plans and Specifications and as applicable to the Land and the Improvements, as such Plans and Specifications may be amended pursuant to the Disbursement and Administration Agreement.

"Rents" means all rents, room revenues, income, receipts, issues, profits, revenues and maintenance fees, room, food and beverage revenues, license and concession fees, income, proceeds and other benefits to which Trustor may now or hereafter be entitled from the Land, the Improvements, the Space Leases or any property encumbered hereby or any business or other activity conducted by Trustor at the Land or the Improvements.

"Space Leases" means any and all leases, subleases, lettings, licenses, concessions, operating agreements, management agreements, and all other agreements affecting the Trust Estate that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, that give any person the right to conduct its business on, or otherwise use, operate or occupy, all or any portion of the Land or Improvements and any leases, agreements or arrangements permitting anyone to enter upon or use any of the Trust Estate to extract or remove natural resources of any kind, together with all amendments, extensions, and renewals of the foregoing entered into in compliance with this Deed of Trust, together with all rental, occupancy, service, maintenance or any other similar agreements pertaining to use or occupation of, or the rendering of services at the Land, the Improvements or any part thereof.

"**Space Lessee(s)**" means any and all tenants, licensees, or other grantees of the Space Leases and any and all guarantors, sureties, endorsers or others having primary or secondary liability with respect to such Space Leases.

"**Tangible Collateral**" means all personal property, goods, equipment, supplies, building and other materials of every nature whatsoever and all other tangible personal property constituting a part or portion of the Project and/or used in the operation of the hotel, casino, restaurants, stores, parking facilities, observation tower and all other commercial operations on the Land or Improvements, including but not limited to communication systems, visual and electronic surveillance systems and transportation systems and not constituting a part of the real property subject to the real property lien of this Deed of Trust and including all property and materials stored therein in which Trustor has an interest and all tools, utensils, food and beverage, liquor, uniforms, linens, housekeeping and maintenance supplies, vehicles, fuel, advertising and promotional material, blueprints, surveys, plans and other documents relating to the Land or Improvements, and all construction materials and all furnishings, fixtures and equipment, including, but not limited to, all FF&E and all equipment and devices which are or are to be installed and used in connection with the operation of the Project, those items of furniture, fixtures and equipment which are to be purchased or leased by Trustor, machinery and any other item of personal property in which Trustor now or hereafter own or acquire an interest or right, and which are used or useful in the construction, operation, use and occupancy of the Project

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and all present and future right and interest of Trustor in and to any casino operator's agreement, license agreement or sublease agreement used in connection with the Land or the Improvements.

"**Title Insurer**" means Commonwealth Land Title Company.

"**Trust Estate**" means all of the property described in Granting Clauses (A) through (O) below, inclusive, and each item of property therein described, provided, however, that such term shall not include the property described in Granting Clause (P) below.

"**UCC**" means the Uniform Commercial Code in effect in the State of Nevada from time to time, NRS chapters 104 and 104A.

The following terms shall have the meaning assigned to such terms in the Disbursement and Administration Agreement:

Environmental Laws
Financing Agreements
Funding Agents
Plans and Specifications

The following terms shall have the meaning assigned to such terms in the Credit Agreement:

Affiliate
Closing Date
Lien
Loan Documents
Nevada Gaming Authority
Nevada Gaming Laws
Nevada Gaming License
Permitted Encumbrance
Permitted Liens
Person
Security Documents
WR Security Agreement

In addition, any capitalized terms used in this Deed of Trust which are not otherwise defined herein shall have the meaning ascribed to such terms in the Disbursement and Administration Agreement and, if not defined therein, the meaning ascribed to such terms in the Credit Agreement and, if not defined therein, the meaning ascribed to such terms in the Guaranty.

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W I T N E S E T H:

IN CONSIDERATION OF TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION; THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, AND FOR THE PURPOSE OF SECURING in favor of Beneficiary (1) the Obligations; (2) the payment of such additional loans or advances as hereafter may be made to Trustor (individually or jointly and severally with any other Person) or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; *provided, however*, that any and all future advances by Beneficiary to Trustor made for the improvement, protection or preservation of the Trust Estate, together with interest at the rate applicable to overdue principal set forth in the Credit Agreement, shall be automatically secured hereby unless such a note or instrument evidencing such advances specifically recites that it is not intended to be secured hereby and (3) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof or to protect the security hereof (including Protective Advances as such term is defined in *Section 4.2* hereof), together with interest thereon as herein provided, Trustor, in consideration of the premises, and for the purposes aforesaid, does hereby ASSIGN, BARGAIN, CONVEY, PLEDGE, RELEASE, HYPOTHECATE, WARRANT, AND TRANSFER WITH POWER OF SALE UNTO TRUSTEE IN TRUST FOR THE BENEFIT OF BENEFICIARY AND THE BANKS each of the following:

(A) The Land;

(B) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Improvements;

(C) TOGETHER WITH all Appurtenant Rights;

(D) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Tangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(E) TOGETHER WITH the Intangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(F) TOGETHER WITH (i) all the estate, right, title and interest of Trustor of, in and to all judgments and decrees, insurance proceeds, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of any of the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof, or to any Appurtenant Rights thereto, and Beneficiary is (subject to the terms hereof) hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittance therefor, and (subject to the terms hereof) to apply the same toward the payment of the indebtedness and other sums secured hereby, notwithstanding the fact that the amount owing thereon may not then be due and payable; (ii) all proceeds of any sales or other dispositions of the property or rights described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof whether voluntary or involuntary, provided, however, that the foregoing shall not be deemed to permit such sales, transfers, or other dispositions except as specifically permitted herein; and (iii) whether arising from any voluntary or involuntary disposition of the property described in Granting Clauses (A), (B), (C), (D) and (E), all Proceeds, products, replacements, additions, substitutions, renewals and accessions, remainders, reversions and after-acquired interest in, of and to such property;

(G) TOGETHER WITH the absolute assignment of any Space Leases or any part thereof that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, together with all of the following (including all "Cash Collateral" within the meaning of the Bankruptcy Law) arising from the Space Leases: (a) Rents (subject, however,

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to the aforesaid absolute assignment to Trustee for the benefit of Beneficiary and the conditional permission hereinbelow given to Trustor to collect the Rents), (b) all guarantees, letters of credit, security deposits, collateral, cash deposits, and other credit enhancement documents, arrangements and other measures with respect to the Space Leases, (c) all of Trustor's right, title, and interest under the Space Leases, including the following: (i) the right to receive and collect the Rents from the lessee, sublessee or licensee, or their successor(s), under any Space Lease(s) and (ii) the right to enforce against any tenants thereunder and otherwise any and all remedies under the Space Leases, including Trustor's right to evict from possession any tenant thereunder or to retain, apply, use, draw upon, pursue, enforce or realize upon any guaranty of any Space Lease; to terminate, modify, or amend the Space Leases; to obtain possession of, use, or occupy, any of the real or personal property subject to the Space Leases; and to enforce or exercise, whether at law or in equity or by any other means, all provisions of the Space Leases and all obligations of the tenants thereunder based upon (A) any breach by such tenant under the applicable Space Lease (including any claim that Trustor may have by reason of a termination, rejection, or disaffirmance of such Space Lease pursuant to any Bankruptcy Law) and (B) the use and occupancy of the premises demised, whether or not pursuant to the applicable Space Lease (including any claim for use and occupancy arising under landlord-tenant law of the State of Nevada or any Bankruptcy Law). Permission is hereby given to Trustor, so long as no Event of Default has occurred and is continuing hereunder, to collect and use the Rents, as they become due and payable, but not more than one (1) month in advance thereof. Upon the occurrence of an Event of Default, the permission hereby given to Trustor to collect the Rents shall automatically terminate, but such permission shall be reinstated upon a cure or waiver of such Event of Default. Beneficiary shall have the right, at any time and from time to time, to notify any Space Lessee of the rights of Beneficiary as provided by this section;

Notwithstanding anything to the contrary contained herein, the foregoing provisions of this Paragraph (G) shall not constitute an assignment for purposes of security but shall constitute an absolute and present assignment of the Rents to Beneficiary, subject, however, to the conditional license given to Trustor to collect and use the Rents as hereinabove provided; and the existence or exercise of such right of Trustor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Trustor;

(H) TOGETHER WITH all of Trustor's right, title and interest in and to any and all Plans and Specifications and all maps, plans, specifications, surveys, studies, tests, reports, data and drawings relating to the development of the Land or the Project and the construction of the Improvements, including, without limitation, all marketing plans, feasibility studies, soils tests, design contracts and all contracts and agreements of Trustor relating thereto including, without limitation, architectural, structural, mechanical and engineering plans and specifications, studies, data and drawings prepared for or relating to the development of the Land or the Project or the construction, renovation or restoration of any of the Improvements or the extraction of minerals, sand, gravel or other valuable substances from the Land and purchase contracts or any agreement granting Trustor a right to acquire any land situated within Clark County, Nevada;

(I) TOGETHER WITH, to the extent permitted by applicable law, all of Trustor's right, title, and interest in and to any and all licenses, permits, variances, special permits, franchises, certificates, rulings, certifications, validations, exemptions, filings, registrations, authorizations, consents, approvals, waivers, orders, rights and agreements (including, without limitation, options, option rights, contract rights now or hereafter obtained by Trustor from any Governmental Authority having or claiming jurisdiction over the Land, the FF&E, the Project, or any other element of the Trust Estate or providing access thereto, or the operation of any business on, at, or from the Land including, without limitation, any liquor or Nevada Gaming Licenses (except for any registrations, licenses, findings of suitability or approvals issued by the Nevada Nevada Gaming Authorities or any other liquor or gaming licenses which are non-assignable); *provided*, that upon an Event of Default hereunder or under the

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Credit Agreement or under the Guaranty, if Beneficiary is not qualified under the Nevada Gaming Laws to hold such Nevada Gaming Licenses, then Beneficiary may designate an appropriately qualified third party to which an assignment of such Nevada Gaming Licenses can be made in compliance with the Nevada Gaming Laws;

(J) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to all water stock, water permits and other water rights relating to the Land;

(K) TOGETHER WITH all oil and gas and other mineral rights, if any, in or pertaining to the Land and all royalty, leasehold and other rights of Trustor pertaining thereto;

(L) TOGETHER WITH any and all monies and other property, real or personal, which may from time to time be subjected to the lien hereof by Trustor or by anyone on its behalf or with its consent, or which may come into the possession or be subject to the control of Trustee or Beneficiary pursuant to this Deed of Trust, the Commitment Letter, the Credit Agreement, the Guaranty or any other Loan Document (including any Security Document), including, without limitation, any Protective Advances (as defined in *Section 4.2* hereof) under this Deed of Trust; and all of Trustor's right, title, and interest in and to all extensions, improvements, betterments, renewals, substitutes for and replacements of, and all additions, accessions, and appurtenances to, any of the foregoing that Trustor may subsequently acquire or obtain by any means, or construct, assemble, or otherwise place on any of the Trust Estate, and all conversions of any of the foregoing; it being the intention of Trustor that all property hereafter acquired by Trustor and required by the Commitment Letter, the Credit Agreement, the Guaranty, any other Loan Document (including any Security Document) or this Deed of Trust to be subject to the lien of this Deed of Trust or intended so to be shall forthwith upon the acquisition thereof by Trustor be subject to the lien of this Deed of Trust as if such property were now owned by Trustor and were specifically described in this Deed of Trust and granted hereby or pursuant hereto, and Trustee and Beneficiary are hereby authorized, subject to Nevada Gaming Laws and other applicable laws, to receive any and all such property as and for additional security for the obligations secured or intended to be secured hereby. Trustor agrees to take any action as may reasonably be necessary to evidence and perfect such liens or security interests, including, without limitation, the execution of any documents necessary to evidence and perfect such liens or security interests;

(M) TOGETHER WITH, to the extent permitted by applicable laws, any and all Accounts Receivable and all royalties, earnings, income, proceeds, products, rents, revenues, reversions, remainders, issues, profits, avails, production payments, and other benefits directly or indirectly derived or otherwise arising from any of the foregoing, all of which are hereby assigned to Beneficiary, who, except as otherwise expressly provided in this Deed of Trust (including the provisions of *Section 1.13* hereof), is authorized to collect and receive the same, to give receipts and acquittances therefor and to apply the same to the Obligations secured hereunder, whether or not then due and payable;

(N) TOGETHER WITH Proceeds of the foregoing property described in Granting Clauses (A) through (M);

(O) TOGETHER WITH Trustor's rights further to assign, sell, lease, encumber or otherwise transfer or dispose of the property described in Granting Clauses (A) through (N) inclusive, above, for debt or otherwise; and

(P) EXPRESSLY EXCLUDING, HOWEVER, any assets expressly excluded from the definition of "WR Collateral" in the Guaranty.

Trustor, for itself and its successors and assigns, covenants and agrees to and with Trustee that, at the time or times of the execution of and delivery of these presents or any instrument of further assurance with respect thereto, Trustor has good right, full power and lawful authority to assign, grant, convey, warrant, transfer, bargain or sell its interests in the Trust Estate in the manner and form as aforesaid, and that the Trust Estate is free and clear of all liens and encumbrances whatsoever, except

Permitted Liens, and Trustor shall warrant and forever defend the above-bargained property in the quiet and peaceable possession of Trustee and its successors and assigns against all and every person or persons lawfully or otherwise claiming or to claim the whole or any part thereof, except for Permitted Liens. Trustor agrees that any greater title to the Trust Estate hereafter acquired by Trustor during the term hereof shall be automatically subject hereto.

ARTICLE ONE

COVENANTS OF TRUSTOR

The Beneficiary and the Banks have been induced to enter into the Commitment Letter, the Credit Agreement, the Guaranty and the other Loan Documents and to make advances of loans thereunder to Borrower on the basis of the following material covenants, all agreed to by Trustor:

1.1 Performance of Financing Agreements. Trustor shall perform, observe and comply with each and every provision hereof, and with each and every provision contained in the Guaranty and the other Financing Agreements and shall promptly pay to the respective Funding Agents, when payment shall become due, the principal with interest thereon and all other sums required to be paid by Trustor under this Deed of Trust, the Guaranty and the other Financing Agreements.

1.2 General Representations, Covenants and Warranties. Trustor represents, covenants and warrants that: (a) Trustor has good and marketable title to an indefeasible fee estate in the Land, free and clear of all encumbrances except Permitted Encumbrances, and that it has the right to hold, occupy and enjoy its interest in the Trust Estate, and has good right, full power and lawful authority to subject the Trust Estate to the Lien of this Deed of Trust and pledge the same as provided herein and Beneficiary may at all times peaceably and quietly enter upon, hold, occupy and enjoy the entire Trust Estate in accordance with the terms hereof; (b) Trustor is not Insolvent and no bankruptcy or insolvency proceedings are pending or contemplated by or, to the best of Trustor's knowledge, threatened against Trustor; (c) all costs arising from construction of any Improvements, the performance of any labor and the purchase of all Tangible Collateral and Improvements have been or shall be paid when due (subject to the provisions of the Disbursement and Administration Agreement, the Credit Agreement, the Guaranty and this Deed of Trust); (d) the Land has direct access for ingress and egress to dedicated street(s); (e) Trustor shall at all times conduct and operate the Trust Estate in a manner so as not to lose, or permit its affiliate to lose, the right to conduct gaming activities at the Project; (f) no material part of the Trust Estate has been damaged, destroyed, condemned or abandoned, other than those portions of the Trust Estate that have been the subject of condemnation proceedings that have resulted in the conveyance of such portion of the Trust Estate to the Trustor; (g) no part of the Trust Estate is the subject of condemnation proceedings, other than condemnation proceedings to convey Land to the Trustor, and Trustor has no knowledge of any contemplated or pending condemnation proceeding with respect to any portion of the Trust Estate other than condemnation proceedings to convey Land to the Trustor; and (h) Trustor acknowledges and agrees that it presently may use, and in the past may have used, one or more of the trade or fictitious names, "Le Reve", "Wynn Collection", "Wynn Resorts" and "Desert Inn" and in each case variations thereof (collectively, the "**Enumerated Names**") in connection with the operation of the business at the Trust Estate, and Trustor further represents and warrants that the Enumerated Names are the only such trade or fictitious names Trustor has so used. For all purposes under this Deed of Trust it shall be deemed that the term "Trustor" includes all trade or fictitious names that Wynn Resorts Holdings, LLC (or any successor or assign thereof) now or hereafter uses, or has in the past used, including, without limitation, the Enumerated Names, with the same force and effect as if this Deed of Trust had been executed in all such names (in addition to "Wynn Resorts Holdings, LLC").

1.3 Compliance with Legal Requirements. Except as provided in the Guaranty, Trustor shall promptly, fully, and faithfully comply in all material respects with all Legal Requirements and shall

cause all portions of the Trust Estate and its use and occupancy to fully comply in all material respects with Legal Requirements at all times, whether or not such compliance requires work or remedial measures that are ordinary or extraordinary, foreseen or unforeseen, structural or nonstructural, or that interfere with the use or enjoyment of the Trust Estate.

1.4 **Taxes.** Except as otherwise permitted by the Guaranty, (a) Trustor shall pay all Impositions as they become due and payable and shall deliver to Beneficiary promptly upon Beneficiary's request, evidence satisfactory to Beneficiary that the Impositions have been paid or are not delinquent; (b) Trustor shall not suffer to exist, permit or initiate the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Land as a single lien, except as may be required by law; and (c) in the event of the passage of any law deducting from the value of real property for the purposes of taxation any lien thereon, or changing in any way the taxation of deeds of trust or obligations secured thereby for state or local purposes, or the manner of collecting such taxes and imposing a tax, either directly or indirectly, on this Deed of Trust, the Guaranty or the other Loan Documents to which Trustor is a party, Trustor shall pay all such taxes.

1.5 **Insurance.**

(a) **Hazard Insurance Requirements and Proceeds.**

(1) *Hazard Insurance.* Trustor shall at its sole expense obtain for, deliver to, assign and maintain for the benefit of Beneficiary, during the term of this Deed of Trust, insurance policies insuring the Trust Estate and liability insurance policies, all in accordance with the requirements of the Guaranty. Trustor shall pay promptly when due any premiums on such insurance policies and on any renewals thereof. In the event of the foreclosure of this Deed of Trust or any other transfer of title to the Trust Estate in partial or complete extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of Beneficiary in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

(2) *Handling of Proceeds.* All Proceeds from any insurance policies shall be collected, held, handled and disbursed in accordance with the provisions of the Credit Agreement, the Guaranty and the Disbursement and Administration Agreement (while in effect). All proceeds of insurance allocable to Trustor, as owner of the Land, and attributable to business interruption insurance shall be collected, held, handled and disbursed in accordance with the provisions of the Credit Agreement, the Guaranty and the Disbursement and Administration Agreement. Any such proceeds disbursed to Beneficiary shall be applied to pay amounts then due and payable under this Deed of Trust. The balance shall be retained by Beneficiary or its designee in an interest bearing or other investment account approved by Beneficiary, which account Trustor hereby pledges to Beneficiary to secure the Obligations. Disbursements shall be permitted from such account to pay expenses reasonably incurred by Trustor in owning and operating the Trust Estate, as reasonably approved by Beneficiary.

(b) **Compliance with Insurance Policies.** Trustor shall not violate or permit to be violated any of the conditions or provisions of any policy of insurance required by the Guaranty or this Deed of Trust and Trustor shall so perform and satisfy the requirements of the companies writing such policies that, at all times, companies of good standing shall be willing to write and/or continue such insurance. Trustor further covenants to promptly send to Beneficiary all notices relating to any violation of such policies or otherwise affecting Trustor's insurance coverage or ability to obtain and maintain such insurance coverage.

1.6 **Condemnation.** Beneficiary is hereby authorized, at its option, to commence, appear in and prosecute in its own or Trustor's name any action or proceeding relating to any condemnation and to

settle or compromise any claim in connection therewith, and Trustor hereby appoints Beneficiary as its attorney-in-fact to take any action in Trustor's name pursuant to Beneficiary's rights hereunder. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Trust Estate or any portion thereof, Trustor shall notify the Trustee and Beneficiary of the pendency of such proceedings. Trustor from time to time shall execute and deliver to Beneficiary all instruments requested by it to permit such participation; provided, however, that such instruments shall be deemed as supplemental to the foregoing grant of permission to Trustee and Beneficiary, and unless otherwise required, the foregoing permission shall, without more, be deemed sufficient to permit Trustee and/or Beneficiary to participate in such proceedings on behalf of Trustor. All such compensation awards, damages, claims, rights of action and Proceeds, and any other payments or relief, and the right thereto, are, whether paid to Beneficiary or Trustor or a third party trustee, included in the Trust Estate. Beneficiary, after deducting therefrom all its expenses, including reasonable attorneys fees, shall apply all Proceeds paid directly to it in accordance with the provisions of the Credit Agreement and the Guaranty. All Proceeds paid directly to the Trustor shall be applied in accordance with the Guaranty and the Disbursement and Administration Agreement. To the extent that any condemnation proceeds are not required to be applied towards restoration of the improvements upon the Land, then Beneficiary shall have the right to apply said condemnation proceeds towards repayment of the Obligations. Trustor hereby waives any rights it may have under NRS 37.115, as amended or recodified from time to time.

1.7 **Care of Trust Estate.**

(a) Trustor shall preserve and maintain the Trust Estate in good condition and repair. Trustor shall not permit, commit or suffer to exist any waste, impairment or deterioration of the Trust Estate or of any part thereof that in any manner materially impairs Beneficiary's security hereunder and shall not take any action which will increase the risk of fire or other hazard to the Trust Estate or to any part thereof.

(b) Except for Permitted Dispositions, no material part of the Improvements or Tangible Collateral that are part of the Trust Estate shall be removed, demolished or materially altered, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld or delayed. Trustor shall have the right, without such consent, to remove and dispose of free from the lien of this Deed of Trust any part of the Improvements or Tangible Collateral that are part of the Trust Estate as from time to time may become worn out or obsolete or otherwise not useful in connection with the operation of the Trust Estate, provided that either (i) such removal or disposition does not materially affect the value of the Trust Estate or (ii) prior to or promptly following such removal, any such property shall be replaced with other property of substantially equal utility and of a value at least substantially equal to that of the replaced property when first acquired and free from any security interest of any other person (subject only to Permitted Liens), and by such removal and replacement Trustor shall be deemed to have subjected such replacement property to the lien of this Deed of Trust.

(c) Notwithstanding the foregoing provisions of this *Section 1.7*, the Trustor may develop the Project in the manner contemplated by the Disbursement and Administration Agreement, the Credit Agreement, the Guaranty and the other Financing Agreements.

1.8 Leases.

(a) Trustor represents, warrants and covenants that:

(i) except for the assignment effected hereby and in the other Financing Agreements, Trustor has not executed any assignment or pledge of any of Space Leases, the Rents, or of Trustor's right, title and interest in the same; and

(ii) this Deed of Trust does not and will not constitute a violation or default under any Space Lease, and is and shall at all times constitute a valid lien on Trustor's interests in the Space Leases.

(b) Trustor shall not enter into any Space Lease or any modifications or amendments to any Space Lease, either orally or in writing, unless such Space Lease complies with the requirements of the Credit Agreement and the Guaranty.

(c) After an Event of Default, upon the request of Administrative Agent Trustor shall deliver to Beneficiary executed copies of all Space Leases.

1.9 Further Encumbrance.

(a) Trustor covenants that at all times prior to the discharge of the Obligations, except for Permitted Liens and Permitted Dispositions, Trustor shall neither make nor suffer to exist, nor enter into any agreement for, any sale, assignment, exchange, mortgage, transfer, Lien, hypothecation or encumbrance of all or any part of the Trust Estate, including, without limitation, the Rents. As used herein, "transfer" includes the actual transfer or other disposition, whether voluntary or involuntary, by law, or otherwise, except those transfers specifically permitted herein, provided, however, that "transfer" shall not include the granting of utility or other beneficial easements with respect to the Trust Estate which have been or are granted by Trustor and are reasonably necessary to the construction, maintenance or operation of the Project.

(b) Any Permitted Lien consisting of the lien of a deed of trust which is junior to the lien of the Loan Documents (including the Security Documents) (a "Subordinate Deed of Trust") shall be permitted hereunder so long as there shall have been delivered to Beneficiary, not less than thirty (30) days prior to the date thereof, a copy thereof which shall contain express covenants in form and substance satisfactory to Beneficiary to the effect that: (i) the Subordinate Deed of Trust is in all respects subject and subordinate to this Deed of Trust; (ii) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Trust Estate shall be named as a party defendant nor shall any action be taken with respect to the Trust Estate which would terminate any occupancy or tenancy of the Trust Estate, or any portion thereof, without the consent of Beneficiary; (iii) any Rents, if collected through a receiver or by the holder of the Subordinate Deed of Trust, shall be applied first to the obligations secured by this Deed of Trust, including principal and interest due and owing on or to become due and owing on the Notes, the Guaranty or the other Loan Documents, and then to the payment of maintenance expenses, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operation, and maintenance of the Trust Estate; and (iv) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust, prompt notice of the commencement thereof shall be given to Beneficiary.

(c) Trustor agrees that in the event the ownership of the Trust Estate or any part thereof becomes vested in a person other than Trustor, Beneficiary may, without notice to Trustor, deal in any way with such successor or successors in interest with reference to this Deed of Trust, the Notes, the Guaranty, the other Loan Documents and other Obligations hereby secured without in any way vitiating or discharging Trustor's or any guarantor's, surety's or endorser's liability hereunder or upon the obligations hereby secured. No sale of the Trust Estate and no forbearance to any person with respect

to this Deed of Trust and no extension to any person of the time for payment of the Obligations, and other sums hereby secured given by Beneficiary shall operate to release, discharge, modify, change or affect the original liability of Trustor, or such guarantor, surety or endorser either in whole or in part.

(d) Trustor covenants and agrees to comply with all of the terms and conditions set forth in any FF&E Financing Agreement. If Trustor shall fail to make any payment required to be made by it under any FF&E Financing Agreement, except where Trustor is contesting such payment in good faith, then the Beneficiary shall be entitled to make such payment on Trustor's behalf and any and all sums so expended by the Beneficiary shall be secured by this Deed of Trust and shall be repaid by Trustor upon demand, together with interest thereon at the interest at the rate applicable to overdue principal set forth in the Credit Agreement from the date of advance.

1.10 Partial Releases of Trust Estate.

(a) Trustor may from time to time make a Permitted Disposition including, but not limited to, (i) transferring a portion of the Trust Estate (including any temporary taking) to any person legally empowered to exercise the power of eminent domain, or pursuant to dedication agreements that are now in effect or entered into in the future in connection with the development of the Project, (ii) granting utility easements reasonably necessary or desirable for the construction and/or operation of the Project, which grant or transfer is for the benefit of the Trust Estate, or (iii) transferring a portion of the Trust Estate as permitted pursuant to the Disbursement and Administration Agreement. In each such case, Beneficiary shall execute and deliver any instruments necessary or appropriate to effectuate or confirm any such transfer or grant, free from the lien of this Deed of Trust, *provided, however*, that Beneficiary shall execute a lien release or subordination agreement, as appropriate, for matters described in clauses (i) and (iii) above only if:

(A) Such transfer, grant or release is not prohibited by the Credit Agreement or the Guaranty and all conditions precedent contained in the Credit Agreement and the Guaranty for such transfer, grant or release, if any, shall have been satisfied;

(B) Beneficiary and Trustee shall have received a counterpart of the instrument pursuant to which such transfer, grant or release is to be made, and each instrument which Beneficiary or Trustee is requested to execute in order to effectuate or confirm such transfer, grant or release;

(C) In the case of a transfer to a person legally empowered to exercise the power of eminent domain, which transfer involves property whose value is greater than \$5,000,000, Beneficiary and Trustee shall have received an opinion of counsel, who may be counsel to Trustor, to the effect that the assignee or grantee of the portion of the Trust Estate being transferred is legally empowered to take such portion under the power of eminent domain; and

(D) Beneficiary and Trustee shall have received such other instruments, certificates (including evidence of authority) and opinions as Beneficiary or Trustee may reasonably request, including, but not limited to, opinions that the proposed release is permitted by this *Section 1.10*.

(b) Any consideration received for a transfer to any person empowered to exercise the right of eminent domain shall be subject to *Section 1.6* hereof.

1.11 *Further Assurances.*

(a) At its sole cost and without expense to Trustee or Beneficiary, and subject in all events to compliance with the Nevada Gaming Laws and other applicable Legal Requirements, Trustor shall do, execute, acknowledge and deliver any and all such further acts, deeds, conveyances, notices, requests for notices, financing statements, continuation statements, certificates, assignments, notices of assignments, agreements, instruments and further assurances, and shall mark any chattel paper, deliver any chattel paper or instruments to Beneficiary and take any other actions that are necessary, prudent, or reasonably requested by Beneficiary or Trustee to perfect or continue the perfection and first

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priority of Beneficiary's security interest in the Trust Estate, to protect the Trust Estate against the rights, claims, or interests of third persons other than holders of Permitted Liens or to effect the purposes of this Deed of Trust, including the security agreement and the absolute assignment of Rents contained herein, or for the filing, registering or recording thereof.

(b) Trustor shall forthwith upon the execution and delivery of this Deed of Trust, and thereafter from time to time, cause this Deed of Trust and each instrument of further assurance to be filed, indexed, registered, recorded, given or delivered in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the title of Trustee and/or Beneficiary to, the Trust Estate.

1.12 ***Security Agreement and Financing Statements.*** Trustor (as debtor) hereby grants to Beneficiary (as creditor and secured party) a present and future security interest in all Tangible Collateral, Intangible Collateral, FF&E, Improvements, all other personal property now or hereafter owned or leased by Trustor or in which Trustor has or will have any interest, to the extent that such property constitutes a part of the Trust Estate (whether or not such items are stored on the premises or elsewhere), Proceeds of the foregoing comprising a portion of the Trust Estate and all proceeds of insurance policies and consideration awards arising therefrom and all proceeds, products, substitutions, and accessions therefor and thereto, subject to Beneficiary's rights to treat such property as real property as herein provided (collectively, the "***Personal Property***"). Trustor shall execute and/or deliver any and all documents and writings, including without limitation financing statements pursuant to the UCC, as may be necessary or prudent to preserve and maintain the priority of the security interest granted hereby on property which may be deemed subject to the foregoing security agreement or as Beneficiary may reasonably request, and shall pay to Beneficiary on demand any reasonable expenses incurred by Beneficiary in connection with the preparation, execution and filing of any such documents. Trustor hereby authorizes and empowers Beneficiary to file, on Trustor's behalf, all financing statements and refile and continuations thereof as advisable to create, preserve and protect said security interest. Trustor acknowledges and agrees that it is not authorized to, and will not, authenticate or file, or authorize the filing of, any financing statements or other record with respect to the Personal Property (including any amendments thereto, or continuation or termination statements thereof), except as permitted by the Guaranty. Trustor approves and ratifies any filing or recording of records made by or on behalf of Beneficiary in connection with the perfection of the security interest in favor of Beneficiary hereunder. This Deed of Trust constitutes both a real property deed of trust and a "security agreement," within the meaning of the UCC, and the Trust Estate includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Trust Estate. Trustor by executing and delivering this Deed of Trust has granted to Beneficiary, as security of the Obligations, a security interest in the Trust Estate.

(a) ***Fixture Filing.*** Without in any way limiting the generality of the immediately preceding paragraph or of the definition of the Trust Estate, this Deed of Trust constitutes a fixture filing under Sections 9-334 and 9-502 of the UCC (NRS 104.9334 and 104.9502). For such purposes, (i) the "debtor" is Trustor and its address is the address given for it in the initial paragraph of this Deed of Trust; (ii) the "secured party" is Beneficiary, and its address for the purpose of obtaining information is the address given for it in the initial paragraph of this Deed of Trust; (iii) the real estate to which the fixtures are or are to become attached is Trustor's interest in the Land; and (iv) the record owner of such real estate is Trustor.

(b) ***Remedies.*** This Deed of Trust shall be deemed a security agreement as defined in the UCC and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall include any or all of (i) those prescribed herein, and (ii) those available under applicable law, and (iii) those available under the UCC, all at Beneficiary's sole election. In addition, a photographic or other reproduction of this Deed of Trust shall be sufficient as a

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financing statement for filing wherever filing may be necessary to perfect or continue the security interest granted herein.

(c) ***Derogation of Real Property.*** It is the intention of the parties that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in anyway derogating from or impairing the express declaration and intention of the parties hereto as hereinabove stated that everything used in connection with the production of income from the Trust Estate and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real property encumbered by this Deed of Trust irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. It is the intention of the parties that

the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Trustor's interest as lessors in any present or future Space Lease or rights to Rents, shall never be construed as in anyway altering any of the rights of Beneficiary as determined by this Deed of Trust or impugning the priority of Beneficiary's real property lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of Beneficiary in the event any court or judge shall at any time hold with respect to the matters set forth in the foregoing clauses (1), (2) and (3) that notice of Beneficiary's priority of interest to be effective against a particular class of persons, including but not limited to, the federal government and any subdivisions or entity of the federal government, must be filed in the UCC records.

(d) **Priority; Permitted Financing of Tangible Collateral.** All Personal Property of any nature whatsoever which is subject to the provisions of this security agreement shall be purchased or obtained by Trustor in its name and free and clear of any lien or encumbrance, except for Permitted Liens and the lien hereof, for use only in connection with the business and operation of the Project, and shall be and at all times remain free and clear of any lease or similar arrangement, chattel financing, installment sale agreement, security agreement and any encumbrance of like kind, so that Beneficiary's security interest shall attach to and vest in Trustor for the benefit of Beneficiary, with the priority herein specified, immediately upon the installation or use of the Personal Property at the Land and Trustor warrants and represents that Beneficiary's security interest in the Personal Property is a validly attached and binding security interest, properly perfected and prior to all other security interests therein except as otherwise permitted in this Deed of Trust. The foregoing shall not be construed as limiting Trustor's rights to transfer Personal Property pursuant to Permitted Dispositions or to obtain releases of Personal Property from the Lien of this Deed of Trust pursuant to *Section 1.10* hereof.

(e) **Preservation of Contractual Rights of Collateral.** Trustor shall, prior to delinquency, default, or forfeiture, perform all obligations and satisfy all material conditions required on its part to be satisfied to preserve its rights and privileges under any contract, lease, license, permit, or other authorization (i) under which it holds any Tangible Collateral or (ii) which constitutes part of the Intangible Collateral, except where Trustor is contesting such obligations in good faith.

(f) **Removal of Collateral.** Except for damaged or obsolete Tangible Collateral which is either no longer usable or which is removed temporarily for repair or improvement or removed for replacement on the Trust Estate with Tangible Collateral of similar function or as otherwise permitted herein, none of the Tangible Collateral shall be removed from the Trust Estate without Beneficiary's prior written consent.

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(g) **Change of Name.** Trustor shall not change its corporate (or other entity) or business name, or do business within the State of Nevada under any name other than such name, or any trade name(s) other than those as to which Trustor gives prior written notice to Beneficiary of its intent to use such trade names, or any other business names (if any) specified in the financing statements delivered to Beneficiary for filing in connection with the execution hereof, without, in each case, providing Beneficiary with the additional financing statement(s) and any other similar documents deemed reasonably necessary by Beneficiary to assure that its security interest remains perfected and of undiminished priority in all such Personal Property notwithstanding such name change.

1.13 **Assignment of Leases and Rents.** Subject to Nevada Gaming Laws and other applicable Legal Requirements, the assignment of Leases and Rents set out above in Granting Clause (G) shall constitute an absolute and present assignment to Beneficiary, subject to the license herein given to Trustor to collect the Rents, and shall be fully operative without any further action on the part of any party, and specifically Beneficiary shall be entitled upon the occurrence of an Event of Default hereunder to all Rents and to enter upon the Land and the Improvements to collect such Rents, provided, however, that Beneficiary shall not be obligated to take possession of the Trust Estate, or any portion thereof. The absolute assignment contained in Granting Clause (G) shall not be deemed to impose upon Beneficiary any of the obligations or duties of Trustor provided in any such Space Lease (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease in the event that any lessee shall have been joined as a party defendant in any action to foreclose this Deed of Trust and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Trust Estate or any part thereof).

1.14 **Expenses.**

(a) Trustor shall pay when due and payable all out-of-pocket costs, including without limitation, those reasonable appraisal fees, recording fees, taxes, abstract fees, title policy fees, escrow fees, attorneys' and paralegal fees, travel expenses, fees for inspecting architect(s) and engineer(s) and all other costs and expenses of every character which may hereafter be incurred by Beneficiary or any assignee of Beneficiary in connection with the preparation and execution of the Guaranty and the other Loan Documents (including the Security Documents) to which Trustor is a party or instruments, agreements or documents of further assurance, the funding of the indebtedness secured hereby, and the enforcement of the Guaranty or any other Loan Document (including any Security Document) to which Trustor is a party. Other than costs associated with the enforcement of any Loan Document, all such costs shall be itemized in reasonable detail; and

(b) Trustor shall, upon demand by Beneficiary, reimburse Beneficiary or any assignee of Beneficiary for all such reasonable expenses which have been incurred or which shall be incurred by it; and

(c) Trustor shall indemnify Beneficiary with respect to any transaction or matter in any way connected with any portion of the Trust Estate, this Deed of Trust, including any occurrence at, in, on, upon or about the Trust Estate (including any personal injury, loss of life, or property damage), or Trustor's use, occupancy, or operation of the Trust Estate, or the filing or enforcement of any mechanic's lien, or otherwise caused in whole or in part by any act, omission or negligence occurring on or at the Trust Estate, including failure to comply with any Legal Requirement or with any requirement of this Deed of Trust that applies to Trustor, except to the extent resulting from the gross negligence, fraud or willful misconduct of Trustee or Beneficiary. If Beneficiary is a party to any litigation as to which either Trustor is required to indemnify Beneficiary (or is made a defendant in any action of any kind against Trustor or relating directly or indirectly to any portion of the Trust Estate) then, at Beneficiary's option, Trustor shall undertake Beneficiary's defense, using counsel reasonably

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satisfactory to Beneficiary (and any settlement shall be subject to Beneficiary's consent, which consent shall not be unreasonably withheld), and in any case shall indemnify Beneficiary against such litigation. Trustor shall pay all reasonable costs and expenses, including reasonable legal costs, that Beneficiary pays or incurs

in connection with any such litigation. Any amount payable under any indemnity in this Deed of Trust shall be a demand obligation, shall be added to, and become a part of, the secured obligations under this Deed of Trust, shall be secured by this Deed of Trust and, if not paid promptly following demand therefor (which demand shall, unless associated with Loan Document enforcement actions, set forth in reasonable detail an itemization of the amount so demanded) shall bear interest at the interest rate specified in the Credit Agreement. Such indemnity shall survive any release of this Deed of Trust and any foreclosure.

1.15 **Beneficiary's Cure of Trustor's Default.** If Trustor defaults hereunder in the payment of any tax, assessment, lien, encumbrance or other Imposition, in its obligation to furnish insurance hereunder, or in the performance or observance of any other covenant, condition or term of this Deed of Trust or any other Financing Agreement or any FF&E Financing Agreement, Beneficiary may, but is not obligated to, to preserve its interest in the Trust Estate, perform or observe the same, and all payments made (whether such payments are regular or accelerated payments) and reasonable costs and expenses incurred or paid by Beneficiary in connection therewith shall become due and payable immediately. The amounts so incurred or paid by Beneficiary, together with interest thereon at the interest rate applicable to overdue principal set forth in the Credit Agreement, from the date incurred until paid by Trustor, shall be added to the indebtedness and secured by the lien of this Deed of Trust. Beneficiary, is hereby empowered to enter and to authorize others to enter upon the Land or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Trustor or any person in possession holding under Trustor. No exercise of any rights under this Section 1.15 by Beneficiary shall cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

1.16 **Use of Land.** Trustor covenants that the Trust Estate shall be used and operated in a manner consistent with the requirements of the Loan Documents.

1.17 **Compliance with Permitted Lien Agreements.** Trustor shall comply with each and every material obligation contained in any agreement pertaining to a Permitted Lien.

1.18 **Defense of Actions.** Trustor shall appear in and defend any action or proceeding affecting or purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and shall pay all costs and expenses, including cost of title search and insurance or other evidence of title, preparation of survey, and reasonable attorneys' fees in any such action or proceeding in which Beneficiary or Trustee may appear or may be joined as a party and in any suit brought by Beneficiary based upon or in connection with this Deed of Trust, the Guaranty or any other Loan Document to which Trustor is a party. Nothing contained in this section shall, however, limit the right of Beneficiary to appear in such action or proceeding with counsel of its own choice, either on its own behalf or on behalf of Trustor.

1.19 **Affiliates.**

(a) **Subject to Trust Deed.** Subject to compliance with the requirements of applicable Nevada Gaming Laws, Trustor shall cause all of its Affiliates in any way involved with the operation of the Trust Estate or the Project to observe the covenants and conditions of this Deed of Trust to the extent necessary to give the full intended effect to such covenants and conditions and to protect and preserve the security of Beneficiary hereunder. Trustor shall, at Beneficiary's request, cause any such Affiliate to execute and deliver to Beneficiary or Trustee such further instruments or documents as Beneficiary may reasonably deem necessary to effectuate the terms of this Section 1.19.

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(b) **Restriction on Use of Subsidiary or Affiliate.** Except as permitted under the Credit Agreement, the Notes, the Guaranty or the other Loan Documents (including any Security Document), Trustor shall not use any Affiliate in the operation of the Trust Estate or the Project if such use would in any way impair the security for the Obligations or circumvent any covenant or condition of this Deed of Trust, the Guaranty or of any other Loan Document.

1.20 **Title Insurance.** On the Closing Date, Trustor shall cause to be delivered to Trustee at Trustor's expense, one or more ALTA extended coverage Lender's Policies of Title Insurance showing fee title to the real property situated in the County of Clark, State of Nevada, more specifically described in Schedule A attached hereto, vested in Trustor and the lien of this Deed of Trust to be a perfected lien, prior to any and all encumbrances other than Permitted Encumbrances (excluding, however, any such non-Permitted Encumbrances for which the Title Insurer has agreed to provide an endorsement or affirmative coverage protecting the lien of this Deed of Trust against such non-Permitted Encumbrances).

ARTICLE TWO

GUARANTY PROVISIONS

2.1 Interaction with Guaranty

(a) **Incorporation by Reference.** All terms, covenants, conditions, provisions and requirements of the Guaranty are incorporated by reference in this Deed of Trust.

(b) **Conflicts.** In the event of any conflict or inconsistency between the provisions of this Deed of Trust and those of the Guaranty, Credit Agreement or the Disbursement and Administration Agreement, the provisions of the Guaranty, Credit Agreement or the Disbursement and Administration Agreement, as applicable, shall govern.

2.2 **Other Collateral.** This Deed of Trust is one of a number of security agreements delivered by or on behalf of Trustor and other Persons pursuant to the Credit Agreement and the other Loan Documents (including the Security Documents) and securing the Obligations secured hereunder. All potential junior Lien claimants are placed on notice that, under any of the Loan Documents (including the Security Documents) (including a separate future unrecorded agreement between Trustor and Beneficiary), other collateral for the Obligations secured hereunder (*i.e.*, collateral other than the Trust Estate) may, under certain circumstances, be released without a corresponding reduction in the total principal amount secured by this Deed of Trust. Such a release would decrease the amount of collateral securing the same indebtedness, thereby increasing the burden on the remaining Trust Estate created and continued by this Deed of Trust. No such release shall impair the priority of the lien of this Deed of Trust. By accepting its interest in the Trust Estate, each and every junior Lien claimant shall be deemed to have acknowledged the possibility of, and consented to, any such release. Nothing in this paragraph shall impose any obligation upon Beneficiary.

ARTICLE THREE

DEFAULTS

3.1 **Event of Default.** The term "Event of Default," wherever used in this Deed of Trust, shall mean any of (i) one or more of the events of default listed in the Credit Agreement or the Guaranty or (ii) so long as the Disbursement and Administration Agreement is in effect, one or more of the events of default listed in the Disbursement and Administration Agreement (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body).

ARTICLE FOUR

REMEDIES

4.1 **Acceleration of Maturity.** If an Event of Default occurs, Beneficiary may (except that such acceleration shall be automatic if the Event of Default is caused by Borrower's or Trustor's Bankruptcy), in accordance with the Loan Documents, declare the Obligations to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become due and payable without demand, presentment, notice or other requirements of any kind (all of which Trustor waives) notwithstanding anything in this Deed of Trust or any Loan Document or applicable law to the contrary.

4.2 **Protective Advances.** If Borrower or Trustor fails to make any payment or perform any other obligation under the Notes, Credit Agreement, Guaranty or any other Financing Agreement, then without thereby limiting Beneficiary's other rights or remedies, waiving or releasing any of Trustor's obligations, or imposing any obligation on Beneficiary, Beneficiary may either advance any amount owing or perform any or all actions that Beneficiary considers necessary or appropriate to cure such default. All such advances shall constitute "Protective Advances." No sums advanced or performance rendered by Beneficiary shall cure, or be deemed a waiver of any Event of Default.

4.3 **Institution of Equity Proceedings.** If an Event of Default occurs, Beneficiary may institute an action, suit or proceeding in equity for specific performance of this Deed of Trust, the Notes, the Guaranty or any other Loan Document (including any Security Document), all of which shall be specifically enforceable by injunction or other equitable remedy. Trustor waives any defense based on laches or any applicable statute of limitations.

4.4 **Beneficiary's Power of Enforcement.**

(a) If an Event of Default occurs, Beneficiary shall be entitled, at its option and in its sole and absolute discretion, to prepare and record on its own behalf, or to deliver to Trustee for recording, if appropriate, written declaration of default and demand for sale and written Notice of Breach and Election to Sell (NRS 107.080(3)) (or other statutory notice) to cause the Trust Estate to be sold to satisfy the obligations hereof, and in the case of delivery to Trustee, Trustee shall cause said notice to be filed for record.

(b) After the lapse of such time as may then be required by law following the recordation of said Notice of Breach and Election to Sell, and notice of sale having been given as then required by law, including compliance with all applicable Nevada Gaming Laws, Trustee without demand on Trustor, shall sell the Trust Estate or any portion thereof at the time and place fixed by it in said notice, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder, of cash in lawful money of the United States payable at the time of sale. Trustee may, for any cause it deems expedient, postpone the sale of all or any portion of said property until it shall be completed and, in every case, notice of postponement shall be given by public announcement thereof at the time and place last appointed for the sale and from time to time thereafter Trustee may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall execute and deliver to the purchaser its Deed, Bill of Sale, or other instrument conveying said property so sold, but without any covenant or warranty, express or implied. The recitals in such instrument of conveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale.

(c) After deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including, without limitation, costs of evidence of title and reasonable attorneys' fees and other legal expenses of Trustee or Beneficiary in connection with a sale, Trustee shall apply the proceeds of such sale to payment of all sums expended under the terms hereof not then repaid, with accrued interest at the rate

applicable to overdue principal set forth in the Credit Agreement to the payment of all other sums then secured hereby and the remainder, if any, to the person or persons legally entitled thereto as provided in NRS 40.462.

(d) Subject to compliance with applicable Nevada Gaming Laws, if any Event of Default occurs, Beneficiary may, either with or without entry or taking possession of the Trust Estate, and without regard to whether or not the indebtedness and other sums secured hereby shall be due and without prejudice to the right of Beneficiary thereafter to bring an action or proceeding to foreclose or any other action for any default existing at the time such earlier action was commenced, proceed by any appropriate action or proceeding: (1) to enforce payment of the Obligations, to the extent permitted by law, or the performance of any term hereof or any other right; (2) to foreclose this Deed of Trust in any manner provided by law for the foreclosure of mortgages or deeds of trust on real property and to sell, as an entirety or in separate lots or parcels, the Trust Estate or any portion thereof pursuant to the laws of the State of Nevada or under the judgment or decree of a court or courts of competent jurisdiction, and Beneficiary shall be entitled to recover in any such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees in such amount as shall be awarded by the court; (3) to exercise any or all of the rights and remedies available to it under the Loan Documents; and (4) to pursue any other remedy available to it. Beneficiary shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Beneficiary may determine.

(e) The remedies described in this Section 4.4 may be exercised with respect to all or any portion of the Personal Property, either simultaneously with the sale of any real property encumbered hereby or independent thereof. Beneficiary shall at any time be permitted to proceed with respect to all or any portion of the Personal Property in any manner permitted by the UCC. Trustor agrees that Beneficiary's inclusion of all or any portion of the Personal Property (and all personal property that is subject to a security interest in favor, or for the benefit, of Beneficiary) in a sale or other remedy exercised with respect to the real property encumbered hereby, as permitted by the UCC, is a commercially reasonable disposition of such property.

4.5 **Beneficiary's Right to Enter and Take Possession, Operate and Apply Income.**

(a) Subject to compliance with applicable Nevada Gaming Laws, if an Event of Default occurs, (i) Trustor, upon demand of Beneficiary, shall forthwith surrender to Beneficiary the actual possession and, if and to the extent permitted by law, Beneficiary itself, or by such officers or agents as it may appoint, may enter and take possession of all the Trust Estate including the Personal Property, without liability for trespass, damages or otherwise, and may exclude Trustor and its agents and employees wholly therefrom and may have joint access with Trustor to the books, papers and accounts of Trustor; and (ii) Trustor shall pay monthly in advance to Beneficiary on Beneficiary's entry into possession, or to any receiver appointed to collect the Rents, all Rents then due and payable.

(b) If Trustor shall for any reason fail to surrender or deliver the Trust Estate, the Personal Property or any part thereof after Beneficiary's demand, Beneficiary may obtain a judgment or decree conferring on Beneficiary or Trustee the right to immediate possession or requiring Trustor to deliver immediate possession of all or part of such property to Beneficiary or Trustee and Trustor hereby specifically consents to the entry of such judgment or decree. Trustor shall pay to Beneficiary or Trustee, upon demand, all reasonable costs and expenses of obtaining such judgment or decree and reasonable compensation to Beneficiary or Trustee, their attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Deed of Trust.

(c) Subject to compliance with applicable Nevada Gaming Laws, upon every such entering upon or taking of possession, Beneficiary or Trustee may hold, store, use, operate, manage and control the

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Trust Estate and conduct the business thereof, and, from time to time in its sole and absolute discretion and without being under any duty to so act:

(1) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;

(2) insure or keep the Trust Estate insured;

(3) manage and operate the Trust Estate and exercise all the rights and powers of Trustor in their name or otherwise with respect to the same;

(4) enter into agreements with others to exercise the powers herein granted Beneficiary or Trustee, all as Beneficiary or Trustee from time to time may determine; and, subject to the absolute assignment of the Leases and Rents to Beneficiary, Beneficiary or Trustee may collect and receive all the Rents, including those past due as well as those accruing thereafter; and shall apply the monies so received by Beneficiary or Trustee in such priority as Beneficiary may determine to (1) the payment of interest and principal due and payable on the Notes or the other Loan Documents, (2) the deposits for taxes and assessments and insurance premiums due, (3) the cost of insurance, taxes, assessments and other proper charges upon the Trust Estate or any part thereof; (4) the compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary or Trustee; and (5) any other charges or costs required to be paid by Trustor under the terms hereof; and

(5) rent or sublet the Trust Estate or any portion thereof for any purpose permitted by this Deed of Trust.

Beneficiary or Trustee shall surrender possession of the Trust Estate and the Personal Property to Trustor only when all that is due upon such interest and principal, tax and insurance deposits, and all amounts under any of the terms of the Credit Agreement or this Deed of Trust, shall have been paid and all defaults made good. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.6 Leases. Beneficiary is authorized to foreclose this Deed of Trust subject to the rights of any tenants of the Trust Estate, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights shall not be, nor be asserted by Trustor to be, a defense to any proceedings instituted by Beneficiary to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Trust Estate, or any portion thereof. Unless otherwise agreed by Beneficiary in writing, all Space Leases executed subsequent to the date hereof, or any part thereof, shall be subordinate and inferior to the lien of this Deed of Trust; provided, however that (i) in accordance with the terms of the Loan Documents, Beneficiary may be required to execute a non-disturbance and attornment agreement in connection with certain Space Leases; and (ii) from time to time Beneficiary may execute and record among the land records of the jurisdiction where this Deed of Trust is recorded, subordination statements with respect to such of said Space Leases as Beneficiary may designate in its sole discretion, whereby the Space Leases so designated by Beneficiary shall be made superior to the lien of this Deed of Trust for the term set forth in such subordination statement. From and after the recordation of such subordination statements, and for the respective periods as may be set forth therein, the Space Leases therein referred to shall be superior to the lien of this Deed of Trust and shall not be affected by any foreclosure hereof. All such Space Leases shall contain a provision to the effect that the Trustor and Space Lessee recognize the right of Beneficiary to elect and to effect such subordination of this Deed of Trust and consents thereto.

4.7 Purchase by Beneficiary. Upon any foreclosure sale (whether judicial or nonjudicial), Beneficiary may bid for and purchase the property subject to such sale and, upon compliance with the

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terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

4.8 Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws. Trustor agrees to the full extent permitted by law that if an Event of Default occurs, neither Trustor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust or the absolute sale of the Trust Estate or any portion thereof or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof, and Trustor for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Trust Estate marshalled upon any foreclosure of the lien hereof and agrees that Trustee or any court having jurisdiction to foreclose such lien may sell the Trust Estate in part or as an entirety.

4.9 Receiver. If an Event of Default occurs, Beneficiary, to the extent permitted by law and subject to compliance with all applicable Nevada Gaming Laws, and without regard to the value, adequacy or occupancy of the security for the indebtedness and other sums secured hereby, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Trust Estate and to collect all Rents and apply the same as the court

may direct, and such receiver may be appointed by any court of competent jurisdiction upon application by Beneficiary. Beneficiary may have a receiver appointed without notice to Trustor or any third party, and Beneficiary may waive any requirement that the receiver post a bond. Beneficiary shall have the power to designate and select the Person who shall serve as the receiver and to negotiate all terms and conditions under which such receiver shall serve. Any receiver appointed on Beneficiary's behalf may be an Affiliate of Beneficiary. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Deed of Trust. The right to enter and take possession of and to manage and operate the Trust Estate and to collect all Rents, whether by a receiver or otherwise, shall be cumulative to any other right or remedy available to Beneficiary under this Deed of Trust, the Guaranty or the other Loan Documents or otherwise available to Beneficiary and may be exercised concurrently therewith or independently thereof. Beneficiary shall be liable to account only for such Rents (including, without limitation, security deposits) actually received by Beneficiary, whether received pursuant to this section or any other provision hereof. Notwithstanding the appointment of any receiver or other custodian, Beneficiary shall be entitled as pledgee to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Deed of Trust to, Beneficiary.

4.10 Suits to Protect the Trust Estate. Beneficiary shall have the power and authority to institute and maintain any suits and proceedings as Beneficiary, in its sole and absolute discretion, may deem advisable (a) to prevent any impairment of the Trust Estate by any acts which may be unlawful or in violation of this Deed of Trust, (b) to preserve or protect its interest in the Trust Estate, or (c) to restrain the enforcement of or compliance with any legislation or other Legal Requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Beneficiary's interest.

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4.11 Proofs of Claim. In the case of any receivership, Insolvency, Bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Trustor, or, to the extent the same would result in an Event of Default hereunder, any Subsidiary, or any guarantor, co-maker or endorser of any of Trustor's obligations, its creditors or its property, Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim or other documents as it may deem to be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Trustor under the Loan Documents, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Trustor after such date.

4.12 Trustor to Pay the Obligations on Any Default in Payment; Application of Monies by Beneficiary.

(a) In case of a foreclosure sale of all or any part of the Trust Estate and of the application of the proceeds of sale to the payment of the sums secured hereby, Beneficiary shall be entitled to enforce payment from Trustor of any additional amounts then remaining due and unpaid with respect to the Obligations and to recover judgment against Trustor for any portion thereof remaining unpaid, with interest at the rate applicable to overdue principal as set forth in the Credit Agreement.

(b) Trustor hereby agrees to the extent permitted by law, that no recovery of any such judgment by Beneficiary or other action by Beneficiary and no attachment or levy of any execution upon any of the Trust Estate or any other property shall in any way affect the Lien and security interest of this Deed of Trust upon the Trust Estate or any part thereof or any Lien, rights, powers or remedies of Beneficiary hereunder, but such Lien, rights, powers and remedies shall continue unimpaired as before.

(c) Any monies collected or received by Beneficiary under this *Section 4.12* shall be first applied to the payment of reasonable compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary, and the balance remaining shall be applied to the Obligations.

(d) The provisions of this section shall not be deemed to limit or otherwise modify the provisions of any guaranty of the indebtedness evidenced by the Notes or the other Loan Documents.

4.13 Delay or Omission; No Waiver. No delay or omission of Beneficiary or any Bank to exercise any right, power or remedy upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Beneficiary whether contained herein or in the other Loan Documents or otherwise available to Beneficiary may be exercised from time to time and as often as may be deemed expedient by Beneficiary.

4.14 No Waiver of One Default to Affect Another. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If Beneficiary or the required percentage of the Banks (as determined pursuant to the Credit Agreement), to the extent applicable under the Credit Agreement, (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Notes, the Credit Agreement, this Deed of Trust, the Guaranty, the Disbursement and Administration Agreement or any other Loan Document (including any Security Document); (d) releases any part of the Trust Estate from the lien or security interest of this Deed of Trust or any other instrument securing the Obligations; (e) consents to the filing of any map, plat or replat of the Land (to the extent such consent is required); (f) consents to the granting of any easement on the Land (to the extent such consent is required); or (g) makes or consents to any agreement changing the terms of this Deed of Trust or any other Loan Document subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability of Trustor under the Guaranty or any other Loan Document (including any Security Document) or otherwise, or any subsequent purchaser of the Trust Estate or any part thereof or any

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maker, co-signer, surety or guarantor. No such act or omission shall preclude Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by Beneficiary, shall the lien or security interest of this Deed of Trust be altered thereby, except to the extent expressly provided in any releases, maps, easements or subordinations described in clause (d), (e), (f) or (g) above of this Section 4.14. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Trust Estate, Beneficiary, without notice to any person, firm or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Trust Estate or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder, or waiving its right to declare such sale or transfer an Event of Default as provided herein. Notwithstanding anything to the contrary

contained in this Deed of Trust or any other Loan Document (including any Security Document), (i) in the case of any non-monetary Event of Default, Beneficiary may continue to accept payments secured hereunder without thereby waiving the existence of such or any other Event of Default and (ii) in the case of any monetary Event of Default, Beneficiary may accept partial payments of any sums secured hereunder without thereby waiving the existence of such Event of Default if the partial payment is not sufficient to completely cure such Event of Default.

4.15 Discontinuance of Proceedings; Position of Parties Restored. If Beneficiary shall have proceeded to enforce any right or remedy under this Deed of Trust by foreclosure, entry of judgment or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Beneficiary, then and in every such case Trustor and Beneficiary shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Beneficiary shall continue as if no such proceedings had occurred or had been taken.

4.16 Remedies Cumulative. No right, power or remedy, including without limitation remedies with respect to any security for Obligations, conferred upon or reserved to Beneficiary by this Deed of Trust or any other Loan Document (including any Security Document) is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or any other Loan Document (including any Security Document), now or hereafter existing at law, in equity or by statute, and Beneficiary shall be entitled to resort to such rights, powers, remedies or security as Beneficiary shall in its sole and absolute discretion deem advisable.

4.17 Interest After Event of Default. If an Event of Default shall have occurred and is continuing, all sums outstanding and unpaid under the Obligations shall, at Beneficiary's option, bear interest at the rate applicable to overdue principal set forth in the Credit Agreement until such Event of Default has been cured. Trustor's obligation to pay such interest shall be secured by this Deed of Trust.

4.18 Foreclosure; Expenses of Litigation. If Trustee forecloses, reasonable attorneys' fees for services in the supervision of said foreclosure proceeding shall be allowed to the Trustee and Beneficiary as part of the foreclosure costs. In the event of foreclosure of the lien hereof, there shall be allowed and included as additional indebtedness all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after foreclosure sale or entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and guarantees, and similar data and assurances with respect to title as Beneficiary may deem reasonably advisable either to prosecute such suit or to evidence to a bidder at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Trust Estate or any portion thereof. All

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expenditures and expenses of the nature in this section mentioned, and such expenses and fees as may be incurred in the protection of the Trust Estate and the maintenance of the lien and security interest of this Deed of Trust, including the fees of any attorney employed by Beneficiary in any litigation or proceeding affecting this Deed of Trust, the Guaranty or any other Loan Document (including any Security Document), the Trust Estate or any portion thereof, including, without limitation, civil, probate, appellate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Trustor, with interest thereon at the rate applicable to overdue principal set forth in the Credit Agreement, and shall be secured by this Deed of Trust. Trustee waives its right to any statutory fee in connection with any judicial or nonjudicial foreclosure of the lien hereof and agrees to accept a reasonable fee for such services.

4.19 Deficiency Judgments. If after foreclosure of this Deed of Trust or Trustee's sale hereunder, there shall remain any deficiency with respect to any Obligations, and Beneficiary shall institute any proceedings to recover such deficiency or deficiencies, all such amounts shall continue to bear interest at the rate applicable to overdue principal set forth in the Credit Agreement. Trustor waives any defense to Beneficiary's recovery against Trustor of any deficiency after any foreclosure sale of the Trust Estate. Trustor expressly waives any defense or benefits that may be derived from any statute granting Trustor any defense to any such recovery by Beneficiary. In addition, Beneficiary and Trustee shall be entitled to recovery of all of their reasonable costs and expenditures (including without limitation any court imposed costs) in connection with such proceedings, including their reasonable attorneys' fees, appraisal fees and the other costs, fees and expenditures referred to in Section 4.18 above. This provision shall survive any foreclosure or sale of the Trust Estate, any portion thereof and/or the extinguishment of the lien hereof.

4.20 Waiver of Jury Trial. Beneficiary and Trustor each waive any right to have a jury participate in resolving any dispute whether sounding in contract, tort or otherwise arising out of, connected with, related to or incidental to the relationship established between them in connection with the Obligations. Any such disputes shall be resolved in a bench trial without a jury.

4.21 Exculpation of Beneficiary. The acceptance by Beneficiary of the assignment contained herein with all of the rights, powers, privileges and authority created hereby shall not, prior to entry upon and taking possession of the Trust Estate by Beneficiary, be deemed or construed to make Beneficiary a "mortgagee in possession"; nor thereafter or at any time or in any event obligate Beneficiary to appear in or defend any action or proceeding relating to the Space Leases, the Rents or the Trust Estate, or to take any action hereunder or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under any Space Lease or to assume any obligation or responsibility for any security deposits or other deposits except to the extent such deposits are actually received by Beneficiary, nor shall Beneficiary, prior to such entry and taking, be liable in any way for any injury or damage to person or property sustained by any Person in or about the Trust Estate.

ARTICLE FIVE

RIGHTS AND RESPONSIBILITIES OF TRUSTEE; OTHER PROVISIONS RELATING TO TRUSTEE

Notwithstanding anything to the contrary in this Deed of Trust, Trustor and Beneficiary agree as follows.

5.1 Exercise of Remedies by Trustee. To the extent that this Deed of Trust or applicable law, including all applicable Nevada Gaming Laws, authorizes or empowers, or does not require approval for, Beneficiary to exercise any remedies set forth in Article Four hereof or otherwise, or perform any acts in connection therewith, Trustee (but not to the exclusion of Beneficiary unless so required under

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the law of the State of Nevada) shall have the power to exercise any or all such remedies, and to perform any acts provided for in this Deed of Trust in connection therewith, all for the benefit of Beneficiary and on Beneficiary's behalf in accordance with applicable law of the State of Nevada. In connection therewith, Trustee: (a) shall not exercise, or waive the exercise of, any Beneficiary's remedies (other than any rights of Trustee to any indemnity or reimbursement), except at Beneficiary's request, and (b) shall exercise, or waive the exercise of, any or all of Beneficiary's remedies at Beneficiary's request, and in accordance with Beneficiary's directions as to the manner of such exercise or waiver. Trustee may, however, decline to follow Beneficiary's request or direction if Trustee shall be advised by counsel that the action or proceeding, or manner thereof, so directed may not lawfully be taken or waived.

5.2 Rights and Privileges of Trustee. To the extent that this Deed of Trust requires Trustor to indemnify Beneficiary or reimburse Beneficiary for any expenditures Beneficiary may incur, Trustee shall be entitled to the same indemnity and the same rights to reimbursement of expenses as Beneficiary, subject to such limitations and conditions as would apply in the case of Beneficiary. To the extent that this Deed of Trust negates or limits Beneficiary's liability as to any matter, Trustee shall be entitled to the same negation or limitation of liability. To the extent that Trustor, pursuant to this Deed of Trust, appoints Beneficiary as Trustor's attorney in fact for any purpose, Beneficiary or (when so instructed by Beneficiary) Trustee shall be entitled to act on Trustor's behalf without joinder or confirmation by the other.

5.3 Resignation or Replacement of Trustee. Trustee may resign by an instrument in writing addressed to Beneficiary, and Trustee may be removed at any time with or without cause (i.e., in Beneficiary's sole and absolute discretion) by an instrument in writing executed by Beneficiary. In case of the death, resignation, removal or disqualification of Trustee or if for any reason Beneficiary shall deem it desirable to appoint a substitute, successor or replacement Trustee to act instead of Trustee originally named (or in place of any substitute, successor or replacement Trustee), then Beneficiary shall have the right and is hereby authorized and empowered to appoint a successor, substitute or replacement Trustee, without any formality other than appointment and designation in writing executed by Beneficiary, which instrument shall be recorded if required by the law of the State of Nevada. The law of the State of Nevada (including, without limitation, the Nevada Gaming Laws) shall govern the qualifications of any Trustee. The authority conferred upon Trustee by this Deed of Trust shall automatically extend to any and all other successor, substitute and replacement Trustee(s) successively until the obligations secured hereunder have been paid in full or the Trust Estate has been sold hereunder or released in accordance with the provisions of the Guaranty and the other Loan Documents (including the Security Documents). Beneficiary's written appointment and designation of any Trustee shall be full evidence of Beneficiary's right and authority to make the same and of all facts therein recited. No confirmation, authorization, approval or other action by Trustor shall be required in connection with any resignation or other replacement of Trustee.

5.4 Authority of Beneficiary. If Beneficiary is a banking corporation, state banking corporation or a national banking association and the instrument of appointment of any successor or replacement Trustee is executed on Beneficiary's behalf by an officer of such corporation, state banking corporation or national banking association, then such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of Beneficiary.

5.5 Effect of Appointment of Successor Trustee. Upon the appointment and designation of any successor, substitute or replacement Trustee, and subject to compliance with applicable Nevada Gaming Laws and other applicable laws, Trustee's entire estate and title in the Trust Estate shall vest in the designated successor, substitute or replacement Trustee. Such successor, substitute or replacement Trustee shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon Trustee. All references herein to Trustee shall be deemed

to refer to Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder.

5.6 Confirmation of Transfer and Succession. Upon the written request of Beneficiary or of any successor, substitute or replacement Trustee, any former Trustee ceasing to act shall execute and deliver an instrument transferring to such successor, substitute or replacement Trustee all of the right, title, estate and interest in the Trust Estate of Trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon Trustee, and shall duly assign, transfer and deliver all properties and moneys held by said Trustee hereunder to said successor, substitute or replacement Trustee.

5.7 Exculpation. Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or otherwise be responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence, willful misconduct or knowing violation of law. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law). Trustee shall be under no liability for interest on any moneys received by it hereunder.

5.8 Endorsement and Execution of Documents. Upon Beneficiary's written request, Trustee shall, without liability or notice to Trustor, execute, consent to, or join in any instrument or agreement in connection with or necessary to effectuate the purposes of the Guaranty and the other Loan Documents (including the Security Documents). Trustor hereby irrevocably designates Trustee as its attorney in fact to execute, acknowledge and deliver, on Trustor's behalf and in Trustor's name, all instruments or agreements necessary to implement any provision(s) of this Deed of Trust or to further perfect the lien created by this Deed of Trust on the Trust Estate. This power of attorney shall be deemed to be coupled with an interest and shall survive any disability of Trustor.

5.9 Multiple Trustees. If Beneficiary appoints multiple trustees, then any Trustee, individually, may exercise all powers granted to Trustee under this instrument, without the need for action by any other Trustee(s).

5.10 Terms of Trustee's Acceptance. Trustee accepts the trust created by this Deed of Trust upon the following terms and conditions:

- (a) **Delegation.** Trustee may exercise any of its powers through appointment of attorney(s) in fact or agents.
- (b) **Counsel.** Trustee may select and employ legal counsel (including any law firm representing Beneficiary). Trustor shall reimburse all reasonable legal fees and expenses that Trustee may thereby incur.
- (c) **Security.** Trustee shall be under no obligation to take any action upon any Event of Default unless furnished security or indemnity, in form satisfactory to Trustee, against costs, expenses, and liabilities that Trustee may incur.
- (d) **Costs and Expenses.** Trustor shall reimburse Trustee, as part of the Obligations secured hereunder, for all reasonable disbursements and expenses (including reasonable legal fees and expenses) incurred by reason of and as provided for in this Deed of Trust, including any of the foregoing

(e) **Release.** Upon full and indefeasible payment and performance of the Obligations secured hereunder, Beneficiary shall request that Trustee release this Deed of Trust. Upon receipt of such request Trustee shall release this Deed of Trust to Trustor. Trustor shall pay all costs of recordation, if any.

ARTICLE SIX

MISCELLANEOUS PROVISIONS

6.1 **Heirs, Successors and Assigns Included in Parties.** Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included, and subject to the limitations set forth in Section 1.9, all covenants and agreements contained in this Deed of Trust, by or on behalf of Trustor or Beneficiary shall bind and inure to the benefit of its heirs, successors and assigns, whether so expressed or not.

6.2 **Addresses for Notices, Etc.** Any notice, report, demand or other instrument authorized or required to be given or furnished under this Deed of Trust to Trustor or Beneficiary shall be deemed given or furnished (i) when addressed to the party intended to receive the same, at the address of such party set forth below, and delivered by hand at such address or (ii) three (3) days after the same is deposited in the United States mail as first class certified mail, return receipt requested, postage paid, whether or not the same is actually received by such party:

Beneficiary: Deutsche Bank Trust Company Americas
31 West 52nd Street, 7th Floor
New York, New York 10019
Attn: Jeff Baevsky

With a copy to: Latham & Watkins
701 B. Street, Suite 2100
San Diego, California 92101
Attn: Sony Ben-Moshe, Esq.

Trustor: Wynn Resorts Holdings, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Legal Department

With a copy to: Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Attn: C. Kevin McGeehan

Trustee: Nevada Title Company
2500 North Buffalo, Suite 150
Las Vegas, Nevada 89128
Attn: Robbie Graham

6.3 **Change of Notice Address.** Any Person may change the address to which any such notice, report, demand or other instrument is to be delivered or mailed to that person, by furnishing written notice of such change to the other parties, but no such notice of change shall be effective unless and until received by such other parties.

6.4 **Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Deed of Trust are for convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

6.5 **Invalid Provisions to Affect No Others.** In the event that any of the covenants, agreements, terms or provisions contained herein or in the Notes, the Credit Agreement, the Guaranty or any other Loan Document (including the Security Documents) shall be invalid, illegal or unenforceable in any respect, the validity of the lien hereof and the remaining covenants, agreements, terms or provisions contained herein or in the Notes, the Credit Agreement, the Guaranty or any other Loan Document (including the Security Documents) shall be in no way affected, prejudiced or disturbed thereby. To the extent permitted by law, Trustor waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

6.6 **Changes and Priority Over Intervening Liens.** Neither this Deed of Trust nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Trustor and Beneficiary relating to this Deed of Trust shall be superior to the rights of the holder of any intervening lien or encumbrance.

6.7 **Estoppel Certificates.** Within ten (10) Business Days after Beneficiary's written request, Trustor shall from time to time execute a certificate, in recordable form (an "Estoppel Certificate"), stating, except to the extent it would be inaccurate to so state: (a) the current amount of the Obligations secured hereunder and all elements thereof, including principal, interest, and all other elements; (b) that Trustor has no defense, offset, claim, counterclaim, right of recoupment, deduction, or reduction against any of the Obligations secured hereunder; (c) that neither the Guaranty, this Deed of Trust nor any other Loan

Documents (including the Security Documents) to which it is a party have been amended, whether orally or in writing; (d) that Trustor has no claims against Beneficiary of any kind; (e) that any power of attorney granted to Beneficiary is in full force and effect; and (f) such other matters relating to this Deed of Trust, the Guaranty or any other Loan Document (including any Security Document) to which it is a party and the relationship of Trustor and Beneficiary as Beneficiary shall request. In addition, the Estoppel Certificate shall set forth the reasons why it would be inaccurate to make any of the foregoing assurances.

6.8 Waiver of Setoff and Counterclaim. All Obligations shall be payable without setoff, counterclaim or any deduction whatsoever. Trustor hereby waives the right to assert a counterclaim (other than a compulsory counterclaim) in any action or proceeding brought against it by Beneficiary and/or any Bank under the Loan Documents, or arising out of or in any way connected with this Deed of Trust or the other Loan Documents (including the Security Documents) or the Obligations.

6.9 Governing Law. The Credit Agreement, the Notes and the Guaranty provide that they are governed by, and construed and enforced in accordance with, the laws of the State of New York. This Deed of Trust shall also be construed under and governed by the laws of the State of New York; provided, however, that (i) the terms and provisions of this Deed of Trust pertaining to the priority, perfection, enforcement or realization by Beneficiary of its respective rights and remedies under this Deed of Trust with respect to the Trust Estate shall be governed and construed and enforced in accordance with the internal laws of the State of Nevada (the "State") without giving effect to the conflicts-of-law rules and principles of the State; (ii) Trustor agrees that to the extent deficiency judgments are available under the laws of the State after a foreclosure (judicial or nonjudicial) of the Trust Estate, or any portion thereof, or any other realization thereon by Beneficiary or any Bank under the Loan Documents, Beneficiary or such Bank, as the case may be, shall have the right to seek such a deficiency judgment against Trustor in the State; and (iii) Trustor agrees that if Beneficiary or any Bank under the Loan Documents obtains a deficiency judgment in another state against Trustor, then Beneficiary or such Bank, as the case may be, shall have the right to enforce such judgment in the State to the extent permitted under the laws of the State, as well as in other states.

6.10 Required Notices. Trustor shall notify Beneficiary promptly of the occurrence of any of the following and shall immediately provide Beneficiary a copy of the notice or documents referred to: (i)

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receipt of notice from any Governmental Authority relating to all or any material part of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (ii) receipt of any notice from any tenant leasing all or any material portion of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iii) receipt of notice from the holder of any Permitted Lien relating to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iv) the commencement of any proceedings or the entry of any judgment, decree or order materially affecting all or any portion of the Trust Estate or which involve the potential liability of Trustor or its Affiliates in an amount in excess of \$25,000,000 (other than for personal injury actions and related property damage suits which are covered by such insurance); or (v) commencement of any judicial or administrative proceedings or the entry of any judgment, decree or order by or against or otherwise affecting Trustor or any Affiliate of Trustor, a material portion of the Trust Estate, or a material portion of the Personal Property, or any other action by any creditor or lessor thereof as a result of any default under the terms of any lease.

6.11 Reconveyance. Upon written request of Trustor when the Obligations secured hereby have been satisfied in full, Beneficiary shall cause Trustee to reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

6.12 Attorneys' Fees. Without limiting any other provision contained herein, Trustor agrees to pay all costs of Beneficiary or Trustee incurred in connection with the enforcement of this Deed of Trust, the Guaranty or the other Loan Documents to which it is a party, including without limitation all reasonable attorneys' fees whether or not suit is commenced, and including, without limitation, fees incurred in connection with any probate, appellate, bankruptcy, deficiency or any other litigation proceedings, all of which sums shall be secured hereby.

6.13 Late Charges. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to collect any late charge thereon or interest thereon at the interest rate on the Notes or as otherwise specified in the Credit Agreement, if so provided, not then paid or its right either to require prompt payment when due of all other sums so secured or to declare default for failure to pay any amounts not so paid.

6.14 Cost of Accounting. Trustor shall pay to Beneficiary, for and on account of the preparation and rendition of any accounting, which Trustor may be entitled to require under any law or statute now or hereafter providing therefor, the reasonable costs thereof.

6.15 Right of Entry. Subject to compliance with applicable Nevada Gaming Laws, Beneficiary may at any reasonable time or times and on reasonable prior written notice to Trustor make or cause to be made entry upon and inspections of the Trust Estate or any part thereof in person or by agent.

6.16 Corrections. Trustor shall, upon request of Beneficiary or Trustee, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust (including, but not limited to, in the exhibits and schedules attached hereto) or in the execution or acknowledgement hereof, and shall execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Trustee to carry out more effectively the purposes of this Deed of Trust, to subject to the lien and security interest hereby created any of Trustor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.

6.17 Statute of Limitations. To the fullest extent allowed by the law, the right to plead, use or assert any statute of limitations as a plea or defense or bar of any kind, or for any purpose, to any debt, demand or obligation secured or to be secured hereby, or to any complaint or other pleading or

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proceeding filed, instituted or maintained for the purpose of enforcing this Deed of Trust or any rights hereunder, is hereby waived by Trustor.

6.18 Subrogation. Should the proceeds of any loan or advance made by Beneficiary or any Bank under the Credit Agreement, repayment of which is hereby secured, or any part thereof, or any amount paid out or advanced by Beneficiary or any Bank under the Credit Agreement, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior or superior lien or encumbrance upon the Trust Estate, or any part thereof, then, as additional security

hereunder, Trustee, on behalf of Beneficiary, shall be subrogated to any and all rights, superior titles, liens, and equities owned or claimed by any owner or holder of said outstanding liens, charges, and indebtedness, however remote, regardless of whether said liens, charges, and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

6.19 **Joint and Several Liability.** All obligations of Trustor hereunder, if more than one, are joint and several. Recourse for deficiency after sale hereunder may be had against the property of Trustor, without, however, creating a present or other lien or charge thereon.

6.20 **Homestead.** Trustor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Trust Estate as against the collection of the Obligations, or any part hereof.

6.21 **Context.** In this Deed of Trust, whenever the context so requires, the neuter includes the masculine and feminine, and the singular including the plural, and vice versa.

6.22 **Time.** Time is of the essence of each and every term, covenant and condition hereof. Unless otherwise specified herein, any reference to "days" in this Deed of Trust shall be deemed to mean "calendar days."

6.23 **Interpretation.** As used in this Deed of Trust unless the context clearly requires otherwise: The terms "herein" or "hereunder" and similar terms without reference to a particular section shall refer to the entire Deed of Trust and not just to the section in which such terms appear; the term "lien" shall also mean a security interest, and the term "security interest" shall also mean a lien.

6.24 **Effect of NRS 107.030.** To the extent not inconsistent herewith, the provisions of NRS 107.030 (1), (3), (5), (6), (8) and (9) are included herein by reference.

6.25 **Amendments.** This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought and only as permitted by the provisions of the Guaranty.

6.26 **No Conflicts.** In the event that any of the provisions contained here conflict with the WR Security Agreement, the provisions contained in the WR Security Agreement shall prevail.

ARTICLE SEVEN

POWER OF ATTORNEY

7.1 **Grant of Power.** Subject to compliance with applicable Nevada Gaming Laws, Trustor irrevocably appoints Beneficiary and any successor thereto as its attorney-in-fact, with full power and authority, including the power of substitution, exercisable only during the continuance of an Event of Default to act for Trustor in its name, place and stead as hereinafter provided:

7.1.1 **Possession and Completion.** To take possession of the Land and the Project, remove all employees, contractors and agents of Trustor therefrom, complete or attempt to complete the work of construction, and market, sell or lease the Land and the Project.

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7.1.2 **Plans.** To make such additions, changes and corrections in the current Plans and Specifications as may be necessary or desirable, in Beneficiary's reasonable discretion, or as it deems proper to complete the Project.

7.1.3 **Employment of Others.** To employ such contractors, subcontractors, suppliers, architects, inspectors, consultants, property managers and other agents as Beneficiary, in its discretion, deems proper for the completion of the Project, for the protection or clearance of title to the Land or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.4 **Security Guards.** To employ watchmen to protect the Land and the Project from injury.

7.1.5 **Compromise Claims.** To pay, settle or compromise all bills and claims then existing or thereafter arising against Trustor, which Beneficiary, in its discretion, deems proper for the protection or clearance of title to the Land or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.6 **Legal Proceedings.** To prosecute and defend all actions and proceedings in connection with the Land or the Project.

7.2 **Other Acts.** To execute, acknowledge and deliver all other instruments and documents in the name of Trustor that are necessary or desirable, to exercise Trustor's rights under all contracts concerning the Land or the Project, including, without limitation, under any Space Leases, and to do all other acts with respect to the Land or the Project that Trustor might do on its own behalf, as Beneficiary, in its reasonable discretion, deems proper.

ARTICLE EIGHT

GUARANTOR PROVISIONS

8.1 **Absolute and Unconditional Obligations.** All rights of Administrative Agent and all obligations of Trustor hereunder shall be absolute and unconditional irrespective of (i) any lack of validity, legality or enforceability of the Credit Agreement, any Note, or any other Loan Document, (ii) the failure of any Bank or any holder of any of the Obligations to assert any claim or demand or to enforce any right or remedy against Borrower, Trustor or any other Person (including any other guarantor of the Obligations) under the provisions of the Credit Agreement, any Note, any other Loan Document or otherwise or to exercise any right or remedy against any other guarantor of, or collateral securing, any of the Obligations, (iii) any change in the time, manner or place of payment of, or in any other term of, all of the Obligations, or any other extension or renewal of any Obligation, (iv) any reduction, limitation, impairment or termination of any of the Obligations for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to, and Trustor hereby waives any right to or claim of, any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, nongenuineness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, any Obligation, (v) any amendment to, rescission, waiver, or other modification of, or any consent to departure from, any of the terms of the Credit Agreement, any Note or any other Loan Document, (vi) any sale, exchange,

release or surrender of, realization upon or other manner or order of dealing with any property by whomsoever pledged or mortgaged to secure or howsoever securing the Obligations or any liabilities or obligations (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof and/or any offset there against, (vii) the application of any sums by whomsoever paid or howsoever realized to any obligations and liabilities of Borrower or any other Person to the Banks under the Loan Documents in the manner provided therein regardless of what obligations and liabilities remain unpaid, (viii) any action or failure to act in any manner referred to in this Deed of Trust which may deprive Trustor of its

right to subrogation against Borrower or any other Person to recover full indemnity for any payments or performances made pursuant to this Deed of Trust or of its right of contribution against any other party and (ix) any other circumstance which might otherwise constitute a defense available to, or a legal or equitable discharge of, Borrower, any other Person, Trustor, any surety or any guarantor.

8.2 **Waiver.** Trustor hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including (i) any right to require Administrative Agent or any other Bank to proceed against Borrower or any other Person or to proceed against or exhaust any security held by Administrative Agent or any other Bank at any time or to pursue any other remedy in Administrative Agent's or any other Bank's power before proceeding against Trustor, (ii) any defense that may arise by reason of the incapacity, lack of power or authority, death, dissolution, merger, termination or disability of Borrower or any other Person or the failure of Administrative Agent or any other Bank to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of Borrower or any other Person, (iii) demand, presentment, protest and notice of any kind except as provided herein, including notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Borrower, Administrative Agent, any other Bank, any endorser or creditor of Borrower, Trustor or on the part of any other Person under this or any other instrument in connection with any obligation or evidence of indebtedness held by Administrative Agent or any other Bank as collateral or in connection with any Obligation, (iv) any defense based upon an election of remedies by Administrative Agent or any other Bank, including an election to proceed by non-judicial rather than judicial foreclosure, which destroys or otherwise impairs the subrogation rights of Trustor, the right of Trustor to proceed against Borrower or any other Person for reimbursement, or both, (v) any defense based on any offset against any amounts which may be owed by any Person to Trustor for any reason whatsoever, (vi) any defense based on any act, failure to act, delay or omission whatsoever on the part of Borrower or any other Person of the failure by Borrower or any other Person to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the Loan Documents, (vii) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal, provided, that, upon payment or performance in full of the Obligations, this Deed of Trust shall no longer be of any force or effect, (viii) any defense, setoff or counterclaim which may at any time be available to or asserted by Borrower or any other Person against Administrative Agent, any other Bank or any other Person under the Loan Documents, (ix) any duty on the part of Administrative Agent or any other Bank to disclose to Trustor any facts Administrative Agent or any other Bank may now or hereafter know about Borrower or any other Person, regardless of whether Administrative Agent or such Bank have reason to believe that any such facts materially increase the risk beyond that which Trustor intends to assume, or have reason to believe that such facts are unknown to Trustor, or have a reasonable opportunity to communicate such facts to Trustor, since Trustor acknowledges that Trustor is fully responsible for being and keeping informed of the financial condition of Borrower and any other Person liable for the Obligations and of all circumstances bearing on the risk of non-payment or non-performance of any obligations and liabilities hereby guaranteed, (x) the fact that Trustor may at any time in the future dispose of all or part of its direct or indirect interest in Borrower or any other Person or otherwise cease to be an Affiliate of Borrower or any other Person, as the case may be, (xi) any defense based on any change in the time, manner or place of any payment or performance under, or in any other term of, the Loan Documents or any other amendment, renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of the Loan Documents, (xii) any defense arising because of Administrative Agent's or any other Bank's election, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code, and (xiii) any defense based upon any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code. To the fullest extent permitted by NRS 40.485 (1) and (2), the provisions of NRS 40.430 are waived.

8.3 **Net Worth Limitation.** If, notwithstanding the representation and warranty set forth in Section 1.2(b) hereof or anything to the contrary herein, enforcement of the liability of Trustor under this Deed of Trust for the full amount of the Obligations would be an unlawful or voidable transfer under any applicable fraudulent conveyance or fraudulent transfer law or any comparable law, then the liability of Trustor hereunder shall be reduced to the highest amount for which such liability may then be enforced without giving rise to an unlawful or voidable transfer under any such law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing as of the day and year first above written.

TRUSTOR:

WYNN RESORTS HOLDINGS, LLC,
a Nevada limited liability company,

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: _____ /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn
Title: *Managing Member*

SCHEDULE A
DESCRIPTION OF LAND

QuickLinks

[DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING](#)
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Recording requested by and recorded counterparts should be returned to:

Sony Ben-Moshe, Esq.
Latham & Watkins
701 B Street, Suite 2100
San Diego, California 92101

Mail Property Tax Statements to:

Wynn Las Vegas, LLC
Legal Department
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109

**AMENDED AND RESTATED DEED OF TRUST, LEASEHOLD DEED OF TRUST,
ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

MADE BY

**WYNN LAS VEGAS, LLC,
a Nevada limited liability company,
as Trustor,**

to

**Nevada Title Company,
a Nevada corporation,
as Trustee,
for the benefit of**

**DEUTSCHE BANK TRUST COMPANY AMERICAS,
in its capacity as Administrative Agent for the benefit of the Banks,
as Beneficiary**

THIS INSTRUMENT IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS OF CLARK COUNTY, NEVADA UNDER THE NAMES OF WYNN LAS VEGAS, LLC AS "DEBTOR" AND DEUTSCHE BANK TRUST COMPANY AMERICAS AS "SECURED PARTY." TRUSTOR'S ORGANIZATIONAL NUMBER IS NEVADA FILE NUMBER LLC3904-2001.

THIS INSTRUMENT IS A "CONSTRUCTION MORTGAGE" AS THAT TERM IS DEFINED IN SECTION 104.9334(8) OF THE NEVADA REVISED STATUTES AND SECURES AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT UPON LAND.

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**AMENDED AND RESTATED DEED OF TRUST, LEASEHOLD DEED OF TRUST,
ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS AMENDED AND RESTATED DEED OF TRUST, LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (hereinafter called "**Deed of Trust**") is made and effective as of October 30, 2002, by WYNN LAS VEGAS, LLC, a Nevada limited liability company (together with all successors and assigns of the Trust Estate (as hereinafter defined), "**Trustor**"), whose address is 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109, to Nevada Title Company, a Nevada corporation, whose address is 2500 North Buffalo, Suite 150, Las Vegas, Nevada 89128, as Trustee ("**Trustee**"), for the benefit of DEUTSCHE BANK TRUST COMPANY AMERICAS ("**Beneficiary**"), in its capacity as Administrative Agent under (i) that certain Amended and Restated Commitment Letter (as the same may be amended or modified from time to time, the "**Commitment Letter**") dated as of June 14, 2002, among Trustor, Beneficiary, Deutsche Bank Securities Inc., Bank of America, N.A., Banc of America Securities LLC, Bear Stearns Corporate Lending, Inc., Bear, Stearns & Co. Inc., Wynn Resorts Holdings, LLC, a Nevada limited liability company (formerly known as Wynn Resorts, LLC), and Valvino Lamore, LLC, a Nevada limited liability company, and (ii) that certain Credit Agreement (as the same may be amended or modified from time to time, the "**Credit Agreement**") dated as of even date herewith (and entered into in connection with and in furtherance of the Commitment Letter) among Trustor, Beneficiary and the other parties signatory thereto (such other parties, together with Beneficiary, the "**Banks**") pursuant to which the Banks have agreed to lend to Trustor an aggregate principal amount of \$1,000,000,000.

THIS INSTRUMENT SECURES FUTURE ADVANCES. THE MAXIMUM AMOUNT OF PRINCIPAL TO BE SECURED HEREBY IS \$1,000,000,000. THIS INSTRUMENT IS TO BE GOVERNED BY THE PROVISIONS OF NRS 106.300 THROUGH NRS 106.400 INCLUSIVE.

THE OBLIGATIONS SECURED HEREBY INCLUDE REVOLVING CREDIT OBLIGATIONS WHICH PERMIT BORROWING, REPAYMENT AND REBORROWING. INTEREST ON OBLIGATIONS SECURED HEREBY ACCRUES AT A RATE WHICH MAY FLUCTUATE FROM TIME TO TIME.

DEFINITIONS—As used in this Deed of Trust, the following terms have the meanings hereinafter set forth:

"**Accounts Receivable**" shall have the meaning set forth in Section 9-102 (NRS 104.9102) of the UCC for the term "account."

"**Appurtenant Rights**" means all and singular tenements, hereditaments, rights, reversions, remainders, development rights, privileges, benefits, easements (in gross or appurtenant), rights-of-way, licenses, gores or strips of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, and all appurtenances whatsoever and claims or demands of Trustor at law or in equity in any way belonging, benefiting, relating or appertaining to the Land, the Project, the Trustor, the Leased Premises, the airspace over the Land, the Improvements or any of the Trust Estate encumbered by this Deed of Trust, or which hereinafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Trustor, including, without limitation, the Appurtenant Rights more specifically described in *Schedule F* attached hereto and incorporated herein.

"**Bankruptcy**" means, with respect to any Person, that (i) a court having jurisdiction in the Trust Estate shall have entered a decree or order for relief in respect of such Person in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order has not been stayed; or any other similar relief shall have been granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against such Person, under the Bankruptcy Code or under any other applicable bankruptcy, insolvency

or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the Trust Estate for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over such Person, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of such Person, for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of such Person, and any such event described in this clause (ii) shall continue for 60 days unless dismissed, bonded or discharged; or (iii) such Person shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or such Person shall make any assignment for the benefit of creditors, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable or if the fair market value of its assets does not exceed its aggregate liabilities; or (iv) such Person shall, or the Board of Directors of such Person (or any committee thereof) shall, adopt any resolution or otherwise authorize any action to approve any of the actions referred to in clause (iii) above.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute thereto.

"Business Day" means any day that is not a Saturday, a Sunday or a day on which banking institutions in the State of Nevada or the City of New York are not required to be open.

"Deed of Trust" means this Deed of Trust as it may be amended, increased or modified from time to time.

"Disbursement Agreement" means that certain Master Disbursement Agreement dated as of even date herewith, among Trustor, Beneficiary, Wells Fargo Bank, National Association, as the trustee for holders of mortgage notes issued in connection with the financing of the Project, Deutsche Bank Trust Company Americas, as disbursement agent, and the other parties signatory thereto, as the same may hereafter be amended or modified in accordance with its terms and the terms of the Credit Agreement.

"Driving Range Lease" means that certain Driving Range Lease dated as of October 21, 2002 between Valvino Lamore, LLC, a Nevada limited liability company as Landlord, and Trustor, as Tenant.

"Driving Range Leased Premises" means the real property and fixtures situated in the County of Clark, State of Nevada described in the Driving Range Lease and more specifically described in *Schedule B* attached hereto and incorporated herein.

"Employee Parking Lot Lease" means that certain Parking Facility Lease dated as of October 21, 2002 between Valvino Lamore, LLC, a Nevada limited liability company as Landlord, and Trustor, as Tenant.

"Employee Parking Lot Leased Premises" means the real property and fixtures situated in the County of Clark, State of Nevada described in the Employee Parking Lot Lease and more specifically described in *Schedule C* attached hereto and incorporated herein.

"Event of Default" has the meaning set forth in *Section 3.1* hereof.

"FF&E" means all furniture, fixtures, equipment, appurtenances and personal property now or in the future contained in, used in connection with, attached to, or otherwise useful or convenient to the use, operation, or occupancy of, or placed on, but unattached to, any part of the Site or Improvements whether or not the same constitutes real property or fixtures in the State of Nevada, including all removable window and floor coverings, all furniture and furnishings, heating, lighting, plumbing,

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ventilating, air conditioning, refrigerating, incinerating and elevator and escalator plants, cooking facilities, vacuum cleaning systems, public address and communications systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings, fixtures, and building materials, all gaming and financial equipment, computer equipment, calculators, adding machines, gaming tables, video game and slot machines, and any other electronic equipment of every nature used or located on any part of the Site or Improvements, together with all Venetian blinds, shades, draperies, drapery and curtain rods, brackets, bulbs, cleaning apparatus, mirrors, lamps, ornaments, cooling apparatus and equipment, ranges and ovens, garbage disposals, dishwashers, mantels, and any and all such property which is at any time installed in, affixed to or placed upon the Site or Improvements.

"FF&E Financing Agreement" means any financing agreement entered into by Trustor (i) the proceeds of which are used by Trustor for the acquisition or lease of FF&E, (ii) pursuant to which Trustor grants to the lender or lessor thereunder a security interest in the FF&E so acquired or leased and (iii) which is permitted by the Credit Agreement.

"Golf Course Lease" means that certain Golf Course Lease dated as of October 21, 2002 between on the one hand, Wynn Resorts Holdings, LLC, a Nevada limited liability company, and Palo, LLC, a Delaware limited liability company, as Landlord, and on the other hand, Trustor, as Tenant.

"Golf Course Leased Premises" means the real property and fixtures situated in the County of Clark, State of Nevada described in the Golf Course Lease and more specifically described in *Schedule D* attached hereto and incorporated herein.

"Governmental Authority" means any agency, authority, board, bureau, commission, department, office, public entity, or instrumentality of any nature whatsoever of the United States federal or foreign government, any state, province or any city or other political subdivision or otherwise, whether now or hereafter in existence, or any officer or official thereof, including, without limitation, any Nevada Gaming Authority.

"Imposition" means any taxes, assessments, water rates, sewer rates, maintenance charges, other governmental impositions and other charges now or hereafter levied or assessed or imposed against the Trust Estate or any part thereof.

"Improvements" means (1) all the buildings, structures, facilities and improvements of every nature whatsoever now or hereafter situated on the Site or any real property encumbered hereby, and (2) all fixtures, machinery, appliances, goods, building or other materials, equipment, including without limitation all gaming equipment and devices, and all machinery, equipment, engines, appliances and fixtures for generating or distributing air, water, heat, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse or garbage; all wall-beds, wall-

safes, built-in furniture and installations, shelving, lockers, partitions, doorstops, vaults, motors, elevators, dumb-waiters, awnings, window shades, Venetian blinds, light fixtures, fire hoses and brackets and boxes for the same, fire sprinklers, alarm, surveillance and security systems, computers, drapes, drapery rods and brackets, mirrors, mantels, screens, linoleum, carpets and carpeting, plumbing, bathtubs, sinks, basins, pipes, faucets, water closets, laundry equipment, washers, dryers, ice-boxes and heating units; all kitchen and restaurant equipment, including but not limited to silverware, dishes, menus, cooking utensils, stoves, refrigerators, ovens, ranges, dishwashers, disposals, water heaters, incinerators, furniture, fixtures and furnishings, communication systems, and equipment; all cocktail lounge supplies, including but not limited to bars, glassware, bottles and tables used in connection with the Site; all chaise lounges, hot tubs, swimming pool heaters and equipment and all other recreational equipment (computerized and otherwise), beauty and barber equipment, and maintenance supplies used in connection with the Site; all amusement rides and attractions attached to the Site, all specifically designed installations and furnishings, and all furniture, furnishings and personal property of every nature whatsoever now or hereafter owned or leased by

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Trustor or in which Trustor has any rights or interest and located in or on, or attached to, or used or intended to be used or which are now or may hereafter be appropriated for use on or in connection with the operation of the Site or any real or personal property encumbered hereby or any other Improvements, or in connection with any construction being conducted or which may be conducted thereon, and all extensions, additions, accessions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing, and all of the right, title and interest of Trustor in and to any such property, which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and improvements and a part of the real property hereby encumbered.

"Indemnity Agreement" means that certain Indemnity Agreement dated as of even date herewith by Trustor for the benefit of Beneficiary and certain other indemnified parties named therein.

"Insolvent" means with respect to any person or entity, that such person or entity shall be deemed to be insolvent if it shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable and/or if the fair market value of its assets does not exceed its aggregate liabilities.

"Intangible Collateral" means (a) the rights to use all names and all derivations thereof now or hereafter used by Trustor in connection with the Site or Improvements, including, without limitation, the name "Le Reve", including any variations thereon, together with the goodwill associated therewith, and all names, logos, and designs used by Trustor, or in connection with the Site or in which Trustor has rights, with the exclusive right to use such names, logos and designs wherever they are now or hereafter used in connection with the Project (or in connection with the marketing of the Project), and any and all other trade names, trademarks or service marks, whether or not registered, now or hereafter used in the operation of the Project, including, without limitation, any interest as a lessee, licensee or franchisee, and, in each case, together with the goodwill associated therewith; (b) subject to the absolute assignment contained herein, the Rents; (c) any and all books, records, customer lists, concession agreements, supply or service contracts, licenses, permits, governmental approvals (to the extent such licenses, permits and approvals may be pledged under applicable law), signs, goodwill, casino and hotel credit and charge records, supplier lists, checking accounts, safe deposit boxes (excluding the contents of such deposit boxes owned by persons other than Trustor and its subsidiaries), cash, instruments, chattel papers, including inter-company notes and pledges, documents, unearned premiums, deposits, refunds, including but not limited to income tax refunds, prepaid expenses, rebates, tax and insurance escrow and impound accounts, if any, actions and rights in action, and all other claims, including without limitation condemnation awards and insurance proceeds, and all other contract rights and general intangibles resulting from or used in connection with the operation and occupancy of the Trust Estate and the Improvements and in which Trustor now or hereafter has rights; and (d) general intangibles, vacation license resort agreements or other time share license or right to use agreements, including without limitation all rents, issues, profits, income and maintenance fees resulting therefrom, whether any of the foregoing is now owned or hereafter acquired.

"Land" means the real property situated in the County of Clark, State of Nevada, more specifically described in *Schedule A* attached hereto and incorporated herein by reference, including any after acquired title thereto.

"Leased Premises" means, as the context may require, the Driving Range Leased Premises, the Employee Parking Lot Leased Premises, the Golf Course Leased Premises and/or the Office Building Leased Premises.

"Legal Requirements" means all applicable restrictive covenants, applicable zoning and subdivision ordinances and building codes, all applicable health and Environmental Laws and regulations, all applicable gaming laws and regulations, and all other applicable laws, ordinances, rules, regulations, judicial decisions, administrative orders, and other requirements of any Governmental Authority having jurisdiction over Trustor, the Trust Estate and/or any Affiliate of Trustor, in effect either at the time of

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execution of this Deed of Trust or at any time during the term hereof, including, without limitation, all Environmental Laws and Nevada Gaming Laws.

"Nevada Gaming License" means any gaming license necessary for the ownership, construction, maintenance, financing or operation of the Project, whether issued and/or required by Nevada Gaming Authorities, Nevada Gaming Laws or otherwise.

"Notes" means, collectively, those certain promissory note(s) to be issued pursuant to the Credit Agreement, as the same may be amended or replaced from time to time in accordance with its terms.

"NRS" means the Nevada Revised Statutes as in effect from time to time.

"Obligations" means the payment and performance of each covenant and agreement of Trustor contained in this Deed of Trust, the Commitment Letter, the Credit Agreement, the Notes, the Indemnity Agreement and the other Loan Documents (including the Security Documents).

"Office Building Lease" means that certain Office Building Lease dated as of October 21, 2002 between Valvino Lamore, LLC, a Nevada limited liability company as Landlord, and Trustor, as Tenant.

"Office Building Leased Premises" means the real property and fixtures situated in the County of Clark, State of Nevada described in the Office Building Lease and more specifically described in *Schedule E* attached hereto and incorporated herein.

"Permitted Dispositions" means (a) the sale, transfer, lease or other disposition of assets in the Trust Estate, in the ordinary course of business, of inventory held in the ordinary course of business (b) the dispositions set forth in *Section 1.10* hereof and (c) other sales, transfers, leases or other dispositions of assets in the Trust Estate, including entering into Space Leases; *provided that*, in each case, all applicable provisions of the Loan Documents are complied with.

"Personal Property" has the meaning set forth in *Section 1.12* hereof.

"Proceeds" has the meaning assigned to it under the UCC and, in any event, shall include but not be limited to (i) any and all proceeds of any insurance (including without limitation property casualty and title insurance), indemnity, warranty or guaranty payable from time to time with respect to any of the Trust Estate; (ii) any and all proceeds in the form of accounts, security deposits, tax escrows (if any), down payments (to the extent the same may be pledged under applicable law), collections, contract rights, documents, instruments, chattel paper, liens and security instruments, guarantees or general intangibles relating in whole or in part to the Project and all rights and remedies of whatever kind or nature Trustor may hold or acquire for the purpose of securing or enforcing any obligation due Trustor thereunder; (iii) any and all payments in any form whatsoever made or due and payable from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Trust Estate by any Governmental Authority; (iv) subject to the absolute assignment contained herein, the Rents or other benefits arising out of, in connection with or pursuant to any Space Lease of the Trust Estate; and (v) any and all other amounts from time to time paid or payable in connection with any of the Trust Estate; *provided, however*, that the Trustor is not authorized to dispose of any of the Trust Estate unless such disposition is a Permitted Disposition.

"Project" means the resort-hotel-casino-mall complex proposed to be constructed in Clark County, Nevada as described in the Plans and Specifications, as such Plans and Specifications may be amended pursuant to the Disbursement Agreement.

"Rents" means all rents, room revenues, income, receipts, issues, profits, revenues and maintenance fees, room, food and beverage revenues, license and concession fees, income, proceeds and other benefits to which Trustor may now or hereafter be entitled from the Site, the Improvements, the Space Leases or any property encumbered hereby or any business or other activity conducted by Trustor at the Site or the Improvements.

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"Site" means the Land, the Appurtenant Rights and, if the context so requires, the Leased Premises.

"Space Leases" means any and all leases, subleases, lettings, licenses, concessions, operating agreements, management agreements, and all other agreements affecting the Trust Estate that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, that give any person the right to conduct its business on, or otherwise use, operate or occupy, all or any portion of the Site or Improvements and any leases, agreements or arrangements permitting anyone to enter upon or use any of the Trust Estate to extract or remove natural resources of any kind, together with all amendments, extensions, and renewals of the foregoing entered into in compliance with this Deed of Trust, together with all rental, occupancy, service, maintenance or any other similar agreements pertaining to use or occupation of, or the rendering of services at the Site, the Improvements or any part thereof.

"Space Lessee(s)" means any and all tenants, licensees, or other grantees of the Space Leases and any and all guarantors, sureties, endorsers or others having primary or secondary liability with respect to such Space Leases.

"Subject Leases" means the Golf Course Lease, the Office Building Lease, the Driving Range Lease and the Employee Parking Lot Lease.

"Tangible Collateral" means all personal property, goods, equipment, supplies, building and other materials of every nature whatsoever and all other tangible personal property constituting a part or portion of the Project and/or used in the operation of the hotel, casino, restaurants, stores, parking facilities, observation tower and all other commercial operations on the Site or Improvements, including but not limited to communication systems, visual and electronic surveillance systems and transportation systems and not constituting a part of the real property subject to the real property lien of this Deed of Trust and including all property and materials stored therein in which Trustor has an interest and all tools, utensils, food and beverage, liquor, uniforms, linens, housekeeping and maintenance supplies, vehicles, fuel, advertising and promotional material, blueprints, surveys, plans and other documents relating to the Site or Improvements, and all construction materials and all furnishings, fixtures and equipment, including, but not limited to, all FF&E and all equipment and devices which are or are to be installed and used in connection with the operation of the Project, those items of furniture, fixtures and equipment which are to be purchased or leased by Trustor, machinery and any other item of personal property in which Trustor now or hereafter own or acquire an interest or right, and which are used or useful in the construction, operation, use and occupancy of the Project and all present and future right and interest of Trustor in and to any casino operator's agreement, license agreement or sublease agreement used in connection with the Site or the Improvements.

"Title Insurer" means Chicago Title Insurance Company.

"Trust Estate" means all of the property described in Granting Clauses (A) through (O) below, inclusive, and each item of property therein described, *provided, however*, that such term shall not include the property described in Granting Clause (Q) below.

"UCC" means the Uniform Commercial Code in effect in the State of Nevada from time to time, NRS chapters 104 and 104A.

The following terms shall have the meaning assigned to such terms in the Disbursement Agreement:

**Disbursement Agent
Plans and Specifications**

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The following terms shall have the meaning assigned to such terms in the Credit Agreement:

**Affiliate
Closing Date
Environmental Laws
Financing Agreements**

Guarantee and Collateral Agreement
Lien
Loan Documents
Nevada Gaming Authorities
Nevada Gaming Laws
Permitted Encumbrance
Permitted Liens
Person
Security Documents

In addition, any capitalized terms used in this Deed of Trust which are not otherwise defined herein shall have the meaning ascribed to such terms in the Disbursement Agreement and, if not defined therein, the meaning ascribed to such terms in the Credit Agreement; *provided*, that upon termination of the Disbursement Agreement, any defined terms used herein having meanings given to such terms in the Disbursement Agreement shall continue to have the meanings given to such terms in the Disbursement Agreement immediately prior to such termination.

WITNESSETH:

IN CONSIDERATION OF TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION; THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, AND FOR THE PURPOSE OF SECURING in favor of Beneficiary (1) the due and punctual payment of the indebtedness evidenced by the Notes and the other Loan Documents; (2) the performance of each covenant and agreement of Trustor contained in the Commitment Letter and the Credit Agreement, herein, in the other Loan Documents (including the Security Documents) and the Disbursement Agreement; (3) the payment of such additional loans or advances as hereafter may be made to Trustor (individually or jointly and severally with any other Person) or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; *provided, however*, that any and all future advances by Beneficiary to Trustor made for the improvement, protection or preservation of the Trust Estate, together with interest at the rate applicable to overdue principal set forth in the Credit Agreement, shall be automatically secured hereby unless such a note or instrument evidencing such advances specifically recites that it is not intended to be secured hereby and (4) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof or to protect the security hereof (including Protective Advances as such term is defined in *Section 4.2* hereof), together with interest thereon as herein provided (without limiting the generality of the protections afforded by NRS Chapter 106, funds disbursed that, in the reasonable exercise of Beneficiary's judgment, are needed to complete Improvements to the Land or to protect Beneficiary's security interest in the Trust Estate are to be deemed obligatory advances hereunder and will be added to the total indebtedness secured by this Deed of Trust and such indebtedness shall be increased accordingly), Trustor, in consideration of the premises, and for the purposes aforesaid, does hereby ASSIGN, BARGAIN, CONVEY, PLEDGE, RELEASE, HYPOTHECATE, WARRANT, AND TRANSFER WITH POWER OF SALE UNTO TRUSTEE IN TRUST FOR THE BENEFIT OF BENEFICIARY AND THE BANKS each of the following:

(A) The Land and the Subject Leases;

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(B) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Improvements;

(C) TOGETHER WITH all Appurtenant Rights;

(D) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Tangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(E) TOGETHER WITH the Intangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(F) TOGETHER WITH (i) all the estate, right, title and interest of Trustor of, in and to all judgments and decrees, insurance proceeds, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of any of the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof, or to any Appurtenant Rights thereto, and Beneficiary is (subject to the terms hereof) hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittance therefor, and (subject to the terms hereof) to apply the same toward the payment of the indebtedness and other sums secured hereby, notwithstanding the fact that the amount owing thereon may not then be due and payable; (ii) all proceeds of any sales or other dispositions of the property or rights described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof whether voluntary or involuntary, provided, however, that the foregoing shall not be deemed to permit such sales, transfers, or other dispositions except as specifically permitted herein; and (iii) whether arising from any voluntary or involuntary disposition of the property described in Granting Clauses (A), (B), (C), (D) and (E), all Proceeds, products, replacements, additions, substitutions, renewals and accessions, remainders, reversions and after-acquired interest in, of and to such property;

(G) TOGETHER WITH the absolute assignment of any Space Leases or any part thereof that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, together with all of the following (including all "Cash Collateral" within the meaning of the Bankruptcy Law) arising from the Space Leases: (a) Rents (subject, however, to the aforesaid absolute assignment to Trustee for the benefit of Beneficiary and the conditional permission hereinbelow given to Trustor to collect the Rents), (b) all guaranties, letters of credit, security deposits, collateral, cash deposits, and other credit enhancement documents, arrangements and other measures with respect to the Space Leases, (c) all of Trustor's right, title, and interest under the Space Leases, including the following: (i) the right to receive and collect the Rents from the lessee, sublessee or licensee, or their successor(s), under any Space Lease(s) and (ii) the right to enforce against any tenants thereunder and otherwise any and all remedies under the Space Leases, including Trustor's right to evict from possession any tenant thereunder or to retain, apply, use, draw upon, pursue, enforce or realize upon any guaranty of any Space Lease; to terminate, modify, or amend the Space Leases; to obtain possession of, use, or occupy, any of the real or personal property subject to the Space Leases; and to enforce or exercise, whether at law or in equity or by any other means, all provisions of the Space Leases and all obligations of the tenants thereunder based upon (A) any breach by such tenant under the applicable Space Lease (including any claim that Trustor may have by reason of a termination, rejection, or disaffirmance of such Space Lease pursuant to any Bankruptcy Law) and (B) the use and occupancy of the premises demised, whether or not pursuant to the applicable Space Lease (including any claim for use and occupancy arising under landlord-tenant law of the State of Nevada or any Bankruptcy Law). Permission is hereby given to Trustor, so long as no Event of Default has occurred and is continuing hereunder, to collect and

use the Rents, as they become due and payable, but not more than one (1) month in advance thereof. Upon the occurrence of an Event of Default, the permission hereby given to Trustor to collect the Rents shall automatically terminate, but such permission shall be reinstated upon a cure or waiver of such Event of Default. Beneficiary shall have the right, at any time and from time to time, to notify any Space Lessee of the rights of Beneficiary as provided by this section;

Notwithstanding anything to the contrary contained herein, the foregoing provisions of this Paragraph (G) shall not constitute an assignment for purposes of security but shall constitute an absolute and present assignment of the Rents to Beneficiary, subject, however, to the conditional license given to Trustor to collect and use the Rents as hereinabove provided; and the existence or exercise of such right of Trustor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Trustor;

(H) TOGETHER WITH all of Trustor's right, title and interest in and to any and all Plans and Specifications and all maps, plans, specifications, surveys, studies, tests, reports, data and drawings relating to the development of the Site or the Project and the construction of the Improvements, including, without limitation, all marketing plans, feasibility studies, soils tests, design contracts and all contracts and agreements of Trustor relating thereto including, without limitation, architectural, structural, mechanical and engineering plans and specifications, studies, data and drawings prepared for or relating to the development of the Site or the Project or the construction, renovation or restoration of any of the Improvements or the extraction of minerals, sand, gravel or other valuable substances from the Site and purchase contracts or any agreement granting Trustor a right to acquire any land situated within Clark County, Nevada;

(I) TOGETHER WITH, to the extent permitted by applicable law, all of Trustor's right, title, and interest in and to any and all licenses, permits, variances, special permits, franchises, certificates, rulings, certifications, validations, exemptions, filings, registrations, authorizations, consents, approvals, waivers, orders, rights and agreements (including, without limitation, options, option rights, contract rights now or hereafter obtained by Trustor from any Governmental Authority having or claiming jurisdiction over the Land, the FF&E, the Project, or any other element of the Trust Estate or providing access thereto, or the operation of any business on, at, or from the Site including, without limitation, any liquor or Nevada Gaming Licenses (except for any registrations, licenses, findings of suitability or approvals issued by the Nevada Gaming Authorities or any other liquor or gaming licenses which are non-assignable); *provided*, that upon an Event of Default hereunder or under the Credit Agreement, if Beneficiary is not qualified under the Nevada Gaming Laws to hold such Nevada Gaming Licenses, then Beneficiary may designate an appropriately qualified third party to which an assignment of such Nevada Gaming Licenses can be made in compliance with the Nevada Gaming Laws;

(J) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to all water stock, water permits and other water rights relating to the Site;

(K) TOGETHER WITH all oil and gas and other mineral rights, if any, in or pertaining to the Site and all royalty, leasehold and other rights of Trustor pertaining thereto;

(L) TOGETHER WITH any and all monies and other property, real or personal, which may from time to time be subjected to the lien hereof by Trustor or by anyone on its behalf or with its consent, or which may come into the possession or be subject to the control of Trustee or Beneficiary pursuant to this Deed of Trust, the Commitment Letter, the Credit Agreement or any other Loan Document (including any Security Document), including, without limitation, any Protective Advances (as defined in *Section 4.2* hereof) under this Deed of Trust; and all of Trustor's right, title, and interest in and to all extensions, improvements, betterments, renewals, substitutes for and replacements of, and all additions, accessions, and appurtenances to, any of the foregoing that Trustor may subsequently acquire or obtain by any means, or construct, assemble, or

otherwise place on any of the Trust Estate, and all conversions of any of the foregoing; it being the intention of Trustor that all property hereafter acquired by Trustor and required by the Commitment Letter, the Credit Agreement, any other Loan Document (including any Security Document) or this Deed of Trust to be subject to the lien of this Deed of Trust or intended so to be shall forthwith upon the acquisition thereof by Trustor be subject to the lien of this Deed of Trust as if such property were now owned by Trustor and were specifically described in this Deed of Trust and granted hereby or pursuant hereto, and Trustee and Beneficiary are hereby authorized, subject to Nevada Gaming Laws and other applicable laws, to receive any and all such property as and for additional security for the obligations secured or intended to be secured hereby. Trustor agrees to take any action as may reasonably be necessary to evidence and perfect such liens or security interests, including, without limitation, the execution of any documents necessary to evidence and perfect such liens or security interests;

(M) TOGETHER WITH, to the extent permitted by applicable laws, any and all Accounts Receivable and all royalties, earnings, income, proceeds, products, rents, revenues, reversions, remainders, issues, profits, avails, production payments, and other benefits directly or indirectly derived or otherwise arising from any of the foregoing, all of which are hereby assigned to Beneficiary, who, except as otherwise expressly provided in this Deed of Trust (including the provisions of *Section 1.13* hereof), is authorized to collect and receive the same, to give receipts and acquittances therefor and to apply the same to the Obligations secured hereunder, whether or not then due and payable;

(N) TOGETHER WITH Proceeds of the foregoing property described in Granting Clauses (A) through (M);

(O) TOGETHER WITH Trustor's rights further to assign, sell, lease, encumber or otherwise transfer or dispose of the property described in Granting Clauses (A) through (N) inclusive, above, for debt or otherwise;

(P) TOGETHER WITH any right of Trustor to elect to terminate the Subject Leases or remain in possession of the Leased Premises pursuant to 11 U.S.C. section 365(h)(1) or any similar provision of applicable law and any possessory rights of Trustor in the Leased Premises pursuant to 11 U.S.C. section 365(h)(2) or any other similar provision of applicable law; and

(Q) EXPRESSLY EXCLUDING, HOWEVER, any assets expressly excluded from the definition of "Collateral" in the Credit Agreement.

Trustor, for itself and its successors and assigns, covenants and agrees to and with Trustee that, at the time or times of the execution of and delivery of these presents or any instrument of further assurance with respect thereto, Trustor has good right, full power and lawful authority to assign, grant, convey, warrant, transfer, bargain or sell its interests in the Trust Estate in the manner and form as aforesaid, and that the Trust Estate is free and clear of all liens and encumbrances whatsoever, except Permitted Liens, and Trustor shall warrant and forever defend the above-bargained property in the quiet and peaceable possession of Trustee and its successors and assigns against all and every person or persons lawfully or otherwise claiming or to claim the whole or any part thereof, except for Permitted Liens. Trustor agrees that any greater title to the Trust Estate hereafter acquired by Trustor during the term hereof shall be automatically subject hereto.

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ARTICLE ONE

COVENANTS OF TRUSTOR

The Beneficiary and the Banks have been induced to enter into the Commitment Letter, the Credit Agreement and the other Loan Documents and to make advances of loans thereunder on the basis of the following material covenants, all agreed to by Trustor:

1.1 Performance of Loan Documents. Trustor shall perform, observe and comply with each and every provision hereof, and with each and every provision contained in the Loan Documents and shall promptly pay to the Administrative Agent or the Disbursement Agent, as applicable, when payment shall become due, the principal with interest thereon and all other sums required to be paid by Trustor under this Deed of Trust and the other Loan Documents.

1.2 General Representations, Covenants and Warranties. Trustor represents, covenants and warrants that: (a) Trustor has good and marketable title to an indefeasible fee estate in the Site (other than the Leased Premises) and a valid leasehold interest in the Leased Premises, free and clear of all encumbrances except Permitted Encumbrances, and that it has the right to hold, occupy and enjoy its interest in the Trust Estate, and has good right, full power and lawful authority to subject the Trust Estate to the Lien of this Deed of Trust and pledge the same as provided herein and Beneficiary may at all times peaceably and quietly enter upon, hold, occupy and enjoy the entire Trust Estate in accordance with the terms hereof; (b) Trustor is not Insolvent and no bankruptcy or insolvency proceedings are pending or contemplated by or, to the best of Trustor's knowledge, threatened against Trustor; (c) all costs arising from construction of any Improvements, the performance of any labor and the purchase of all Tangible Collateral and Improvements have been or shall be paid when due (subject to the provisions of the Disbursement Agreement, the Credit Agreement and this Deed of Trust); (d) the Land has frontage on, and direct access for ingress and egress to dedicated street(s); (e) Trustor shall at all times conduct and operate the Trust Estate in a manner so as not to lose, or permit its affiliate to lose, the right to conduct gaming activities at the Project; (f) no material part of the Trust Estate has been damaged, destroyed, condemned or abandoned, other than those portions of the Trust Estate that (i) have been the subject of condemnation proceedings that have resulted in the conveyance of such portion of the Trust Estate to the Trustor or (ii) have been demolished in furtherance of the development of the Project as contemplated under the Disbursement Agreement; (g) no part of the Trust Estate is the subject of condemnation proceedings and Trustor has no knowledge of any contemplated or pending condemnation proceeding with respect to any portion of the Trust Estate; and (h) Trustor acknowledges and agrees that it presently may use, and in the past may have used, one or more of the trade or fictitious names, "Le Reve", "Wynn Collection", "Wynn Resorts" and "Desert Inn" and in each case variations thereof (collectively, the "**Enumerated Names**") in connection with the operation of the business at the Trust Estate, and Trustor further represents and warrants that the Enumerated Names are the only such trade or fictitious names Trustor has so used. For all purposes under this Deed of Trust it shall be deemed that the term "Trustor" includes all trade or fictitious names that Wynn Las Vegas, LLC (or any successor or assign thereof) now or hereafter uses, or has in the past used, including, without limitation, the Enumerated Names, with the same force and effect as if this Deed of Trust had been executed in all such names (in addition to "Wynn Las Vegas, LLC").

1.3 Compliance with Legal Requirements. Except as provided in the Credit Agreement, Trustor shall promptly, fully, and faithfully comply in all material respects with all Legal Requirements and shall cause all portions of the Trust Estate and its use and occupancy to fully comply in all material respects with Legal Requirements at all times, whether or not such compliance requires work or remedial measures that are ordinary or extraordinary, foreseen or unforeseen, structural or nonstructural, or that interfere with the use or enjoyment of the Trust Estate.

1.4 Taxes. Except as otherwise permitted by the Credit Agreement and the Disbursement Agreement, (a) Trustor shall pay all Impositions as they become due and payable and shall deliver to

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Beneficiary promptly upon Beneficiary's request, evidence satisfactory to Beneficiary that the Impositions have been paid or are not delinquent; (b) Trustor shall not suffer to exist, permit or initiate the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Land as a single lien, except as may be required by law; and (c) in the event of the passage of any law deducting from the value of real property for the purposes of taxation any lien thereon, or changing in any way the taxation of deeds of trust or obligations secured thereby for state or local purposes, or the manner of collecting such taxes and imposing a tax, either directly or indirectly, on this Deed of Trust, the Notes or the other Loan Documents, Trustor shall pay all such taxes.

1.5 Insurance.

(a) Hazard Insurance Requirements and Proceeds.

(1) **Hazard Insurance.** Trustor shall at its sole expense obtain for, deliver to, assign and maintain for the benefit of Beneficiary, during the term of this Deed of Trust, insurance policies insuring the Trust Estate and liability insurance policies, all in accordance with the requirements of the Credit Agreement and the Disbursement Agreement (while in effect). Trustor shall pay promptly when due any premiums on such insurance policies and on any renewals thereof. In the event of the foreclosure of this Deed of Trust or any other transfer of title to the Trust Estate in partial or complete extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of Beneficiary in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

(2) **Handling of Proceeds.** All Proceeds from any insurance policies shall be collected, held, handled and disbursed in accordance with the provisions of the Credit Agreement and the Disbursement Agreement (while in effect). All proceeds of insurance allocable to Trustor, as owner or

lessee of the Site, and attributable to business interruption insurance shall be collected, held, handled and disbursed in accordance with the provisions of the Credit Agreement and the Disbursement Agreement. Any such proceeds disbursed to Beneficiary shall be applied to pay amounts then due and payable under this Deed of Trust. The balance shall be retained by Beneficiary or its designee in an interest bearing or other investment account approved by Beneficiary, which account Trustor hereby pledges to Beneficiary to secure the Obligations. Disbursements shall be permitted from such account to pay expenses reasonably incurred by Trustor in owning and operating the Trust Estate, as reasonably approved by Beneficiary.

(b) **Compliance with Insurance Policies.** Trustor shall not violate or permit to be violated any of the conditions or provisions of any policy of insurance required by the Credit Agreement, the Disbursement Agreement (while in effect) or this Deed of Trust and Trustor shall so perform and satisfy the requirements of the companies writing such policies that, at all times, companies of good standing shall be willing to write and/or continue such insurance. Trustor further covenants to promptly send to Beneficiary all notices relating to any violation of such policies or otherwise affecting Trustor's insurance coverage or ability to obtain and maintain such insurance coverage.

1.6 **Condemnation.** Beneficiary is hereby authorized, at its option, to commence, appear in and prosecute in its own or Trustor's name any action or proceeding relating to any condemnation and to settle or compromise any claim in connection therewith, and Trustor hereby appoints Beneficiary as its attorney-in-fact to take any action in Trustor's name pursuant to Beneficiary's rights hereunder. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Trust Estate or any portion thereof, Trustor shall notify the Trustee and Beneficiary of the pendency of such proceedings. Trustor from time to time shall execute and deliver to Beneficiary all instruments requested by it to permit such participation; provided, however, that such instruments shall be deemed as supplemental to the foregoing grant of permission to Trustee and Beneficiary, and unless

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otherwise required, the foregoing permission shall, without more, be deemed sufficient to permit Trustee and/or Beneficiary to participate in such proceedings on behalf of Trustor. All such compensation awards, damages, claims, rights of action and Proceeds, and any other payments or relief, and the right thereto, are, whether paid to Beneficiary or Trustor or a third party trustee, included in the Trust Estate. Beneficiary, after deducting therefrom all its expenses, including reasonable attorneys fees, shall apply all Proceeds paid directly to it in accordance with the provisions of the Credit Agreement. All Proceeds paid directly to the Trustor shall be applied, if received by Trustor prior to the Final Completion Date, in accordance with the Disbursement Agreement and, if received on or after the Final Completion Date, in accordance with the Credit Agreement. To the extent that any condemnation proceeds are not required to be applied towards restoration of the improvements upon the Site, then Beneficiary shall have the right to apply said condemnation proceeds towards repayment of the Obligations. Trustor hereby waives any rights it may have under NRS 37.115, as amended or recodified from time to time.

1.7 **Care of Trust Estate.**

(a) Trustor shall preserve and maintain the Trust Estate in good condition and repair. Trustor shall not permit, commit or suffer to exist any waste, impairment or deterioration of the Trust Estate or of any part thereof that in any manner materially impairs Beneficiary's security hereunder and shall not take any action which will increase the risk of fire or other hazard to the Trust Estate or to any part thereof.

(b) Except for Permitted Dispositions, no material part of the Improvements or Tangible Collateral that are part of the Trust Estate shall be removed, demolished or materially altered, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld or delayed. Trustor shall have the right, without such consent, to remove and dispose of free from the lien of this Deed of Trust any part of the Improvements or Tangible Collateral that are part of the Trust Estate as from time to time may become worn out or obsolete or otherwise not useful in connection with the operation of the Trust Estate, provided that either (i) such removal or disposition does not materially affect the value of the Trust Estate or (ii) prior to or promptly following such removal, any such property shall be replaced with other property of substantially equal utility and of a value at least substantially equal to that of the replaced property when first acquired and free from any security interest of any other person (subject only to Permitted Liens), and by such removal and replacement Trustor shall be deemed to have subjected such replacement property to the lien of this Deed of Trust.

(c) Notwithstanding the foregoing provisions of this *Section 1.7*, the Trustor may develop the Project in the manner contemplated by the Disbursement Agreement, the Credit Agreement and the other Loan Documents.

1.8 **Leases.**

(a) Trustor represents, warrants and covenants that:

(i) as of the date hereof, Trustor has not entered into any Space Leases;

(ii) except for the assignment effected hereby and in the other Financing Agreements, Trustor has not executed any assignment or pledge of any of the Space Leases, the Rents, or of Trustor's right, title and interest in the same; and

(iii) this Deed of Trust does not and will not constitute a violation or default under any Space Lease, and is and shall at all times constitute a valid lien on Trustor's interests in the Space Leases.

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(b) Trustor shall not enter into any Space Lease or any modifications or amendments to any Space Lease, either orally or in writing, unless such Space Lease complies with the requirements of the Credit Agreement.

(c) After an Event of Default, upon the request of Administrative Agent Trustor shall deliver to Beneficiary executed copies of all Space Leases.

1.9 **Further Encumbrance.**

(a) Trustor covenants that at all times prior to the discharge of the Credit Agreement and the Notes, except for Permitted Liens and Permitted Dispositions, Trustor shall neither make nor suffer to exist, nor enter into any agreement for, any sale, assignment, exchange, mortgage, transfer, Lien,

hypothecation or encumbrance of all or any part of the Trust Estate, including, without limitation, the Rents. As used herein, "transfer" includes the actual transfer or other disposition, whether voluntary or involuntary, by law, or otherwise, except those transfers specifically permitted herein, provided, however, that "transfer" shall not include the granting of utility or other beneficial easements with respect to the Trust Estate which have been or are granted by Trustor and are reasonably necessary to the construction, maintenance or operation of the Project.

(b) Any Permitted Lien consisting of the lien of a deed of trust which is junior to the lien of the Loan Documents (including the Security Documents) (a "Subordinate Deed of Trust") shall be permitted hereunder so long as there shall have been delivered to Beneficiary, not less than thirty (30) days prior to the date thereof, a copy thereof which shall contain express covenants in form and substance satisfactory to Beneficiary to the effect that: (i) the Subordinate Deed of Trust is in all respects subject and subordinate to this Deed of Trust; (ii) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Trust Estate shall be named as a party defendant nor shall any action be taken with respect to the Trust Estate which would terminate any occupancy or tenancy of the Trust Estate, or any portion thereof, without the consent of Beneficiary; (iii) any Rents, if collected through a receiver or by the holder of the Subordinate Deed of Trust, shall be applied first to the obligations secured by this Deed of Trust, including principal and interest due and owing on or to become due and owing on the Notes or the other Loan Documents, and then to the payment of maintenance expenses, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operation, and maintenance of the Trust Estate; and (iv) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust, prompt notice of the commencement thereof shall be given to Beneficiary.

(c) Trustor agrees that in the event the ownership of the Trust Estate or any part thereof becomes vested in a person other than Trustor, Beneficiary may, without notice to Trustor, deal in any way with such successor or successors in interest with reference to this Deed of Trust, the Notes, the other Loan Documents and other Obligations hereby secured without in any way vitiating or discharging Trustor's or any guarantor's, surety's or endorser's liability hereunder or upon the obligations hereby secured. No sale of the Trust Estate and no forbearance to any person with respect to this Deed of Trust and no extension to any person of the time for payment of the Notes or other payment obligations under the Loan Documents (whether principal and interest payments or otherwise), and other sums hereby secured given by Beneficiary shall operate to release, discharge, modify, change or affect the original liability of Trustor, or such guarantor, surety or endorser either in whole or in part.

(d) If Trustor shall fail to make any payment required to be made by it under any FF&E Financing Agreement, except where Trustor is contesting such payment in good faith, then the Beneficiary shall be entitled to make such payment on Trustor's behalf and any and all sums so

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expended by the Beneficiary shall be secured by this Deed of Trust and shall be repaid by Trustor upon demand, together with interest thereon at the interest at the rate applicable to overdue principal set forth in the Credit Agreement from the date of advance.

1.10 *Partial Releases of Trust Estate.*

(a) Trustor may from time to time make a Permitted Disposition including, but not limited to, (i) transferring a portion of the Trust Estate (including any temporary taking) to any person legally empowered to exercise the power of eminent domain, or pursuant to dedication agreements that are now in effect or entered into in the future in connection with the development of the Project, (ii) granting utility easements reasonably necessary or desirable for the construction and/or operation of the Project, which grant or transfer is for the benefit of the Trust Estate, or (iii) transferring all or a portion of the Trust Estate as permitted pursuant to the Disbursement Agreement or the other Loan Documents. In each such case, Beneficiary shall execute and deliver any instruments necessary or appropriate to effectuate or confirm any such transfer or grant, free from the lien of this Deed of Trust, *provided, however*, that Beneficiary shall execute a lien release or subordination agreement, as appropriate, for matters described in clauses (i) and (iii) above only if:

(A) Such transfer, grant or release is not prohibited by the Credit Agreement and all conditions precedent contained in the Credit Agreement for such transfer, grant or release, if any, shall have been satisfied; and

(B) Beneficiary and Trustee shall have received a counterpart of the instrument pursuant to which such transfer, grant or release is to be made, and each instrument which Beneficiary or Trustee is requested to execute in order to effectuate or confirm such transfer, grant or release.

(b) Any consideration received for a transfer to any person empowered to exercise the right of eminent domain shall be subject to *Section 1.6* hereof.

1.11 *Further Assurances.*

(a) At its sole cost and without expense to Trustee or Beneficiary, and subject in all events to compliance with the Nevada Gaming Laws and other applicable Legal Requirements, Trustor shall do, execute, acknowledge and deliver any and all such further acts, deeds, conveyances, notices, requests for notices, financing statements, continuation statements, certificates, assignments, notices of assignments, agreements, instruments and further assurances, and shall mark any chattel paper, deliver any chattel paper or instruments to Beneficiary and take any other actions that are necessary, prudent, or reasonably requested by Beneficiary or Trustee to perfect or continue the perfection and first priority of Beneficiary's security interest in the Trust Estate, to protect the Trust Estate against the rights, claims, or interests of third persons other than holders of Permitted Liens or to effect the purposes of this Deed of Trust, including the security agreement and the absolute assignment of Rents contained herein, or for the filing, registering or recording thereof.

(b) Trustor shall forthwith upon the execution and delivery of this Deed of Trust, and thereafter from time to time, cause this Deed of Trust and each instrument of further assurance to be filed, indexed, registered, recorded, given or delivered in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the title of Trustee and/or Beneficiary to, the Trust Estate.

(c) Upon any modification of the boundaries of the Leased Premises (or any portion thereof), Trustor, at Trustor's expense, shall notify Beneficiary and amend this Deed of Trust to reflect an accurate description of the Leased Premises (or such portion thereof). In connection therewith, Trustor shall provide Beneficiary with such title insurance endorsements to Beneficiary's

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1.12 **Security Agreement and Financing Statements.** Trustor (as debtor) hereby grants to Beneficiary (as creditor and secured party) a present and future security interest in all Tangible Collateral, Intangible Collateral, FF&E, Improvements, all other personal property now or hereafter owned or leased by Trustor or in which Trustor has or will have any interest, to the extent that such property constitutes a part of the Trust Estate (whether or not such items are stored on the premises or elsewhere), Proceeds of the foregoing comprising a portion of the Trust Estate and all products, substitutions, and accessions therefor and thereto, subject to Beneficiary's rights to treat such property as real property as herein provided (collectively, the "**Personal Property**"). Trustor shall execute and/or deliver any and all documents and writings, including without limitation financing statements pursuant to the UCC, as may be necessary or prudent to preserve and maintain the priority of the security interest granted hereby on property which may be deemed subject to the foregoing security agreement or as Beneficiary may reasonably request, and shall pay to Beneficiary on demand any reasonable expenses incurred by Beneficiary in connection with the preparation, execution and filing of any such documents. Trustor hereby authorizes and empowers Beneficiary to file, on Trustor's behalf, all financing statements and refiling and continuations thereof as advisable to create, preserve and protect said security interest. Trustor acknowledges and agrees that it is not authorized to, and will not, authenticate or file, or authorize the filing of, any financing statements or other record with respect to the Personal Property (including any amendments thereto, or continuation or termination statements thereof), except as permitted by the Credit Agreement. Trustor approves and ratifies any filing or recording of records made by or on behalf of Beneficiary in connection with the perfection of the security interest in favor of Beneficiary hereunder. This Deed of Trust constitutes both a real property deed of trust and a "security agreement," within the meaning of the UCC, and the Trust Estate includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Trust Estate. Trustor by executing and delivering this Deed of Trust has granted to Beneficiary, as security of the Obligations, a security interest in the Trust Estate.

(a) **Fixture Filing.** Without in any way limiting the generality of the immediately preceding paragraph or of the definition of the Trust Estate, this Deed of Trust constitutes a fixture filing under Sections 9-334 and 9-502 of the UCC (NRS 104.9334 and 104.9502). For such purposes, (i) the "debtor" is Trustor and its address is the address given for it in the initial paragraph of this Deed of Trust; (ii) the "secured party" is Beneficiary, and its address for the purpose of obtaining information is the address given for it in the initial paragraph of this Deed of Trust; (iii) the real estate to which the fixtures are or are to become attached is Trustor's interest in the Site; and (iv) the record owner of such real estate or interests therein is Trustor (with respect to the Land and as the lessor under the Subject Leases).

(b) **Remedies.** This Deed of Trust shall be deemed a security agreement as defined in the UCC and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall include any or all of (i) those prescribed herein, and (ii) those available under applicable law, and (iii) those available under the UCC, all at Beneficiary's sole election. In addition, a photographic or other reproduction of this Deed of Trust shall be sufficient as a financing statement for filing wherever filing may be necessary to perfect or continue the security interest granted herein.

(c) **Derogation of Real Property.** It is the intention of the parties that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in anyway derogating from or impairing the express declaration and intention of the parties hereto as hereinabove stated that everything used in connection with the production of income from the Trust Estate and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or

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equitable, shall be regarded as part of the real property encumbered by this Deed of Trust irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. It is the intention of the parties that the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Trustor's interest as lessors in any present or future Space Lease or rights to Rents, shall never be construed as in anyway altering any of the rights of Beneficiary as determined by this Deed of Trust or impugning the priority of Beneficiary's real property lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of Beneficiary in the event any court or judge shall at any time hold with respect to the matters set forth in the foregoing clauses (1), (2) and (3) that notice of Beneficiary's priority of interest to be effective against a particular class of persons, including but not limited to, the federal government and any subdivisions or entity of the federal government, must be filed in the UCC records.

(d) **Priority; Permitted Financing of Tangible Collateral.** All Personal Property of any nature whatsoever which is subject to the provisions of this security agreement shall be purchased or obtained by Trustor in its name and free and clear of any lien or encumbrance, except for Permitted Liens and the lien hereof, for use only in connection with the business and operation of the Project, and shall be and at all times remain free and clear of any lease or similar arrangement, chattel financing, installment sale agreement, security agreement and any encumbrance of like kind, so that Beneficiary's security interest shall attach to and vest in Trustor for the benefit of Beneficiary, with the priority herein specified, immediately upon the installation or use of the Personal Property at the Site and Trustor warrants and represents that Beneficiary's security interest in the Personal Property is a validly attached and binding security interest, properly perfected and prior to all other security interests therein except as otherwise permitted in this Deed of Trust. The foregoing shall not be construed as limiting Trustor's rights to transfer Personal Property pursuant to Permitted Dispositions or to obtain releases of Personal Property from the Lien of this Deed of Trust pursuant to *Section 1.10* hereof.

(e) **Preservation of Contractual Rights of Collateral.** Trustor shall, prior to delinquency, default, or forfeiture, perform all obligations and satisfy all material conditions required on its part to be satisfied to preserve its rights and privileges under any contract, lease, license, permit, or other authorization (i) under which it holds any Tangible Collateral or (ii) which constitutes part of the Intangible Collateral, except where Trustor is contesting such obligations in good faith.

(f) **Removal of Collateral.** Except for damaged or obsolete Tangible Collateral which is either no longer usable or which is removed temporarily for repair or improvement or removed for replacement on the Trust Estate with Tangible Collateral of similar function or as otherwise permitted herein, none of the Tangible Collateral shall be removed from the Trust Estate without Beneficiary's prior written consent.

(g) **Change of Name.** Trustor shall not change its corporate (or other entity) or business name, or do business within the State of Nevada under any name other than such name, or any trade name(s) other than those as to which Trustor gives prior written notice to Beneficiary of its intent to use such trade names, or any other business names (if any) specified in the financing statements delivered to Beneficiary for filing in connection with the execution hereof, without, in each case, providing Beneficiary with the additional financing statement(s) and any other similar documents deemed reasonably

1.13 Assignment of Leases and Rents. Subject to Nevada Gaming Laws and other applicable Legal Requirements, the assignment of Leases and Rents set out above in Granting Clause (G) shall constitute an absolute and present assignment to Beneficiary, subject to the license herein given to Trustor to collect the Rents, and shall be fully operative without any further action on the part of any party, and specifically Beneficiary shall be entitled upon the occurrence of an Event of Default hereunder to all Rents and to enter upon the Site and the Improvements to collect such Rents, provided, however, that Beneficiary shall not be obligated to take possession of the Trust Estate, or any portion thereof. The absolute assignment contained in Granting Clause (G) shall not be deemed to impose upon Beneficiary any of the obligations or duties of Trustor provided in any such Space Lease (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease in the event that any lessee shall have been joined as a party defendant in any action to foreclose this Deed of Trust and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Trust Estate or any part thereof).

1.14 Expenses.

(a) Trustor shall pay when due and payable all out-of-pocket costs, including without limitation, those reasonable appraisal fees, recording fees, taxes, abstract fees, title policy fees, escrow fees, attorneys' and paralegal fees, travel expenses, fees for inspecting architect(s) and engineer(s) and all other costs and expenses of every character which may hereafter be incurred by Beneficiary or any assignee of Beneficiary in connection with the preparation and execution of the Commitment Letter, the Credit Agreement and the other Loan Documents (including the Security Documents) or instruments, agreements or documents of further assurance, the funding of the indebtedness secured hereby, and the enforcement of any Loan Document (including any Security Document). Other than costs associated with the enforcement of any Loan Document, all such costs shall be itemized in reasonable detail; and

(b) Trustor shall, upon demand by Beneficiary, reimburse Beneficiary or any assignee of Beneficiary for all such reasonable expenses which have been incurred or which shall be incurred by it; and

(c) Trustor shall indemnify Beneficiary with respect to any transaction or matter in any way connected with any portion of the Trust Estate, this Deed of Trust, including any occurrence at, in, on, upon or about the Trust Estate (including any personal injury, loss of life, or property damage), or Trustor's use, occupancy, or operation of the Trust Estate, or the filing or enforcement of any mechanic's lien, or otherwise caused in whole or in part by any act, omission or negligence occurring on or at the Trust Estate, including failure to comply with any Legal Requirement or with any requirement of this Deed of Trust that applies to Trustor, except to the extent resulting from the gross negligence, fraud or willful misconduct of Trustee or Beneficiary. If Beneficiary is a party to any litigation as to which either Trustor is required to indemnify Beneficiary (or is made a defendant in any action of any kind against Trustor or relating directly or indirectly to any portion of the Trust Estate) then, at Beneficiary's option, Trustor shall undertake Beneficiary's defense, using counsel reasonably satisfactory to Beneficiary (and any settlement shall be subject to Beneficiary's consent, which consent shall not be unreasonably withheld), and in any case shall indemnify Beneficiary against such litigation. Trustor shall pay all reasonable costs and expenses, including reasonable legal costs, that Beneficiary pays or incurs in connection with any such litigation. Any amount payable under any indemnity in this Deed of Trust shall be a demand obligation, shall be added to, and become a part of, the secured obligations under this Deed of Trust, shall be secured by this Deed of Trust and, if not paid promptly following demand therefor (which demand shall, unless associated with Loan Document enforcement actions, set forth in reasonable detail an itemization of the amount so demanded) shall bear interest at the interest rate specified in the Credit Agreement. Such indemnity shall survive any release of this Deed of Trust and any foreclosure.

1.15 Beneficiary's Cure of Trustor's Default. If Trustor defaults hereunder in the payment of any tax, assessment, lien, encumbrance or other Imposition, in its obligation to furnish insurance hereunder, or in the performance or observance of any other covenant, condition or term of this Deed of Trust or any other Financing Agreement or any FF&E Financing Agreement, Beneficiary may, but is not obligated to, to preserve its interest in the Trust Estate, perform or observe the same, and all payments made (whether such payments are regular or accelerated payments) and reasonable costs and expenses incurred or paid by Beneficiary in connection therewith shall become due and payable immediately. The amounts so incurred or paid by Beneficiary, together with interest thereon at the interest rate applicable to overdue principal set forth in the Credit Agreement, from the date incurred until paid by Trustor, shall be added to the indebtedness and secured by the lien of this Deed of Trust. Beneficiary, is hereby empowered to enter and to authorize others to enter upon the Site or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Trustor or any person in possession holding under Trustor. No exercise of any rights under this Section 1.15 by Beneficiary shall cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

1.16 Use of Land. Trustor covenants that the Trust Estate shall be (i) used and operated in a manner consistent with the requirements of the Loan Documents and (ii) open during such days and hours as are customarily observed by casino-hotels located in Las Vegas, Nevada, reasonably consistent with the provisions of the Credit Agreement.

1.17 Compliance with Permitted Lien Agreements. Trustor shall comply with each and every material obligation contained in any agreement pertaining to a Permitted Lien.

1.18 Defense of Actions. Trustor shall appear in and defend any action or proceeding affecting or purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and shall pay all costs and expenses, including cost of title search and insurance or other evidence of title, preparation of survey, and reasonable attorneys' fees in any such action or proceeding in which Beneficiary or Trustee may appear or may be joined as a party and in any suit brought by Beneficiary based upon or in connection with this Deed of Trust or any Loan Document. Nothing contained in this section shall, however, limit the right of Beneficiary to appear in such action or proceeding with counsel of its own choice, either on its own behalf or on behalf of Trustor.

1.19 Affiliates.

(a) **Subject to Trust Deed.** Subject to compliance with the requirements of applicable Nevada Gaming Laws, Trustor shall cause all of its Affiliates in any way involved with the operation of the Trust Estate or the Project to observe the covenants and conditions of this Deed of Trust to the extent necessary to give the full intended effect to such covenants and conditions and to protect and preserve the security of Beneficiary hereunder.

(b) **Restriction on Use of Subsidiary or Affiliate.** Except as permitted under the Credit Agreement, the Notes or the other Loan Documents (including any Security Document), Trustor shall not use any Affiliate in the operation of the Trust Estate or the Project if such use would in any way impair the security for the Notes and the other Loan Documents or circumvent any covenant or condition of this Deed of Trust or of any other Loan Document.

1.20 **Title Insurance.** On the Closing Date, Trustor shall cause to be delivered to Trustee at Trustor's expense, one or more ALTA extended coverage Lender's Policies of Title Insurance showing fee title to the real property situated in the County of Clark, State of Nevada, more specifically described in Schedule A attached hereto, vested in Trustor and the lien of this Deed of Trust to be a perfected lien, prior to any and all encumbrances other than Permitted Encumbrances (excluding, however, any such non-Permitted Encumbrances for which the Title Insurer has agreed to provide an endorsement or affirmative coverage protecting the lien of this Deed of Trust against such non-Permitted Encumbrances).

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1.21 **Leasehold Estates.** Trustor represents, covenants and warrants: (a) that the Subject Leases are in full force and effect and unmodified; (b) Trustor will defend the leasehold estate under each Subject Lease for the entire remainder of the term set forth in each of the said Subject Leases against all and every Person or Persons lawfully claiming, or who may claim the same or any part thereof, subject to the payment of the rents in the Subject Leases reserved and subject to the performance and observance of all of the terms, covenants, conditions and warranties thereof; and (c) that there is no uncured default under any Subject Lease or in the performance of any of the terms, covenants, conditions or warranties thereof on the part of the lessor or the lessee to be observed and performed and that no state of facts exist under a Subject Lease which, with the lapse of time or giving of notice or both would constitute a default thereunder.

1.22 **Payment of Subject Leases Expenses.** The Trustor shall pay or cause to be paid on or prior to the date due all rents, additional rents and other charges and Impositions payable by the lessor or the lessee under the Subject Leases for which provision has not been made hereinbefore, when and as often as the same shall become due and payable.

1.23 **Trustor's Covenants with Respect to Subject Leases.**

(a) Trustor shall at all times promptly and faithfully keep and perform, or cause to be kept and performed, all the covenants and conditions contained in the Subject Leases to be kept and performed by it under the Subject Leases and in all respects conform to and comply with the terms and conditions of the Subject Leases. Trustor shall, within ten days after written demand from Beneficiary, deliver to Beneficiary proof of payment of all items that are required to be paid by Trustor under the Subject Leases, including, without limitation, rent, taxes, operating expenses and other charges. Trustor shall promptly deliver to Beneficiary copies of all notices given with respect to or which affect the Subject Leases including pleadings or notices of default given under the Subject Leases. Trustor further covenants that it shall not do or permit anything to occur or fail to occur which will impair or tend to impair the security of this Deed of Trust or will be grounds for declaring a forfeiture or termination of either Subject Lease, and upon any such failure as aforesaid, Trustor shall be subject to all of the rights and remedies granted Beneficiary in this Deed of Trust.

(b) Except as otherwise permitted in the Loan Documents, Trustor shall not modify, extend or in any way alter the terms of the Subject Leases or cancel or surrender said Subject Leases or reject the Subject Leases in a case pending under the Bankruptcy Code, or waive, execute, condone or in anyway release or discharge the lessor thereunder of or from the obligations, covenants, conditions and agreements by said lessor to be done and performed; and Trustor does expressly release, relinquish and surrender unto Beneficiary all of its rights, power and authority to cancel, surrender, amend, modify or alter in any way the terms and provisions of the Subject Leases and any attempt on the part of Trustor to exercise any such right without the written approval and consent of Beneficiary thereto being first had and obtained shall constitute an Event of Default under the terms hereof and the other Loan Documents Documents and all Obligations and other sums secured hereby shall, at the option of Beneficiary, become due and payable forthwith. If Trustor becomes a debtor under the Bankruptcy Code, Trustor shall assume and assign the Subject Leases to Beneficiary, and it further agrees that it shall not object to any request by Beneficiary that the Subject Leases not be rejected, or that Beneficiary be authorized to assume Trustor's rights under the Subject Leases.

(c) Trustor shall deliver to Beneficiary an original executed copy of each Subject Lease, an estoppel certificate from the Lessor within ten (10) days of request by Beneficiary and in such form and content as shall be satisfactory to Beneficiary, as well as any and all documentary evidence received by it showing compliance by Trustor with the provisions of the Subject Leases.

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(d) Trustor does hereby authorize and irrevocably appoint and constitute Beneficiary as its true and lawful attorney-in-fact, which appointment is coupled with an interest, in its name, place and stead, to, upon the occurrence and during the continuance of an Event of Default, take any and all actions deemed necessary or desirable by Beneficiary to perform and comply with all the obligations of Trustor under the Subject Leases, and to do and take upon the occurrence and during continuation of an Event of Default, but without any obligation so to do or take, any action which Beneficiary deems reasonably necessary to prevent or cure any default by Trustor under the Subject Leases, to enter into and upon the Site, the Project or the Improvements or any part thereof as provided in the Loan Documents in order to prevent or cure any default of Trustor pursuant thereto, to the end that the rights of Trustor in and to the leasehold estate created by the Subject Leases shall be kept free from default.

(e) In the event of any failure by Trustor to perform or cause the performance of any covenant on the part of lessor or lessee to be observed and performed under the Subject Leases, the performance by Beneficiary on behalf of Trustor of the applicable Subject Lease covenant shall not remove or waive, as between Trustor and Beneficiary, the corresponding Event of Default under the terms hereof and any amount so advanced by Beneficiary or any costs incurred in connection therewith, with interest thereon at the interest rate applicable to overdue principal under the Credit Agreement, shall constitute additional Obligations secured hereby and be immediately due and payable.

(f) To the extent permitted by law, the price payable by Trustor, or by any other party so entitled, in the exercise of the right of redemption, if any, shall include all rents paid and other sums advanced by Beneficiary, on behalf of Trustor, as lessee under the Subject Leases.

(g) Trustor shall use all reasonable efforts to enforce the obligations of the lessor under the Subject Leases in a commercially reasonable manner.

(h) No release or forbearance of any of Trustor's obligations under the Subject Leases by the lessor thereunder, shall release Trustor from any of its obligations under this Deed of Trust.

(i) The lien of this Deed of Trust shall attach to all of Trustor's rights and remedies at any time arising under or pursuant to section 365(h) of the Bankruptcy Law, including, without limitation, all of Trustor's rights to remain in possession of the Leased Premises. Trustor shall not elect to treat the Subject Leases as terminated under section 365(h)(1) of the Bankruptcy Law, and any such election shall be void.

(i) If pursuant to section 365(h)(2) of the Bankruptcy Law, Trustor shall seek to offset against the rent reserved in the Subject Leases the amount of any damages caused by the nonperformance by the lessor or any other party of any of their respective obligations thereunder after the rejection by the lessor or such other party of the Subject Leases under the Bankruptcy Law, then Trustor shall, prior to effecting such offset, notify Beneficiary of its intent to do so, setting forth the amount proposed to be so offset and the basis therefor. Beneficiary shall have the right to object to all or any part of such offset that, in the reasonable judgment of Beneficiary, would constitute a breach of the Subject Leases, and in the event of such objection, Trustor shall not effect any offset of the amounts found objectionable by Beneficiary. Neither Beneficiary's failure to object as aforesaid nor any objection relating to such offset shall constitute an approval of any such offset by Beneficiary.

(ii) If any action, proceeding, motion or notice shall be commenced or filed in respect of the lessor under the Subject Leases or any other party or in respect of the Subject Leases in connection with any case under the Bankruptcy Law, then Beneficiary shall have the option to intervene in any such litigation with counsel of Beneficiary's choice. Beneficiary may proceed in its own name in connection with any such litigation, and Trustor agrees to execute any and

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all powers, authorizations, consents or other documents required by Beneficiary in connection therewith.

(iii) Trustor shall, after obtaining knowledge thereof, promptly notify Beneficiary of any filing by or against the lessor or any other party with an interest in the Leased Premises of a petition under the Bankruptcy Law. Trustor shall promptly deliver to Beneficiary, following receipt, copies of any and all notices, summonses, pleadings, applications and other documents received by Trustor in connection with any such petition and any proceedings relating thereto.

(iv) If there shall be filed by or against Trustor a petition under the Bankruptcy Law, and Trustor, as lessee under the Subject Leases, shall determine to reject the Subject Leases pursuant to section 365(a) of the Bankruptcy Law, then Trustor shall give Beneficiary a notice of the date on which Trustor shall apply to the bankruptcy court for authority to reject the Subject Leases (such notice to be no later than twenty (20) days prior to such date). Beneficiary shall have the right, but not the obligation, to serve upon Trustor at any time prior to the date on which Trustor shall so apply to the bankruptcy court a notice stating that Beneficiary demands that Trustor assume and assign the Subject Leases to Beneficiary pursuant to section 365 of the Bankruptcy Law. If Beneficiary shall serve upon Trustor the notice described in the preceding sentence, to the extent permitted by law Trustor shall not seek to reject the Subject Leases and shall comply with the demand provided for in the preceding sentence. In addition, effective upon the entry of an order for relief with respect to Trustor under the Bankruptcy Law, Trustor hereby assigns and transfers to Beneficiary a non-exclusive right to apply to the bankruptcy court under section 365(d)(4) of the Bankruptcy Law for an order extending the period during which the Subject Leases may be rejected or assumed; and shall (a) promptly notify Beneficiary of any default by Trustor in the performance or observance of any of the terms, covenants or conditions on the part of Trustor to be performed or observed under the Subject Leases and of the giving of any written notice by the lessor thereunder to Trustor of any such default, and (b) promptly cause a copy of each written notice given to Trustor by the lessor under the Subject Leases to be delivered to Beneficiary. Beneficiary may rely on any notice received by it from any such lessor of any default by Trustor under the Subject Leases and may take such action as may be permitted by law to cure such default even though the existence of such default or the nature thereof shall be questioned or denied by Trustor or by any Person on its behalf.

(k) Beneficiary shall have the right upon notice to Trustor to participate in the adjustment and settlement of any insurance proceeds and in the determination of any condemnation award under the Subject Leases to the extent and in the manner provided in the Subject Leases.

1.24 **Rejection of Subject Leases.**

To the extent applicable, if the lessor under the Subject Leases rejects or disaffirms the Subject Leases or purports or seeks to disaffirm the Subject Leases pursuant to any Bankruptcy Law, then:

(a) To the extent permitted by law, Trustor shall remain in possession of the Leased Premises demised under the Subject Leases and shall perform all acts reasonably necessary for Trustor to remain in such possession for the unexpired term of such Subject Leases (including all renewals), whether the then existing terms and provisions of such Subject Leases require such acts or otherwise; and

(b) All the terms and provisions of this Deed of Trust and the Lien created by this Deed of Trust shall remain in full force and effect and shall extend automatically to all of Trustor's rights and remedies arising at any time under, or pursuant to, Section 365(h) of the Bankruptcy Code, including all of Trustor's rights to remain in possession of the Leased Premises.

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ARTICLE TWO

CREDIT AGREEMENT PROVISIONS

2.1 *Interaction with Credit Agreement*

(a) **Incorporation by Reference.** All terms, covenants, conditions, provisions and requirements of the Credit Agreement are incorporated by reference in this Deed of Trust.

(b) **Conflicts.** In the event of any conflict or inconsistency between the provisions of this Deed of Trust and those of the Credit Agreement or the Disbursement Agreement, the provisions of the Credit Agreement or the Disbursement Agreement, as applicable, shall govern.

2.2 **Other Collateral.** This Deed of Trust is one of a number of security agreements to secure the debt delivered by or on behalf of Trustor pursuant to the Credit Agreement and the other Loan Documents (including the Security Documents) and securing the Obligations secured hereunder. All potential junior Lien claimants are placed on notice that, under any of the Loan Documents (including the Security Documents) (including a separate future unrecorded agreement between Trustor and Beneficiary), other collateral for the Obligations secured hereunder (*i.e.*, collateral other than the Trust Estate) may, under certain circumstances, be released without a corresponding reduction in the total principal amount secured by this Deed of Trust. Such a release would decrease the amount of collateral securing the same indebtedness, thereby increasing the burden on the remaining Trust Estate created and continued by this Deed of Trust. No such release shall impair the priority of the lien of this Deed of Trust. By accepting its interest in the Trust Estate, each and every junior Lien claimant shall be deemed to have acknowledged the possibility of, and consented to, any such release. Nothing in this paragraph shall impose any obligation upon Beneficiary.

ARTICLE THREE

DEFAULTS

3.1 **Event of Default.** The term "Event of Default," wherever used in this Deed of Trust, shall mean any of (i) one or more of the events of default listed in the Credit Agreement (ii) so long as the Disbursement Agreement is in effect, one or more of the events of default listed in the Disbursement Agreement (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) or (iii) if any "borrower" (as that term is defined in NRS 106.310) who may send a notice pursuant to NRS 106.380(1), (x) delivers, sends by mail or otherwise gives, or purports to deliver, send by mail or otherwise give, to a beneficiary under this Deeds of Trust (A) any notice of an election to terminate the operation of this Deed of Trust as security for any secured obligation, including, without limitation, any obligation to repay any "future advance" (as defined in NRS 106.320) of "principal" (as defined in NRS 106.345), or (B) any other notice pursuant to NRS 106.380(1), (y) records a statement pursuant to NRS 106.380(3), or (z) causes this Deed of Trust, any secured obligation, or any Secured Party to be subject to NRS 106.380(2), 106.380(3) or 106.400.

ARTICLE FOUR

REMEDIES

4.1 **Acceleration of Maturity.** If an Event of Default occurs, Beneficiary may (except that such acceleration shall be automatic if the Event of Default is caused by Trustor's Bankruptcy), in accordance with the Credit Agreement, declare the Notes and other indebtedness under the Loan Documents and all indebtedness or sums secured hereby, to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become due and payable without demand, presentment, notice or other requirements of any kind (all of which Trustor waives)

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notwithstanding anything in this Deed of Trust or any Loan Document or applicable law to the contrary.

4.2 **Protective Advances.** If Trustor fails to make any payment or perform any other obligation under the Notes, Credit Agreement or any other Financing Agreement, then without thereby limiting Beneficiary's other rights or remedies, waiving or releasing any of Trustor's obligations, or imposing any obligation on Beneficiary, Beneficiary may either advance any amount owing or perform any or all actions that Beneficiary considers necessary or appropriate to cure such default. All such advances shall constitute "Protective Advances" and shall bear interest thereon at the interest rate applicable to overdue principal set forth in the Credit Agreement from the date incurred until paid by Trustor. No sums advanced or performance rendered by Beneficiary shall cure, or be deemed a waiver of any Event of Default.

4.3 **Institution of Equity Proceedings.** If an Event of Default occurs, Beneficiary may institute an action, suit or proceeding in equity for specific performance of this Deed of Trust, the Notes or any other Loan Document (including any Security Document), all of which shall be specifically enforceable by injunction or other equitable remedy. Trustor waives any defense based on laches or any applicable statute of limitations.

4.4 **Beneficiary's Power of Enforcement.**

(a) If an Event of Default occurs, Beneficiary shall be entitled, at its option and in its sole and absolute discretion, to prepare and record on its own behalf, or to deliver to Trustee for recording, if appropriate, written declaration of default and demand for sale and written Notice of Breach and Election to Sell (NRS 107.080(3)) (or other statutory notice) to cause the Trust Estate to be sold to satisfy the obligations hereof, and in the case of delivery to Trustee, Trustee shall cause said notice to be filed for record.

(b) After the lapse of such time as may then be required by law following the recordation of said Notice of Breach and Election to Sell, and notice of sale having been given as then required by law, including compliance with any applicable Nevada Gaming Laws, Trustee without demand on Trustor, shall sell the Trust Estate or any portion thereof at the time and place fixed by it in said notice, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder, of cash in lawful money of the United States payable at the time of sale. Trustee may, for any cause it deems expedient, postpone the sale of all or any portion of said property until it shall be completed and, in every case, notice of postponement shall be given by public announcement thereof at the time and place last appointed for the sale and from time to time thereafter Trustee may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall execute and deliver to the purchaser its Deed, Bill of Sale, or other instrument conveying said property so sold, but without any covenant or warranty, express or implied. The recitals in such instrument of conveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale.

(c) After deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including, without limitation, costs of evidence of title and reasonable attorneys' fees and other legal expenses of Trustee or Beneficiary in connection with a sale, Trustee shall apply the proceeds of such sale to payment of all sums expended under the terms hereof not then repaid, with accrued interest at the rate applicable to overdue principal set forth in the Credit Agreement to the payment of all other sums then secured hereby and the remainder, if any, to the person or persons legally entitled thereto as provided in NRS 40.462.

(d) Subject to compliance with applicable Nevada Gaming Laws, if any Event of Default occurs, Beneficiary may, either with or without entry or taking possession of the Trust Estate, and without regard to whether or not the indebtedness and other sums secured hereby shall be due and without prejudice to the right of Beneficiary thereafter to bring an action or proceeding to

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foreclose or any other action for any default existing at the time such earlier action was commenced, proceed by any appropriate action or proceeding: (1) to enforce payment of the Notes or other payment obligations under the Loan Documents (whether principal and interest payments or otherwise), to the extent permitted by law, or the performance of any term hereof or any other right; (2) to foreclose this Deed of Trust in any manner provided by law for the foreclosure of mortgages or deeds of trust on real property and to sell, as an entirety or in separate lots or parcels, the Trust Estate or any portion thereof pursuant to the laws of the State of Nevada or under the judgment or decree of a court or courts of competent jurisdiction, and Beneficiary shall be entitled to recover in any such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees in such amount as shall be awarded by the court; (3) to exercise any or all of the rights and remedies available to it under the Loan Documents; and (4) to pursue any other remedy available to it. Beneficiary shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Beneficiary may determine.

(e) The remedies described in this *Section 4.4* may be exercised with respect to all or any portion of the Personal Property, either simultaneously with the sale of any real property encumbered hereby or independent thereof. Beneficiary shall at any time be permitted to proceed with respect to all or any portion of the Personal Property in any manner permitted by the UCC. Trustor agrees that Beneficiary's inclusion of all or any portion of the Personal Property (and all personal property that is subject to a security interest in favor, or for the benefit, of Beneficiary) in a sale or other remedy exercised with respect to the real property encumbered hereby, as permitted by the UCC, is a commercially reasonable disposition of such property.

4.5 Beneficiary's Right to Enter and Take Possession, Operate and Apply Income.

(a) Subject to compliance with applicable Nevada Gaming Laws, if an Event of Default occurs, (i) Trustor, upon demand of Beneficiary, shall forthwith surrender to Beneficiary the actual possession and, if and to the extent permitted by law, Beneficiary itself, or by such officers or agents as it may appoint, may enter and take possession of all the Trust Estate including the Personal Property, without liability for trespass, damages or otherwise, and may exclude Trustor and its agents and employees wholly therefrom and may have joint access with Trustor to the books, papers and accounts of Trustor; and (ii) Trustor shall pay monthly in advance to Beneficiary on Beneficiary's entry into possession, or to any receiver appointed to collect the Rents, all Rents then due and payable.

(b) If Trustor shall for any reason fail to surrender or deliver the Trust Estate, the Personal Property or any part thereof after Beneficiary's demand, Beneficiary may obtain a judgment or decree conferring on Beneficiary or Trustee the right to immediate possession or requiring Trustor to deliver immediate possession of all or part of such property to Beneficiary or Trustee and Trustor hereby specifically consents to the entry of such judgment or decree. Trustor shall pay to Beneficiary or Trustee, upon demand, all reasonable costs and expenses of obtaining such judgment or decree and reasonable compensation to Beneficiary or Trustee, their attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Deed of Trust.

(c) Subject to compliance with applicable Nevada Gaming Laws, upon every such entering upon or taking of possession, Beneficiary or Trustee may hold, store, use, operate, manage and control the Trust Estate and conduct the business thereof, and, from time to time in its sole and absolute discretion and without being under any duty to so act:

(1) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;

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(2) insure or keep the Trust Estate insured;

(3) manage and operate the Trust Estate and exercise all the rights and powers of Trustor in their name or otherwise with respect to the same;

(4) enter into agreements with others to exercise the powers herein granted Beneficiary or Trustee, all as Beneficiary or Trustee from time to time may determine; and, subject to the absolute assignment of the Leases and Rents to Beneficiary, Beneficiary or Trustee may collect and receive all the Rents, including those past due as well as those accruing thereafter; and shall apply the monies so received by Beneficiary or Trustee in such priority as Beneficiary may determine to (1) the payment of interest and principal due and payable on the Notes or the other Loan Documents, (2) the deposits for taxes and assessments and insurance premiums due, (3) the cost of insurance, taxes, assessments and other proper charges upon the Trust Estate or any part thereof; (4) the compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary or Trustee; and (5) any other charges or costs required to be paid by Trustor under the terms hereof; and

(5) rent or sublet the Trust Estate or any portion thereof for any purpose permitted by this Deed of Trust.

Beneficiary or Trustee shall surrender possession of the Trust Estate and the Personal Property to Trustor only when all that is due upon such interest and principal, tax and insurance deposits, and all amounts under any of the terms of the Credit Agreement or this Deed of Trust, shall have been paid and all defaults made good. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.6 **Leases.** Beneficiary is authorized to foreclose this Deed of Trust subject to the rights of any tenants of the Trust Estate, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights shall not be, nor be asserted by Trustor to be, a defense to any proceedings instituted by Beneficiary to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Trust Estate, or any portion thereof. Unless otherwise agreed by Beneficiary in writing, all Space Leases executed subsequent to the date hereof, or any part thereof, shall be subordinate and inferior to the lien of this Deed of Trust; provided, however that (i) in accordance with the terms of the Credit Agreement, Beneficiary may be required to execute a non-disturbance and attornment agreement in connection with certain Space Leases; and (ii) from time to time Beneficiary may execute and record among the land records of the jurisdiction where this Deed of Trust is recorded, subordination statements with respect to such of said Space Leases as Beneficiary may designate in its sole discretion, whereby the Space Leases so designated by Beneficiary shall be made superior to the lien of this Deed of Trust for the term set forth in such subordination statement. From and after the recordation of such subordination statements, and for the respective periods as may be set forth therein, the Space Leases therein referred to shall be superior to the lien of this Deed of Trust and shall not be affected by any foreclosure hereof. All such Space Leases shall contain a provision to the effect that the Trustor and Space Lessee recognize the right of Beneficiary to elect and to effect such subordination of this Deed of Trust and consents thereto.

4.7 **Purchase by Beneficiary.** Upon any foreclosure sale (whether judicial or nonjudicial), Beneficiary may bid for and purchase the property subject to such sale and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

4.8 **Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws.** Trustor agrees to the full extent permitted by law that if an Event of Default occurs, neither Trustor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the

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enforcement or foreclosure of this Deed of Trust or the absolute sale of the Trust Estate or any portion thereof or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof, and Trustor for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Trust Estate marshalled upon any foreclosure of the lien hereof and agrees that Trustee or any court having jurisdiction to foreclose such lien may sell the Trust Estate in part or as an entirety.

4.9 **Receiver.** If an Event of Default occurs, Beneficiary, to the extent permitted by law and subject to compliance with all applicable Nevada Gaming Laws, and without regard to the value, adequacy or occupancy of the security for the indebtedness and other sums secured hereby, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Trust Estate and to collect all Rents and apply the same as the court may direct, and such receiver may be appointed by any court of competent jurisdiction upon application by Beneficiary. Beneficiary may have a receiver appointed without notice to Trustor or any third party, and Beneficiary may waive any requirement that the receiver post a bond. Beneficiary shall have the power to designate and select the Person who shall serve as the receiver and to negotiate all terms and conditions under which such receiver shall serve. Any receiver appointed on Beneficiary's behalf may be an Affiliate of Beneficiary. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Deed of Trust. The right to enter and take possession of and to manage and operate the Trust Estate and to collect all Rents, whether by a receiver or otherwise, shall be cumulative to any other right or remedy available to Beneficiary under this Deed of Trust or the other Loan Documents or otherwise available to Beneficiary and may be exercised concurrently therewith or independently thereof. Beneficiary shall be liable to account only for such Rents (including, without limitation, security deposits) actually received by Beneficiary, whether received pursuant to this section or any other provision hereof. Notwithstanding the appointment of any receiver or other custodian, Beneficiary shall be entitled as pledgee to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Deed of Trust to, Beneficiary.

4.10 **Suits to Protect the Trust Estate.** Beneficiary shall have the power and authority to institute and maintain any suits and proceedings as Beneficiary, in its sole and absolute discretion, may deem advisable (a) to prevent any impairment of the Trust Estate by any acts which may be unlawful or in violation of this Deed of Trust, (b) to preserve or protect its interest in the Trust Estate, or (c) to restrain the enforcement of or compliance with any legislation or other Legal Requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Beneficiary's interest.

4.11 **Proofs of Claim.** In the case of any receivership, Insolvency, Bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Trustor, or, to the extent the same would result in an Event of Default hereunder, any Subsidiary, or any guarantor, co-maker or endorser of any of Trustor's obligations, its creditors or its property, Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim or other documents as it may deem to be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Trustor under the Notes or any other Loan Document (including any Security Document), at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Trustor after such date.

4.12 **Trustor to Pay the Notes on Any Default in Payment; Application of Monies by Beneficiary.**

(a) In case of a foreclosure sale of all or any part of the Trust Estate and of the application of the proceeds of sale to the payment of the sums secured hereby, Beneficiary shall be entitled to enforce payment from Trustor of any additional amounts then remaining due and unpaid and to

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recover judgment against Trustor for any portion thereof remaining unpaid, with interest at the rate applicable to overdue principal as set forth in the Credit Agreement.

(b) Trustor hereby agrees to the extent permitted by law, that no recovery of any judgment by Beneficiary or other action by Beneficiary and no attachment or levy of any execution upon any Property of Trustor by Beneficiary (other than a foreclosure of the entire Trust Estate hereunder) shall in any way affect the Lien and security interest of this Deed of Trust upon the Trust Estate or any part thereof or any Lien, rights, powers or remedies of Beneficiary hereunder, but such Lien, rights, powers and remedies shall continue unimpaired as before.

(c) Any monies collected or received by Beneficiary under this Section 4.12 shall be first applied to the payment of reasonable compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary, and the balance remaining shall be applied to the payment of

amounts due and unpaid under the Notes and the other Loan Documents.

(d) The provisions of this section shall not be deemed to limit or otherwise modify the provisions of any guaranty of the indebtedness evidenced by the Notes or the other Loan Documents.

4.13 Delay or Omission; No Waiver. No delay or omission of Beneficiary or any Bank to exercise any right, power or remedy upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Beneficiary whether contained herein or in the other Loan Documents or otherwise available to Beneficiary may be exercised from time to time and as often as may be deemed expedient by Beneficiary.

4.14 No Waiver of One Default to Affect Another. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If Beneficiary or the required percentage of the Banks (as determined pursuant to the Credit Agreement), to the extent applicable under the Credit Agreement, (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Notes, the Credit Agreement, this Deed of Trust, the Disbursement Agreement or any other Loan Document (including any Security Document); (d) releases any part of the Trust Estate from the lien or security interest of this Deed of Trust or any other instrument securing the Notes or the other Loan Documents; (e) consents to the filing of any map, plat or replat of the Site (to the extent such consent is required); (f) consents to the granting of any easement on the Site (to the extent such consent is required); or (g) makes or consents to any agreement changing the terms of this Deed of Trust or any other Loan Document subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability of Trustor under the Notes, this Deed of Trust or any other Loan Document (including any Security Document) or otherwise, or any subsequent purchaser of the Trust Estate or any part thereof or any maker, co-signer, surety or guarantor. No such act or omission shall preclude Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by Beneficiary, shall the lien or security interest of this Deed of Trust be altered thereby, except to the extent expressly provided in any releases, maps, easements or subordinations described in clause (d), (e), (f) or (g) above of this Section 4.14. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Trust Estate, Beneficiary, without notice to any person, firm or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Trust Estate or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder, or waiving its right to declare such sale or transfer an Event of Default as

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provided herein. Notwithstanding anything to the contrary contained in this Deed of Trust or any other Loan Document (including any Security Document), (i) in the case of any non-monetary Event of Default, Beneficiary may continue to accept payments due hereunder without thereby waiving the existence of such or any other Event of Default and (ii) in the case of any monetary Event of Default, Beneficiary may accept partial payments of any sums due hereunder without thereby waiving the existence of such Event of Default if the partial payment is not sufficient to completely cure such Event of Default.

4.15 Discontinuance of Proceedings; Position of Parties Restored. If Beneficiary shall have proceeded to enforce any right or remedy under this Deed of Trust by foreclosure, entry of judgment or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Beneficiary, then and in every such case Trustor and Beneficiary shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Beneficiary shall continue as if no such proceedings had occurred or had been taken.

4.16 Remedies Cumulative. No right, power or remedy, including without limitation remedies with respect to any security for the Notes or any other Loan Document, conferred upon or reserved to Beneficiary by this Deed of Trust or any other Loan Document (including any Security Document) is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or any other Loan Document (including any Security Document), now or hereafter existing at law, in equity or by statute, and Beneficiary shall be entitled to resort to such rights, powers, remedies or security as Beneficiary shall in its sole and absolute discretion deem advisable.

4.17 Interest After Event of Default. If an Event of Default shall have occurred and is continuing, all sums outstanding and unpaid under the Notes, this Deed of Trust and the other Loan Documents shall, at Beneficiary's option, bear interest at the rate applicable to overdue principal set forth in the Credit Agreement until such Event of Default has been cured. Trustor's obligation to pay such interest shall be secured by this Deed of Trust.

4.18 Foreclosure; Expenses of Litigation. If Trustee forecloses, reasonable attorneys' fees for services in the supervision of said foreclosure proceeding shall be allowed to the Trustee and Beneficiary as part of the foreclosure costs. In the event of foreclosure of the lien hereof, there shall be allowed and included as additional indebtedness all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after foreclosure sale or entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and guarantees, and similar data and assurances with respect to title as Beneficiary may deem reasonably advisable either to prosecute such suit or to evidence to a bidder at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Trust Estate or any portion thereof. All expenditures and expenses of the nature in this section mentioned, and such expenses and fees as may be incurred in the protection of the Trust Estate and the maintenance of the lien and security interest of this Deed of Trust, including the fees of any attorney employed by Beneficiary in any litigation or proceeding affecting this Deed of Trust or any other Loan Document (including any Security Document), the Trust Estate or any portion thereof, including, without limitation, civil, probate, appellate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Trustor, with interest thereon at the rate applicable to overdue principal set forth in the Credit Agreement, and shall be secured by this Deed of Trust. Trustee waives its right to any statutory fee in connection with any judicial or nonjudicial foreclosure of the lien hereof and agrees to accept a reasonable fee for such services.

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4.19 Deficiency Judgments. If after foreclosure of this Deed of Trust or Trustee's sale hereunder, there shall remain any deficiency with respect to any amounts payable under the Notes, this Deed of Trust or the other Loan Documents or any amounts secured hereby, and Beneficiary shall institute any proceedings to recover such deficiency or deficiencies, all such amounts shall continue to bear interest at the rate applicable to overdue principal set forth in the Credit

Agreement. Trustor waives any defense to Beneficiary's recovery against Trustor of any deficiency after any foreclosure sale of the Trust Estate. Trustor expressly waives any defense or benefits that may be derived from any statute granting Trustor any defense to any such recovery by Beneficiary. In addition, Beneficiary and Trustee shall be entitled to recovery of all of their reasonable costs and expenditures (including without limitation any court imposed costs) in connection with such proceedings, including their reasonable attorneys' fees, appraisal fees and the other costs, fees and expenditures referred to in Section 4.18 above. This provision shall survive any foreclosure or sale of the Trust Estate, any portion thereof and/or the extinguishment of the lien hereof.

4.20 **Waiver of Jury Trial.** Beneficiary and Trustor each waive any right to have a jury participate in resolving any dispute whether sounding in contract, tort or otherwise arising out of, connected with, related to or incidental to the relationship established between them in connection with the Notes, this Deed of Trust or any other Loan Document (including any Security Document). Any such disputes shall be resolved in a bench trial without a jury.

4.21 **Exculpation of Beneficiary.** The acceptance by Beneficiary of the assignment contained herein with all of the rights, powers, privileges and authority created hereby shall not, prior to entry upon and taking possession of the Trust Estate by Beneficiary, be deemed or construed to make Beneficiary a "mortgagee in possession"; nor thereafter or at any time or in any event obligate Beneficiary to appear in or defend any action or proceeding relating to the Space Leases, the Rents or the Trust Estate, or to take any action hereunder or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under any Space Lease or to assume any obligation or responsibility for any security deposits or other deposits except to the extent such deposits are actually received by Beneficiary, nor shall Beneficiary, prior to such entry and taking, be liable in any way for any injury or damage to person or property sustained by any Person in or about the Trust Estate.

ARTICLE FIVE

RIGHTS AND RESPONSIBILITIES OF TRUSTEE;

OTHER PROVISIONS RELATING TO TRUSTEE

Notwithstanding anything to the contrary in this Deed of Trust, Trustor and Beneficiary agree as follows.

5.1 **Exercise of Remedies by Trustee.** To the extent that this Deed of Trust or applicable law, including all applicable Nevada Gaming Laws, authorizes or empowers, or does not require approval for, Beneficiary to exercise any remedies set forth in Article Four hereof or otherwise, or perform any acts in connection therewith, Trustee (but not to the exclusion of Beneficiary unless so required under the law of the State of Nevada) shall have the power to exercise any or all such remedies, and to perform any acts provided for in this Deed of Trust in connection therewith, all for the benefit of Beneficiary and on Beneficiary's behalf in accordance with applicable law of the State of Nevada. In connection therewith, Trustee: (a) shall not exercise, or waive the exercise of, any of Beneficiary's remedies (other than any rights of Trustee to any indemnity or reimbursement), except at Beneficiary's request, and (b) shall exercise, or waive the exercise of, any or all of Beneficiary's remedies at Beneficiary's request, and in accordance with Beneficiary's directions as to the manner of such exercise or waiver. Trustee may, however, decline to follow Beneficiary's request or direction if Trustee shall be advised by counsel that the action or proceeding, or manner thereof, so directed may not lawfully be taken or waived.

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5.2 **Rights and Privileges of Trustee.** To the extent that this Deed of Trust requires Trustor to indemnify Beneficiary or reimburse Beneficiary for any expenditures Beneficiary may incur, Trustee shall be entitled to the same indemnity and the same rights to reimbursement of expenses as Beneficiary, subject to such limitations and conditions as would apply in the case of Beneficiary. To the extent that this Deed of Trust negates or limits Beneficiary's liability as to any matter, Trustee shall be entitled to the same negation or limitation of liability. To the extent that Trustor, pursuant to this Deed of Trust, appoints Beneficiary as Trustor's attorney in fact for any purpose, Beneficiary or (when so instructed by Beneficiary) Trustee shall be entitled to act on Trustor's behalf without joinder or confirmation by the other.

5.3 **Resignation or Replacement of Trustee.** Trustee may resign by an instrument in writing addressed to Beneficiary, and Trustee may be removed at any time with or without cause (i.e., in Beneficiary's sole and absolute discretion) by an instrument in writing executed by Beneficiary. In case of the death, resignation, removal or disqualification of Trustee or if for any reason Beneficiary shall deem it desirable to appoint a substitute, successor or replacement Trustee to act instead of Trustee originally named (or in place of any substitute, successor or replacement Trustee), then Beneficiary shall have the right and is hereby authorized and empowered to appoint a successor, substitute or replacement Trustee, without any formality other than appointment and designation in writing executed by Beneficiary, which instrument shall be recorded in the Office of the Recorder of Clark County, Nevada. The law of the State of Nevada (including, without limitation, the Nevada Gaming Laws) shall govern the qualifications of any Trustee. The authority conferred upon Trustee by this Deed of Trust shall automatically extend to any and all other successor, substitute and replacement Trustee(s) successively until the obligations secured hereunder have been paid in full or the Trust Estate has been sold hereunder or released in accordance with the provisions of the Loan Documents (including the Security Documents). Beneficiary's written appointment and designation of any Trustee shall be full evidence of Beneficiary's right and authority to make the same and of all facts therein recited. No confirmation, authorization, approval or other action by Trustor shall be required in connection with any resignation or other replacement of Trustee.

5.4 **Authority of Beneficiary.** If Beneficiary is a banking corporation, state banking corporation or a national banking association and the instrument of appointment of any successor or replacement Trustee is executed on Beneficiary's behalf by an officer of such corporation, state banking corporation or national banking association, then such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of Beneficiary.

5.5 **Effect of Appointment of Successor Trustee.** Upon the appointment and designation of any successor, substitute or replacement Trustee, and subject to compliance with applicable Nevada Gaming Laws and other applicable laws, Trustee's entire estate and title in the Trust Estate shall vest in the designated successor, substitute or replacement Trustee. Such successor, substitute or replacement Trustee shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon Trustee. All references herein to Trustee shall be deemed to refer to Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder.

5.6 **Confirmation of Transfer and Succession.** Upon the written request of Beneficiary or of any successor, substitute or replacement Trustee, any former Trustee ceasing to act shall execute and deliver an instrument transferring to such successor, substitute or replacement Trustee all of the right, title, estate

5.7 **Exculpation.** Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or otherwise be responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence, willful misconduct or knowing violation of law. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law). Trustee shall be under no liability for interest on any moneys received by it hereunder.

5.8 **Endorsement and Execution of Documents.** Upon Beneficiary's written request, Trustee shall, without liability or notice to Trustor, execute, consent to, or join in any instrument or agreement in connection with or necessary to effectuate the purposes of the Loan Documents (including the Security Documents). Trustor hereby irrevocably designates Trustee as its attorney in fact to execute, acknowledge and deliver, on Trustor's behalf and in Trustor's name, all instruments or agreements necessary to implement any provision(s) of this Deed of Trust or to further perfect the lien created by this Deed of Trust on the Trust Estate. This power of attorney shall be deemed to be coupled with an interest and shall survive any disability of Trustor.

5.9 **Multiple Trustees.** If Beneficiary appoints multiple trustees, then any Trustee, individually, may exercise all powers granted to Trustee under this instrument, without the need for action by any other Trustee(s).

5.10 **Terms of Trustee's Acceptance.** Trustee accepts the trust created by this Deed of Trust upon the following terms and conditions:

- (a) **Delegation.** Trustee may exercise any of its powers through appointment of attorney(s) in fact or agents.
- (b) **Counsel.** Trustee may select and employ legal counsel (including any law firm representing Beneficiary). Trustor shall reimburse all reasonable legal fees and expenses that Trustee may thereby incur.
- (c) **Security.** Trustee shall be under no obligation to take any action upon any Event of Default unless furnished security or indemnity, in form satisfactory to Trustee, against costs, expenses, and liabilities that Trustee may incur.
- (d) **Costs and Expenses.** Trustor shall reimburse Trustee, as part of the Obligations secured hereunder, for all reasonable disbursements and expenses (including reasonable legal fees and expenses) incurred by reason of and as provided for in this Deed of Trust, including any of the foregoing incurred in Trustee's administering and executing the trust created by this Deed of Trust, in complying with all applicable Nevada Gaming Laws and performing Trustee's duties and exercising Trustee's powers under this Deed of Trust.
- (e) **Release.** Upon full and indefeasible payment and performance of the Obligations secured hereunder, Beneficiary shall request that Trustee release this Deed of Trust. Upon receipt of such request Trustee shall release this Deed of Trust to Trustor. Trustor shall pay all costs of recordation, if any.

ARTICLE SIX

MISCELLANEOUS PROVISIONS

6.1 **Heirs, Successors and Assigns Included in Parties.** Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included, and subject to the limitations set forth in Section 1.9, all covenants and agreements contained in this Deed

of Trust, by or on behalf of Trustor or Beneficiary shall bind and inure to the benefit of its heirs, successors and assigns, whether so expressed or not.

6.2 **Addresses for Notices, Etc.** Any notice, report, demand or other instrument authorized or required to be given or furnished under this Deed of Trust to Trustor or Beneficiary shall be deemed given or furnished (i) when addressed to the party intended to receive the same, at the address of such party set forth below, and delivered by hand at such address or (ii) three (3) days after the same is deposited in the United States mail as first class certified mail, return receipt requested, postage paid, whether or not the same is actually received by such party:

Beneficiary: Deutsche Bank Trust Company Americas
31 West 52nd Street, 7th Floor
New York, New York 10019
Attn: Jeff Baevsky

With a copy to: Latham & Watkins
701 B. Street, Suite 2100
San Diego, California 92101
Attn: Sony Ben-Moshe, Esq.

Trustor: Wynn Las Vegas, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Legal Department

With a copy to: Irell & Manella LLP

1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Attn: C. Kevin McGeehan

Trustee: Nevada Title Company
2500 North Buffalo, Suite 150
Las Vegas, Nevada 89128
Attn: Robbie Graham

6.3 **Change of Notice Address.** Any Person may change the address to which any such notice, report, demand or other instrument is to be delivered or mailed to that person, by furnishing written notice of such change to the other parties, but no such notice of change shall be effective unless and until received by such other parties.

6.4 **Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Deed of Trust are for convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

6.5 **Invalid Provisions to Affect No Others.** In the event that any of the covenants, agreements, terms or provisions contained herein or in the Notes, the Credit Agreement or any other Loan Document (including the Security Documents) shall be invalid, illegal or unenforceable in any respect, the validity of the lien hereof and the remaining covenants, agreements, terms or provisions contained herein or in the Notes, the Credit Agreement or any other Loan Document (including the Security Documents) shall be in no way affected, prejudiced or disturbed thereby. To the extent permitted by law, Trustor waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

6.6 **Changes and Priority Over Intervening Liens.** Neither this Deed of Trust nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or

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termination is sought. Any agreement hereafter made by Trustor and Beneficiary relating to this Deed of Trust shall be superior to the rights of the holder of any intervening lien or encumbrance.

6.7 **Estoppel Certificates.** Within ten (10) Business Days after Beneficiary's written request, Trustor shall from time to time execute a certificate, in recordable form (an "Estoppel Certificate"), stating, except to the extent it would be inaccurate to so state: (a) the current amount of the Obligations secured hereunder and all elements thereof, including principal, interest, and all other elements; (b) that Trustor has no defense, offset, claim, counterclaim, right of recoupment, deduction, or reduction against any of the Obligations secured hereunder; (c) that none of the Loan Documents (including the Security Documents) have been amended, whether orally or in writing; (d) that Trustor has no claims against Beneficiary of any kind; (e) that any power of attorney granted to Beneficiary is in full force and effect; and (f) such other matters relating to this Deed of Trust or any other Loan Document (including any Security Document) and the relationship of Trustor and Beneficiary as Beneficiary shall request. In addition, the Estoppel Certificate shall set forth the reasons why it would be inaccurate to make any of the foregoing assurances.

6.8 **Waiver of Setoff and Counterclaim; Other Waivers.** All amounts due under this Deed of Trust, the Notes and the other Loan Documents (including the Security Documents) shall be payable without setoff, counterclaim or any deduction whatsoever. Trustor hereby waives the right to assert a counterclaim (other than a compulsory counterclaim) in any action or proceeding brought against it by Beneficiary and/or any Bank under the Loan Documents, or arising out of or in any way connected with this Deed of Trust or the other Loan Documents (including the Security Documents) or the Obligations.

6.9 **Governing Law.** The Credit Agreement and the Notes provide that they are governed by, and construed and enforced in accordance with, the laws of the State of New York. This Deed of Trust shall also be construed under and governed by the laws of the State of New York; provided, however, that (i) the terms and provisions of this Deed of Trust pertaining to the priority, perfection, enforcement or realization by Beneficiary of its respective rights and remedies under this Deed of Trust with respect to the Trust Estate shall be governed and construed and enforced in accordance with the internal laws of the State of Nevada (the "State") without giving effect to the conflicts-of-law rules and principles of the State; (ii) Trustor agrees that to the extent deficiency judgments are available under the laws of the State after a foreclosure (judicial or nonjudicial) of the Trust Estate, or any portion thereof, or any other realization thereon by Beneficiary or any Bank under the Loan Documents, Beneficiary or such Bank, as the case may be, shall have the right to seek such a deficiency judgment against Trustor in the State; and (iii) Trustor agrees that if Beneficiary or any Bank under the Loan Documents obtains a deficiency judgment in another state against Trustor, then Beneficiary or such Bank, as the case may be, shall have the right to enforce such judgment in the State to the extent permitted under the laws of the State, as well as in other states.

6.10 **Required Notices.** Trustor shall notify Beneficiary promptly of the occurrence of any of the following and shall immediately provide Beneficiary a copy of the notice or documents referred to: (i) receipt of notice from any Governmental Authority relating to all or any material part of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (ii) receipt of any notice from any tenant leasing all or any material portion of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iii) receipt of notice from the holder of any Permitted Lien relating to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iv) the commencement of any proceedings or the entry of any judgment, decree or order materially affecting all or any portion of the Trust Estate or which involve the potential liability of Trustor or its Affiliates in an amount in excess of \$25,000,000 (other than for personal injury actions and related property damage suits which are covered by such insurance); or (v) commencement of any judicial or administrative proceedings or the

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entry of any judgment, decree or order by or against or otherwise affecting Trustor or any Affiliate of Trustor, a material portion of the Trust Estate, or a material portion of the Personal Property, or any other action by any creditor or lessor thereof as a result of any default under the terms of any lease.

6.11 **Reconveyance.** Upon written request of Trustor when the Obligations secured hereby have been satisfied in full, Beneficiary shall cause Trustee to reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

6.12 **Attorneys' Fees.** Without limiting any other provision contained herein, Trustor agrees to pay all costs of Beneficiary or Trustee incurred in connection with the enforcement of this Deed of Trust, the Notes or the other Loan Documents, including without limitation all reasonable attorneys' fees whether or not suit is commenced, and including, without limitation, fees incurred in connection with any probate, appellate, bankruptcy, deficiency or any other litigation proceedings, all of which sums shall be secured hereby.

6.13 **Late Charges.** By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to collect any late charge thereon or interest thereon at the interest rate on the Notes or as otherwise specified in the Credit Agreement, if so provided, not then paid or its right either to require prompt payment when due of all other sums so secured or to declare default for failure to pay any amounts not so paid.

6.14 **Cost of Accounting.** Trustor shall pay to Beneficiary, for and on account of the preparation and rendition of any accounting, which Trustor may be entitled to require under any law or statute now or hereafter providing therefor, the reasonable costs thereof.

6.15 **Right of Entry.** Subject to compliance with applicable Nevada Gaming Laws, Beneficiary may at any reasonable time or times and on reasonable prior written notice to Trustor make or cause to be made entry upon and inspections of the Trust Estate or any part thereof in person or by agent.

6.16 **Corrections.** Trustor shall, upon request of Beneficiary or Trustee, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust (including, but not limited to, in the exhibits and schedules attached hereto) or in the execution or acknowledgement hereof, and shall execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Trustee to carry out more effectively the purposes of this Deed of Trust, to subject to the lien and security interest hereby created any of Trustor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.

6.17 **Statute of Limitations.** To the fullest extent allowed by the law, the right to plead, use or assert any statute of limitations as a plea or defense or bar of any kind, or for any purpose, to any debt, demand or obligation secured or to be secured hereby, or to any complaint or other pleading or proceeding filed, instituted or maintained for the purpose of enforcing this Deed of Trust or any rights hereunder, is hereby waived by Trustor.

6.18 **Subrogation.** Should the proceeds of any loan or advance made by Beneficiary or any Bank under the Credit Agreement to Trustor, repayment of which is hereby secured, or any part thereof, or any amount paid out or advanced by Beneficiary or any Bank under the Credit Agreement, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior or superior lien or encumbrance upon the Trust Estate, or any part thereof, then, as additional security hereunder, Trustee, on behalf of Beneficiary, shall be subrogated to any and all rights, superior titles, liens, and equities owned or claimed by any owner or holder of said outstanding liens, charges, and indebtedness, however remote, regardless of whether said liens, charges, and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

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6.19 **Joint and Several Liability.** All obligations of Trustor hereunder, if more than one, are joint and several. Recourse for deficiency after sale hereunder may be had against the property of Trustor, without, however, creating a present or other lien or charge thereon.

6.20 **Homestead.** Trustor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Trust Estate as against the collection of the Obligations, or any part hereof.

6.21 **Context.** In this Deed of Trust, whenever the context so requires, the neuter includes the masculine and feminine, and the singular including the plural, and vice versa.

6.22 **Time.** Time is of the essence of each and every term, covenant and condition hereof. Unless otherwise specified herein, any reference to "days" in this Deed of Trust shall be deemed to mean "calendar days."

6.23 **Interpretation.** As used in this Deed of Trust unless the context clearly requires otherwise: The terms "herein" or "hereunder" and similar terms without reference to a particular section shall refer to the entire Deed of Trust and not just to the section in which such terms appear; the term "lien" shall also mean a security interest, and the term "security interest" shall also mean a lien.

6.24 **Effect of NRS 107.030.** To the extent not inconsistent herewith, the provisions of NRS 107.030 (1), (2) (in amounts as hereinabove provided for), (3), (4) (with interest at the default rate provided for under the Credit Agreement), (5), (6), (7) (reasonable), (8) and (9) are included herein by reference and made part of this Deed of Trust.

6.25 **Amendments.** This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought and only as permitted by the provisions of the Credit Agreement.

6.26 **No Conflicts.** In the event that any of the provisions contained here conflict with the Credit Agreement or the Guarantee and Collateral Agreement, the provisions contained in the Credit Agreement and the Guarantee and Collateral Agreement shall prevail.

6.27 **Amendment and Restatement.** This Deed of Trust amends and restates that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing by Trustor to Trustee for the benefit of Beneficiary recorded on July 2, 2002 in Book No. 20020702 as Instrument No. 00145 of Official Records in the office of the County Recorder of Clark County, Nevada (the "**Original Deed of Trust**") in its entirety. This Deed of Trust is not intended and shall not be construed or interpreted as to affect the effectiveness or priority of the Original Deed of Trust.

ARTICLE SEVEN

POWER OF ATTORNEY

7.1 **Grant of Power.** Subject to compliance with applicable Nevada Gaming Laws, Trustor irrevocably appoints Beneficiary and any successor thereto as its attorney-in-fact, with full power and authority, including the power of substitution, exercisable only during the continuance of an Event of Default to act for Trustor in its name, place and stead as hereinafter provided:

7.1.1 **Possession and Completion.** To take possession of the Site and the Project, remove all employees, contractors and agents of Trustor therefrom, complete or attempt to complete the work of construction, and market, sell or lease the Site and the Project.

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7.1.2 **Plans.** To make such additions, changes and corrections in the current Plans and Specifications as may be necessary or desirable, in Beneficiary's reasonable discretion, or as it deems proper to complete the Project.

7.1.3 **Employment of Others.** To employ such contractors, subcontractors, suppliers, architects, inspectors, consultants, property managers and other agents as Beneficiary, in its discretion, deems proper for the completion of the Project, for the protection or clearance of title to the Site or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.4 **Security Guards.** To employ watchmen to protect the Site and the Project from injury.

7.1.5 **Compromise Claims.** To pay, settle or compromise all bills and claims then existing or thereafter arising against Trustor, which Beneficiary, in its discretion, deems proper for the protection or clearance of title to the Site or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.6 **Legal Proceedings.** To prosecute and defend all actions and proceedings in connection with the Site or the Project.

7.2 **Other Acts.** To execute, acknowledge and deliver all other instruments and documents in the name of Trustor that are necessary or desirable, to exercise Trustor's rights under all contracts concerning the Site or the Project, including, without limitation, under any Space Leases, and to do all other acts with respect to the Site or the Project that Trustor might do on its own behalf, as Beneficiary, in its reasonable discretion, deems proper.

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IN WITNESS WHEREOF, Trustor has executed this Amended and Restated Deed of Trust, Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing as of the day and year first above written.

TRUSTOR:

WYNN LAS VEGAS, LLC,
a Nevada limited liability company,

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein

Title: Senior Vice President, General Counsel and Secretary

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QuickLinks

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[ARTICLE SIX MISCELLANEOUS PROVISIONS](#)

[ARTICLE SEVEN POWER OF ATTORNEY](#)

APNs: 162-16-610-016,
162-16-610-007 and
162-16-610-006

Recording requested by and recorded
counterparts should be returned to:

Sony Ben-Moshe, Esq.
Latham & Watkins
701 B Street, Suite 2100
San Diego, California 92101

Mail Property Tax Statements to:

Palo, LLC
Legal Department
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109

**AMENDED AND RESTATED DEED OF TRUST, ASSIGNMENT OF RENTS AND
LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

MADE BY

**PALO, LLC,
a Delaware limited liability company,
as Trustor,**

to

**Nevada Title Company,
a Nevada corporation,
as Trustee,
for the benefit of**

**DEUTSCHE BANK TRUST COMPANY AMERICAS,
in its capacity as Administrative Agent for the benefit of the Banks,
as Beneficiary**

THIS INSTRUMENT IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS OF CLARK COUNTY, NEVADA UNDER THE NAMES OF PALO, LLC AS "DEBTOR" AND DEUTSCHE BANK TRUST COMPANY AMERICAS AS "SECURED PARTY." TRUSTOR'S ORGANIZATIONAL NUMBER IS DELAWARE FILE NUMBER 3114855.

THIS INSTRUMENT IS A "CONSTRUCTION MORTGAGE" AS THAT TERM IS DEFINED IN SECTION 104.9334(8) OF THE NEVADA REVISED STATUTES AND SECURES AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT UPON LAND.

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SCHEDULE A DESCRIPTION OF THE LAND

**AMENDED AND RESTATED DEED OF TRUST, ASSIGNMENT OF RENTS AND
LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS AMENDED AND RESTATED DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (hereinafter called "**Deed of Trust**") is made and effective as of October 30, 2002, by PALO, LLC, a Delaware limited liability company (together with all successors and assigns of the Trust Estate (as hereinafter defined), "**Trustor**"), whose address is 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109, to Nevada Title Company, a Nevada corporation, whose address is 2500 North Buffalo, Suite 150, Las Vegas, Nevada 89128, as Trustee ("**Trustee**"), for the benefit of DEUTSCHE BANK TRUST COMPANY AMERICAS ("**Beneficiary**"), in its capacity as Administrative Agent under (i) that certain Amended and Restated Commitment Letter (as the same may be amended or modified from time to time, the "**Commitment Letter**") dated as of June 14, 2002, among Wynn Resorts Holdings, LLC, a Nevada limited liability company (formerly known as Wynn Resorts, LLC), Beneficiary, Deutsche Bank Securities Inc., Bank of America, N.A., Banc of America Securities LLC, Bear Stearns Corporate Lending, Inc., Bear, Stearns & Co. Inc., Valvino Lamore, LLC, a Nevada limited liability company, and Wynn Las Vegas, LLC, a Nevada limited liability company (Wynn Las Vegas, LLC being hereinafter referred to as "**Borrower**"), and that certain Credit Agreement (as the same may be amended or modified from time to time, the "**Credit Agreement**") dated as of even date herewith (and entered into in connection with and in furtherance of the Commitment Letter) among Borrower, Beneficiary and the other parties signatory thereto (such other parties, together with Beneficiary, the "**Banks**") pursuant to which the Banks have agreed to lend to Borrower an aggregate principal amount of \$1,000,000,000 and (ii) that certain Guarantee and Collateral Agreement (as the same may be amended or modified from time to time, the "**Guaranty**") dated as of even date herewith (and entered into in connection with and in furtherance of the Commitment Letter and the Credit Agreement) by Trustor and the other parties thereto for the benefit of Beneficiary on behalf of the Banks pursuant to which Trustor will guaranty the payment and performance of all obligations of Borrower under the Credit Agreement and the other Loan Documents. Trustor is an affiliate of Borrower and it is anticipated that Borrower will use proceeds of the loans made by the Banks to Borrower under the Credit Agreement for, among other things, the development and improvement of the Land (as hereinafter defined) and certain surrounding properties. Beneficiary and the Banks have agreed to enter into the Credit Agreement with Borrower on the condition that Trustor execute this Deed of Trust and the Guaranty. Trustor acknowledges that it will benefit, directly and indirectly, if Beneficiary and the Banks enter into the Credit Agreement and the other Loan Documents and executes this Deed of Trust in consideration and furtherance thereof.

THIS INSTRUMENT SECURES FUTURE ADVANCES. THE MAXIMUM AMOUNT OF PRINCIPAL TO BE SECURED HEREBY IS \$1,000,000,000. THIS INSTRUMENT IS TO BE GOVERNED BY THE PROVISIONS OF NRS 106.300 THROUGH NRS 106.400 INCLUSIVE.

THE OBLIGATIONS SECURED HEREBY INCLUDE REVOLVING CREDIT OBLIGATIONS WHICH PERMIT BORROWING, REPAYMENT AND REBORROWING. INTEREST ON OBLIGATIONS SECURED HEREBY ACCRUES AT A RATE WHICH MAY FLUCTUATE FROM TIME TO TIME.

DEFINITIONS—As used in this Deed of Trust, the following terms have the meanings hereinafter set forth:

"**Accounts Receivable**" shall have the meaning set forth in Section 9-102 (NRS 104.9102) of the UCC for the term "account."

"**Appurtenant Rights**" means all and singular tenements, hereditaments, rights, reversions, remainders, development rights, privileges, benefits, easements (in gross or appurtenant), rights-of-way, licenses, gores or strips of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, and all appurtenances whatsoever and claims or demands of Trustor at law or in equity in

any way belonging, benefiting, relating or appertaining to the Land, the Trustor, the Project, the airspace over the Land, the Improvements or any of the Trust Estate encumbered by this Deed of Trust, or which hereinafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Trustor.

"**Bankruptcy**" means, with respect to any Person, that (i) a court having jurisdiction in the Trust Estate shall have entered a decree or order for relief in respect of such Person in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order has not been stayed; or any other similar relief shall have been granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against such Person, under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the Trust Estate for the appointment of a receiver, liquidator, sequestrator, trustee,

custodian or other officer having similar powers over such Person, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of such Person, for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of such Person, and any such event described in this clause (ii) shall continue for 60 days unless dismissed, bonded or discharged; or (iii) such Person shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or such Person shall make any assignment for the benefit of creditors, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable or if the fair market value of its assets does not exceed its aggregate liabilities; or (iv) such Person shall, or the Board of Directors of such Person (or any committee thereof) shall, adopt any resolution or otherwise authorize any action to approve any of the actions referred to in clause (iii) above.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute thereto.

"Business Day" means any day that is not a Saturday, a Sunday or a day on which banking institutions in the State of Nevada or the City of New York are not required to be open.

"Deed of Trust" means this Deed of Trust as it may be amended, increased or modified from time to time.

"Disbursement Agreement" means that certain Master Disbursement Agreement dated as of even date herewith, among Borrower, Beneficiary, Wells Fargo Bank, National Association, as the trustee for holders of mortgage notes issued in connection with the financing of the Project, Deutsche Bank Trust Company Americas, as disbursement agent, and the other parties signatory thereto, as the same may hereafter be amended or modified in accordance with its terms and the terms of the Credit Agreement.

"Event of Default" has the meaning set forth in Section 3.1 hereof.

"FF&E" means all furniture, fixtures, equipment, appurtenances and personal property now or in the future contained in, used in connection with, attached to, or otherwise useful or convenient to the use, operation, or occupancy of, or placed on, but unattached to, any part of the Site or Improvements whether or not the same constitutes real property or fixtures in the State of Nevada, including all removable window and floor coverings, all furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator and escalator plants, cooking facilities, vacuum cleaning systems, public address and communications systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances,

equipment, fittings, fixtures, and building materials, all gaming and financial equipment, computer equipment, calculators, adding machines, gaming tables, video game and slot machines, and any other electronic equipment of every nature used or located on any part of the Site or Improvements, together with all Venetian blinds, shades, draperies, drapery and curtain rods, brackets, bulbs, cleaning apparatus, mirrors, lamps, ornaments, cooling apparatus and equipment, ranges and ovens, garbage disposals, dishwashers, mantels, and any and all such property which is at any time installed in, affixed to or placed upon the Site or Improvements.

"FF&E Financing Agreement" means any financing agreement entered into by Trustor (i) the proceeds of which are used by Trustor for the acquisition or lease of FF&E, (ii) pursuant to which Trustor grants to the lender or lessor thereunder a security interest in the FF&E so acquired or leased and (iii) which is permitted by the Credit Agreement and the Guaranty.

"Governmental Authority" means any agency, authority, board, bureau, commission, department, office, public entity, or instrumentality of any nature whatsoever of the United States federal or foreign government, any state, province or any city or other political subdivision or otherwise, whether now or hereafter in existence, or any officer or official thereof, including, without limitation, any Nevada Gaming Authority.

"Imposition" means any taxes, assessments, water rates, sewer rates, maintenance charges, other governmental impositions and other charges now or hereafter levied or assessed or imposed against the Trust Estate or any part thereof.

"Improvements" means (1) all the buildings, structures, facilities and improvements of every nature whatsoever now or hereafter situated on the Site or any real property encumbered hereby, and (2) all fixtures, machinery, appliances, goods, building or other materials, equipment, including without limitation all gaming equipment and devices, and all machinery, equipment, engines, appliances and fixtures for generating or distributing air, water, heat, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse or garbage; all wall-beds, wall-safes, built-in furniture and installations, shelving, lockers, partitions, doorstops, vaults, motors, elevators, dumb-waiters, awnings, window shades, Venetian blinds, light fixtures, fire hoses and brackets and boxes for the same, fire sprinklers, alarm, surveillance and security systems, computers, drapes, drapery rods and brackets, mirrors, mantels, screens, linoleum, carpets and carpeting, plumbing, bathtubs, sinks, basins, pipes, faucets, water closets, laundry equipment, washers, dryers, ice-boxes and heating units; all kitchen and restaurant equipment, including but not limited to silverware, dishes, menus, cooking utensils, stoves, refrigerators, ovens, ranges, dishwashers, disposals, water heaters, incinerators, furniture, fixtures and furnishings, communication systems, and equipment; all cocktail lounge supplies, including but not limited to bars, glassware, bottles and tables used in connection with the Site; all chaise lounges, hot tubs, swimming pool heaters and equipment and all other recreational equipment (computerized and otherwise), beauty and barber equipment, and maintenance supplies used in connection with the Site; all amusement rides and attractions attached to the Site, all specifically designed installations and furnishings, and all furniture, furnishings and personal property of every nature whatsoever now or hereafter owned or leased by Trustor or in which Trustor has any rights or interest and located in or on, or attached to, or used or intended to be used or which are now or may hereafter be appropriated for use on or in connection with the operation of the Site or any real or personal property encumbered hereby or any other Improvements, or in connection with any construction being conducted or which may be conducted thereon, and all extensions, additions, accessions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing, and all of the right, title and interest of Trustor in and to any such property, which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and improvements and a part of the real property hereby encumbered.

"Indemnity Agreement" means that certain Indemnity Agreement dated as of even date herewith by Trustor for the benefit of Beneficiary and certain other indemnified parties named therein.

"Insolvent" means with respect to any person or entity, that such person or entity shall be deemed to be insolvent if it shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable and/or if the fair market value of its assets does not exceed its aggregate liabilities.

"Intangible Collateral" means (a) the rights to use all names and all derivations thereof now or hereafter used by Trustor in connection with the Site or Improvements, including, without limitation, the name "Le Reve", including any variations thereon, together with the goodwill associated therewith, and all names, logos, and designs used by Trustor, or in connection with the Site or in which Trustor has rights, with the exclusive right to use such names, logos and designs wherever they are now or hereafter used in connection with the Project (or in connection with the marketing of the Project), and any and all other trade names, trademarks or service marks, whether or not registered, now or hereafter used in the operation of the Project, including, without limitation, any interest as a lessee, licensee or franchisee, and, in each case, together with the goodwill associated therewith; (b) subject to the absolute assignment contained herein, the Rents; (c) any and all books, records, customer lists, concession agreements, supply or service contracts, licenses, permits, governmental approvals (to the extent such licenses, permits and approvals may be pledged under applicable law), signs, goodwill, casino and hotel credit and charge records, supplier lists, checking accounts, safe deposit boxes (excluding the contents of such deposit boxes owned by persons other than Trustor and its subsidiaries), cash, instruments, chattel papers, including inter-company notes and pledges, documents, unearned premiums, deposits, refunds, including but not limited to income tax refunds, prepaid expenses, rebates, tax and insurance escrow and impound accounts, if any, actions and rights in action, and all other claims, including without limitation condemnation awards and insurance proceeds, and all other contract rights and general intangibles resulting from or used in connection with the operation and occupancy of the Trust Estate and the Improvements and in which Trustor now or hereafter has rights; and (d) general intangibles, vacation license resort agreements or other time share license or right to use agreements, including without limitation all rents, issues, profits, income and maintenance fees resulting therefrom, whether any of the foregoing is now owned or hereafter acquired.

"Land" means the real property situated in the County of Clark, State of Nevada, more specifically described in *Schedule A* attached hereto and incorporated herein by reference, including any after acquired title thereto.

"Legal Requirements" means all applicable restrictive covenants, applicable zoning and subdivision ordinances and building codes, all applicable health and Environmental Laws and regulations, all applicable gaming laws and regulations, and all other applicable laws, ordinances, rules, regulations, judicial decisions, administrative orders, and other requirements of any Governmental Authority having jurisdiction over Trustor, the Trust Estate and/or any Affiliate of Trustor, in effect either at the time of execution of this Deed of Trust or at any time during the term hereof, including, without limitation, all Environmental Laws and Nevada Gaming Laws.

"Nevada Gaming License" means any gaming license necessary for the ownership, construction, maintenance, financing or operation of the Project, whether issued and/or required by Nevada Gaming Authorities, Nevada Gaming Laws or otherwise.

"Notes" means, collectively, those certain promissory note(s) to be issued pursuant to the Credit Agreement, as the same may be amended or replaced from time to time in accordance with its terms.

"NRS" means the Nevada Revised Statutes as in effect from time to time.

"Obligations" means (i) the payment and performance by Borrower of each covenant and agreement of Borrower contained in the Commitment Letter, the Credit Agreement, the Notes and the other Loan Documents (including the Security Documents) and (ii) the payment and performance by Trustor of each covenant and agreement of Trustor contained in the Guaranty, this Deed of Trust, the Indemnity Agreement and the other Loan Documents.

"Permitted Dispositions" means (a) the sale, transfer, lease or other disposition of assets in the Trust Estate, in the ordinary course of business, of inventory held in the ordinary course of business (b) the dispositions set forth in *Section 1.10* hereof and (c) other sales, transfers, leases or other dispositions of assets in the Trust Estate, including entering into Space Leases; *provided* that, in each case, all applicable provisions of the Loan Documents, including the Guaranty, are complied with.

"Personal Property" has the meaning set forth in *Section 1.12* hereof.

"Proceeds" has the meaning assigned to it under the UCC and, in any event, shall include but not be limited to (i) any and all proceeds of any insurance (including without limitation property casualty and title insurance), indemnity, warranty or guaranty payable from time to time with respect to any of the Trust Estate; (ii) any and all proceeds in the form of accounts, security deposits, tax escrows (if any), down payments (to the extent the same may be pledged under applicable law), collections, contract rights, documents, instruments, chattel paper, liens and security instruments, guarantees or general intangibles relating in whole or in part to the Project and all rights and remedies of whatever kind or nature Trustor may hold or acquire for the purpose of securing or enforcing any obligation due Trustor thereunder; (iii) any and all payments in any form whatsoever made or due and payable from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Trust Estate by any Governmental Authority; (iv) subject to the absolute assignment contained herein, the Rents or other benefits arising out of, in connection with or pursuant to any Space Lease of the Trust Estate; and (v) any and all other amounts from time to time paid or payable in connection with any of the Trust Estate; *provided, however*, that the Trustor is not authorized to dispose of any of the Trust Estate unless such disposition is a Permitted Disposition.

"Project" means the resort-hotel-casino-mall complex proposed to be constructed in Clark County, Nevada as described in the Plans and Specifications and as applicable to the Land and the Improvements, as such Plans and Specifications may be amended pursuant to the Disbursement Agreement.

"Rents" means all rents, room revenues, income, receipts, issues, profits, revenues and maintenance fees, room, food and beverage revenues, license and concession fees, income, proceeds and other benefits to which Trustor may now or hereafter be entitled from the Site, the Improvements, the Space Leases or any property encumbered hereby or any business or other activity conducted by Trustor at the Site or the Improvements.

"Site" means the Land and the Appurtenant Rights.

"**Space Leases**" means any and all leases, subleases, lettings, licenses, concessions, operating agreements, management agreements, and all other agreements affecting the Trust Estate that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, that give any person the right to conduct its business on, or otherwise use, operate or occupy, all or any portion of the Site or Improvements and any leases, agreements or arrangements permitting anyone to enter upon or use any of the Trust Estate to extract or remove natural resources of any kind, together with all amendments, extensions, and renewals of the foregoing entered into in compliance with this Deed of Trust, together with all rental, occupancy, service, maintenance or any other similar agreements pertaining to use or occupation of, or the rendering of services at the Site, the Improvements or any part thereof.

"**Space Lessee(s)**" means any and all tenants, licensees, or other grantees of the Space Leases and any and all guarantors, sureties, endorsers or others having primary or secondary liability with respect to such Space Leases.

"**Tangible Collateral**" means all personal property, goods, equipment, supplies, building and other materials of every nature whatsoever and all other tangible personal property constituting a part or portion of the Project and/or used in the operation of the hotel, casino, restaurants, stores, parking

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facilities, observation tower and all other commercial operations on the Site or Improvements, including but not limited to communication systems, visual and electronic surveillance systems and transportation systems and not constituting a part of the real property subject to the real property lien of this Deed of Trust and including all property and materials stored therein in which Trustor has an interest and all tools, utensils, food and beverage, liquor, uniforms, linens, housekeeping and maintenance supplies, vehicles, fuel, advertising and promotional material, blueprints, surveys, plans and other documents relating to the Site or Improvements, and all construction materials and all furnishings, fixtures and equipment, including, but not limited to, all FF&E and all equipment and devices which are or are to be installed and used in connection with the operation of the Project, those items of furniture, fixtures and equipment which are to be purchased or leased by Trustor, machinery and any other item of personal property in which Trustor now or hereafter own or acquire an interest or right, and which are used or useful in the construction, operation, use and occupancy of the Project and all present and future right and interest of Trustor in and to any casino operator's agreement, license agreement or sublease agreement used in connection with the Site or the Improvements.

"**Title Insurer**" means Chicago Title Insurance Company.

"**Trust Estate**" means all of the property described in Granting Clauses (A) through (O) below, inclusive, and each item of property therein described, provided, however, that such term shall not include the property described in Granting Clause (P) below.

"**UCC**" means the Uniform Commercial Code in effect in the State of Nevada from time to time, NRS chapters 104 and 104A.

The following terms shall have the meaning assigned to such terms in the Disbursement Agreement:

Disbursement Agent
Plans and Specifications

The following terms shall have the meaning assigned to such terms in the Credit Agreement:

Affiliate
Closing Date
Environmental Laws
Financing Agreements
Lien
Loan Documents
Nevada Gaming Authorities
Nevada Gaming Laws
Permitted Encumbrance
Permitted Liens
Person
Security Documents

In addition, any capitalized terms used in this Deed of Trust which are not otherwise defined herein shall have the meaning ascribed to such terms in the Disbursement Agreement and, if not defined therein, the meaning ascribed to such terms in the Credit Agreement and, if not defined therein, the meaning ascribed to such terms in the Guaranty; *provided*, that upon termination of the Disbursement Agreement, any defined terms used herein having meanings given to such terms in the Disbursement Agreement shall continue to have the meanings given to such terms in the Disbursement Agreement immediately prior to such termination.

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W I T N E S E T H:

IN CONSIDERATION OF TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION; THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, AND FOR THE PURPOSE OF SECURING in favor of Beneficiary (1) the Obligations; (2) the payment of such additional loans or advances as hereafter may be made to Trustor (individually or jointly and severally with any other Person) or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; *provided, however*, that any and all future advances by Beneficiary to Trustor made for the improvement, protection or preservation of the Trust Estate, together with interest at the rate applicable to overdue principal set forth in the Credit Agreement, shall be automatically secured hereby unless such a note or instrument evidencing such advances specifically recites that it is not intended to be secured hereby and (3) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof or to protect the security hereof (including Protective Advances as such term is defined in *Section 4.2* hereof), together with interest thereon as herein provided (without limiting the generality of the protections afforded by NRS Chapter 106, funds disbursed that, in the reasonable exercise of Beneficiary's judgment, are needed to complete Improvements to

the Land or to protect Beneficiary's security interest in the Trust Estate are to be deemed obligatory advances hereunder and will be added to the total indebtedness secured by this Deed of Trust and such indebtedness shall be increased accordingly), Trustor, in consideration of the premises, and for the purposes aforesaid, does hereby ASSIGN, BARGAIN, CONVEY, PLEDGE, RELEASE, HYPOTHECATE, WARRANT, AND TRANSFER WITH POWER OF SALE UNTO TRUSTEE IN TRUST FOR THE BENEFIT OF BENEFICIARY AND THE BANKS each of the following:

(A) The Land;

(B) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Improvements;

(C) TOGETHER WITH all Appurtenant Rights;

(D) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Tangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(E) TOGETHER WITH the Intangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(F) TOGETHER WITH (i) all the estate, right, title and interest of Trustor of, in and to all judgments and decrees, insurance proceeds, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of any of the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof, or to any Appurtenant Rights thereto, and Beneficiary is (subject to the terms hereof) hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittance therefor, and (subject to the terms hereof) to apply the same toward the payment of the indebtedness and other sums secured hereby, notwithstanding the fact that the amount owing thereon may not then be due and payable; (ii) all proceeds of any sales or other dispositions of the property or rights described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof whether voluntary or involuntary, provided, however, that the foregoing shall not be deemed to permit such sales, transfers, or other dispositions except as specifically permitted herein; and (iii) whether arising from any voluntary or involuntary disposition of the property described in Granting Clauses (A), (B), (C), (D) and (E), all Proceeds, products, replacements, additions, substitutions, renewals and accessions, remainders, reversions and after-acquired interest in, of and to such property;

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(G) TOGETHER WITH the absolute assignment of any Space Leases or any part thereof that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, together with all of the following (including all "Cash Collateral" within the meaning of the Bankruptcy Law) arising from the Space Leases: (a) Rents (subject, however, to the aforesaid absolute assignment to Trustee for the benefit of Beneficiary and the conditional permission hereinbelow given to Trustor to collect the Rents), (b) all guarantees, letters of credit, security deposits, collateral, cash deposits, and other credit enhancement documents, arrangements and other measures with respect to the Space Leases, (c) all of Trustor's right, title, and interest under the Space Leases, including the following: (i) the right to receive and collect the Rents from the lessee, sublessee or licensee, or their successor(s), under any Space Lease(s) and (ii) the right to enforce against any tenants thereunder and otherwise any and all remedies under the Space Leases, including Trustor's right to evict from possession any tenant thereunder or to retain, apply, use, draw upon, pursue, enforce or realize upon any guaranty of any Space Lease; to terminate, modify, or amend the Space Leases; to obtain possession of, use, or occupy, any of the real or personal property subject to the Space Leases; and to enforce or exercise, whether at law or in equity or by any other means, all provisions of the Space Leases and all obligations of the tenants thereunder based upon (A) any breach by such tenant under the applicable Space Lease (including any claim that Trustor may have by reason of a termination, rejection, or disaffirmance of such Space Lease pursuant to any Bankruptcy Law) and (B) the use and occupancy of the premises demised, whether or not pursuant to the applicable Space Lease (including any claim for use and occupancy arising under landlord-tenant law of the State of Nevada or any Bankruptcy Law). Permission is hereby given to Trustor, so long as no Event of Default has occurred and is continuing hereunder, to collect and use the Rents, as they become due and payable, but not more than one (1) month in advance thereof. Upon the occurrence of an Event of Default, the permission hereby given to Trustor to collect the Rents shall automatically terminate, but such permission shall be reinstated upon a cure or waiver of such Event of Default. Beneficiary shall have the right, at any time and from time to time, to notify any Space Lessee of the rights of Beneficiary as provided by this section;

Notwithstanding anything to the contrary contained herein, the foregoing provisions of this Paragraph (G) shall not constitute an assignment for purposes of security but shall constitute an absolute and present assignment of the Rents to Beneficiary, subject, however, to the conditional license given to Trustor to collect and use the Rents as hereinabove provided; and the existence or exercise of such right of Trustor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Trustor;

(H) TOGETHER WITH all of Trustor's right, title and interest in and to any and all Plans and Specifications and all maps, plans, specifications, surveys, studies, tests, reports, data and drawings relating to the development of the Site or the Project and the construction of the Improvements, including, without limitation, all marketing plans, feasibility studies, soils tests, design contracts and all contracts and agreements of Trustor relating thereto including, without limitation, architectural, structural, mechanical and engineering plans and specifications, studies, data and drawings prepared for or relating to the development of the Site or the Project or the construction, renovation or restoration of any of the Improvements or the extraction of minerals, sand, gravel or other valuable substances from the Site and purchase contracts or any agreement granting Trustor a right to acquire any land situated within Clark County, Nevada;

(I) TOGETHER WITH, to the extent permitted by applicable law, all of Trustor's right, title, and interest in and to any and all licenses, permits, variances, special permits, franchises, certificates, rulings, certifications, validations, exemptions, filings, registrations, authorizations, consents, approvals, waivers, orders, rights and agreements (including, without limitation, options, option rights, contract rights now or hereafter obtained by Trustor from any Governmental Authority having or claiming jurisdiction over the Land, the FF&E, the Project, or any other

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element of the Trust Estate or providing access thereto, or the operation of any business on, at, or from the Site including, without limitation, any liquor or Nevada Gaming Licenses (except for any registrations, licenses, findings of suitability or approvals issued by the Nevada Gaming Authorities or any other liquor or gaming licenses which are non-assignable); *provided*, that upon an Event of Default hereunder or under the Credit Agreement or under the Guaranty, if Beneficiary is not qualified under the Nevada Gaming Laws to hold such Nevada Gaming Licenses, then Beneficiary may designate an appropriately qualified third party to which an assignment of such Nevada Gaming Licenses can be made in compliance with the Nevada Gaming Laws;

(J) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to all water stock, water permits and other water rights relating to the Site;

(K) TOGETHER WITH all oil and gas and other mineral rights, if any, in or pertaining to the Site and all royalty, leasehold and other rights of Trustor pertaining thereto;

(L) TOGETHER WITH any and all monies and other property, real or personal, which may from time to time be subjected to the lien hereof by Trustor or by anyone on its behalf or with its consent, or which may come into the possession or be subject to the control of Trustee or Beneficiary pursuant to this Deed of Trust, the Commitment Letter, the Credit Agreement, the Guaranty or any other Loan Document (including any Security Document), including, without limitation, any Protective Advances (as defined in *Section 4.2* hereof) under this Deed of Trust; and all of Trustor's right, title, and interest in and to all extensions, improvements, betterments, renewals, substitutes for and replacements of, and all additions, accessions, and appurtenances to, any of the foregoing that Trustor may subsequently acquire or obtain by any means, or construct, assemble, or otherwise place on any of the Trust Estate, and all conversions of any of the foregoing; it being the intention of Trustor that all property hereafter acquired by Trustor and required by the Commitment Letter, the Credit Agreement, the Guaranty, any other Loan Document (including any Security Document) or this Deed of Trust to be subject to the lien of this Deed of Trust or intended so to be shall forthwith upon the acquisition thereof by Trustor be subject to the lien of this Deed of Trust as if such property were now owned by Trustor and were specifically described in this Deed of Trust and granted hereby or pursuant hereto, and Trustee and Beneficiary are hereby authorized, subject to Nevada Gaming Laws and other applicable laws, to receive any and all such property as and for additional security for the obligations secured or intended to be secured hereby. Trustor agrees to take any action as may reasonably be necessary to evidence and perfect such liens or security interests, including, without limitation, the execution of any documents necessary to evidence and perfect such liens or security interests;

(M) TOGETHER WITH, to the extent permitted by applicable laws, any and all Accounts Receivable and all royalties, earnings, income, proceeds, products, rents, revenues, reversions, remainders, issues, profits, avails, production payments, and other benefits directly or indirectly derived or otherwise arising from any of the foregoing, all of which are hereby assigned to Beneficiary, who, except as otherwise expressly provided in this Deed of Trust (including the provisions of *Section 1.13* hereof), is authorized to collect and receive the same, to give receipts and acquittances therefor and to apply the same to the Obligations secured hereunder, whether or not then due and payable;

(N) TOGETHER WITH Proceeds of the foregoing property described in Granting Clauses (A) through (M);

(O) TOGETHER WITH Trustor's rights further to assign, sell, lease, encumber or otherwise transfer or dispose of the property described in Granting Clauses (A) through (N) inclusive, above, for debt or otherwise; and

(P) EXPRESSLY EXCLUDING, HOWEVER, any assets expressly excluded from the definition of "Collateral" in the Credit Agreement.

Trustor, for itself and its successors and assigns, covenants and agrees to and with Trustee that, at the time or times of the execution of and delivery of these presents or any instrument of further assurance with respect thereto, Trustor has good right, full power and lawful authority to assign, grant, convey, warrant, transfer, bargain or sell its interests in the Trust Estate in the manner and form as aforesaid, and that the Trust Estate is free and clear of all liens and encumbrances whatsoever, except Permitted Liens, and Trustor shall warrant and forever defend the above-bargained property in the quiet and peaceable possession of Trustee and its successors and assigns against all and every person or persons lawfully or otherwise claiming or to claim the whole or any part thereof, except for Permitted Liens. Trustor agrees that any greater title to the Trust Estate hereafter acquired by Trustor during the term hereof shall be automatically subject hereto.

ARTICLE ONE

COVENANTS OF TRUSTOR

The Beneficiary and the Banks have been induced to enter into the Commitment Letter, the Credit Agreement, the Guaranty and the other Loan Documents and to make advances of loans thereunder to Borrower on the basis of the following material covenants, all agreed to by Trustor:

1.1 Performance of Loan Documents. Trustor shall perform, observe and comply with each and every provision hereof, and with each and every provision contained in the Guaranty and the other Loan Documents and shall promptly pay to the Administrative Agent or the Disbursement Agent, as applicable, when payment shall become due, the principal with interest thereon and all other sums required to be paid by Trustor under this Deed of Trust, the Guaranty and the other Loan Documents.

1.2 General Representations, Covenants and Warranties. Trustor represents, covenants and warrants that: (a) Trustor has good and marketable title to an indefeasible fee estate in the Site, free and clear of all encumbrances except Permitted Encumbrances, and that it has the right to hold, occupy and enjoy its interest in the Trust Estate, and has good right, full power and lawful authority to subject the Trust Estate to the Lien of this Deed of Trust and pledge the same as provided herein and Beneficiary may at all times peaceably and quietly enter upon, hold, occupy and enjoy the entire Trust Estate in accordance with the terms hereof; (b) Trustor is not Insolvent and no bankruptcy or insolvency proceedings are pending or contemplated by or, to the best of Trustor's knowledge, threatened against Trustor; (c) all costs arising from construction of any Improvements, the performance of any labor and the purchase of all Tangible Collateral and Improvements have been or shall be paid when due (subject to the provisions of the Disbursement Agreement, the Credit Agreement, the Guaranty and this Deed of Trust); (d) the Land has direct access for ingress and egress to dedicated street(s); (e) Trustor shall at all times conduct and operate the Trust Estate in a manner so as not to lose, or permit its affiliate to lose, the right to conduct gaming activities at the Project; (f) no material part of the Trust Estate has been damaged, destroyed, condemned or abandoned, other than those portions of the Trust Estate that (i) have been the subject of condemnation proceedings that have resulted in the conveyance of such portion of the Trust Estate to the Trustor or (ii) have been demolished in furtherance of the development of the Project as contemplated under the Disbursement Agreement; (g) as of the date hereof, no part of the Trust Estate is the subject of condemnation proceedings and Trustor has no

knowledge of any contemplated or pending condemnation proceeding with respect to any portion of the Trust Estate; and (h) Trustor acknowledges and agrees that it presently may use, and in the past may have used, one or more of the trade or fictitious names, "Le Reve", "Wynn Collection", "Wynn Resorts" and "Desert Inn" and in each case variations thereof (collectively, the "**Enumerated Names**") in connection with the operation of the business at the Trust Estate, and Trustor further represents and warrants that the Enumerated Names are the only such trade or fictitious names Trustor has so used. For all purposes under this Deed of Trust it shall be deemed that the term "Trustor" includes all trade or fictitious names that Palo, LLC (or any successor or assign thereof) now or hereafter uses, or has in

the past used, including, without limitation, the Enumerated Names, with the same force and effect as if this Deed of Trust had been executed in all such names (in addition to "Palo, LLC").

1.3 Compliance with Legal Requirements. Except as provided in the Guaranty, Trustor shall promptly, fully, and faithfully comply in all material respects with all Legal Requirements and shall cause all portions of the Trust Estate and its use and occupancy to fully comply in all material respects with Legal Requirements at all times, whether or not such compliance requires work or remedial measures that are ordinary or extraordinary, foreseen or unforeseen, structural or nonstructural, or that interfere with the use or enjoyment of the Trust Estate.

1.4 Taxes. Except as otherwise permitted by the Guaranty, (a) Trustor shall pay all Impositions as they become due and payable and shall deliver to Beneficiary promptly upon Beneficiary's request, evidence satisfactory to Beneficiary that the Impositions have been paid or are not delinquent; (b) Trustor shall not suffer to exist, permit or initiate the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Land as a single lien, except as may be required by law; and (c) in the event of the passage of any law deducting from the value of real property for the purposes of taxation any lien thereon, or changing in any way the taxation of deeds of trust or obligations secured thereby for state or local purposes, or the manner of collecting such taxes and imposing a tax, either directly or indirectly, on this Deed of Trust, the Guaranty or the other Loan Documents to which Trustor is a party, Trustor shall pay all such taxes.

1.5 Insurance.

(a) Hazard Insurance Requirements and Proceeds.

(1) *Hazard Insurance.* Trustor shall at its sole expense obtain for, deliver to, assign and maintain for the benefit of Beneficiary, during the term of this Deed of Trust, insurance policies insuring the Trust Estate and liability insurance policies, all in accordance with the requirements of the Guaranty. Trustor shall pay promptly when due any premiums on such insurance policies and on any renewals thereof. In the event of the foreclosure of this Deed of Trust or any other transfer of title to the Trust Estate in partial or complete extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of Beneficiary in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

(2) *Handling of Proceeds.* All Proceeds from any insurance policies shall be collected, held, handled and disbursed in accordance with the provisions of the Credit Agreement, the Guaranty and the Disbursement Agreement (while in effect). All proceeds of insurance allocable to Trustor, as owner of the Site, and attributable to business interruption insurance shall be collected, held, handled and disbursed in accordance with the provisions of the Credit Agreement, the Guaranty and the Disbursement Agreement. Any such proceeds disbursed to Beneficiary shall be applied to pay amounts then due and payable under this Deed of Trust. The balance shall be retained by Beneficiary or its designee in an interest bearing or other investment account approved by Beneficiary, which account Trustor hereby pledges to Beneficiary to secure the Obligations. Disbursements shall be permitted from such account to pay expenses reasonably incurred by Trustor in owning and operating the Trust Estate, as reasonably approved by Beneficiary.

(b) Compliance with Insurance Policies. Trustor shall not violate or permit to be violated any of the conditions or provisions of any policy of insurance required by the Guaranty or this Deed of Trust and Trustor shall so perform and satisfy the requirements of the companies writing such policies that, at all times, companies of good standing shall be willing to write and/or continue such insurance. Trustor further covenants to promptly send to Beneficiary all notices relating to

any violation of such policies or otherwise affecting Trustor's insurance coverage or ability to obtain and maintain such insurance coverage.

1.6 Condemnation. Beneficiary is hereby authorized, at its option, to commence, appear in and prosecute in its own or Trustor's name any action or proceeding relating to any condemnation and to settle or compromise any claim in connection therewith, and Trustor hereby appoints Beneficiary as its attorney-in-fact to take any action in Trustor's name pursuant to Beneficiary's rights hereunder. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Trust Estate or any portion thereof, Trustor shall notify the Trustee and Beneficiary of the pendency of such proceedings. Trustor from time to time shall execute and deliver to Beneficiary all instruments requested by it to permit such participation; provided, however, that such instruments shall be deemed as supplemental to the foregoing grant of permission to Trustee and Beneficiary, and unless otherwise required, the foregoing permission shall, without more, be deemed sufficient to permit Trustee and/or Beneficiary to participate in such proceedings on behalf of Trustor. All such compensation awards, damages, claims, rights of action and Proceeds, and any other payments or relief, and the right thereto, are, whether paid to Beneficiary or Trustor or a third party trustee, included in the Trust Estate. Beneficiary, after deducting therefrom all its expenses, including reasonable attorneys fees, shall apply all Proceeds paid directly to it in accordance with the provisions of the Credit Agreement and the Guaranty. All Proceeds paid directly to the Trustor shall be applied, if received by Trustor prior to the Final Completion Date, in accordance with the Disbursement Agreement and, if received on or after the Final Completion Date, in accordance with the Guaranty and Credit Agreement. To the extent that any condemnation proceeds are not required to be applied towards restoration of the improvements upon the Site, then Beneficiary shall have the right to apply said condemnation proceeds towards repayment of the Obligations. Trustor hereby waives any rights it may have under NRS 37.115, as amended or recodified from time to time.

1.7 Care of Trust Estate.

(a) Trustor shall preserve and maintain the Trust Estate in good condition and repair. Trustor shall not permit, commit or suffer to exist any waste, impairment or deterioration of the Trust Estate or of any part thereof that in any manner materially impairs Beneficiary's security hereunder and shall not take any action which will increase the risk of fire or other hazard to the Trust Estate or to any part thereof.

(b) Except for Permitted Dispositions, no material part of the Improvements or Tangible Collateral that are part of the Trust Estate shall be removed, demolished or materially altered, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld or delayed. Trustor shall have the right, without such consent, to remove and dispose of free from the lien of this Deed of Trust any part of the Improvements or Tangible Collateral that are part of the Trust Estate as from time to time may become worn out or obsolete or otherwise not useful in connection with the operation of the Trust Estate, provided that either (i) such removal or disposition does not materially affect the value of the Trust Estate or (ii) prior to or promptly following such removal, any such property shall be replaced with other property of substantially equal utility and of a value at least substantially equal to that of the replaced property when first acquired and free from any security interest of any other person (subject only to Permitted Liens), and by such removal and replacement Trustor shall be deemed to have subjected such replacement property to the lien of this Deed of Trust.

(c) Notwithstanding the foregoing provisions of this *Section 1.7*, the Trustor may develop the Project in the manner contemplated by the Disbursement Agreement, the Credit Agreement, the Guaranty and the other Loan Documents.

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1.8 *Leases.*

(a) Trustor represents, warrants and covenants that:

(i) except for the assignment effected hereby and in the other Financing Agreements, Trustor has not executed any assignment or pledge of any of the Space Leases, the Rents, or of Trustor's right, title and interest in the same; and

(ii) this Deed of Trust does not and will not constitute a violation or default under any Space Lease, and is and shall at all times constitute a valid lien on Trustor's interests in the Space Leases.

(b) Trustor shall not enter into any Space Lease or any modifications or amendments to any Space Lease, either orally or in writing, unless such Space Lease complies with the requirements of the Credit Agreement and the Guaranty.

(c) After an Event of Default, upon the request of Administrative Agent Trustor shall deliver to Beneficiary executed copies of all Space Leases.

1.9 *Further Encumbrance.*

(a) Trustor covenants that at all times prior to the discharge of the Obligations, except for Permitted Liens and Permitted Dispositions, Trustor shall neither make nor suffer to exist, nor enter into any agreement for, any sale, assignment, exchange, mortgage, transfer, Lien, hypothecation or encumbrance of all or any part of the Trust Estate, including, without limitation, the Rents. As used herein, "transfer" includes the actual transfer or other disposition, whether voluntary or involuntary, by law, or otherwise, except those transfers specifically permitted herein, provided, however, that "transfer" shall not include the granting of utility or other beneficial easements with respect to the Trust Estate which have been or are granted by Trustor and are reasonably necessary to the construction, maintenance or operation of the Project.

(b) Any Permitted Lien consisting of the lien of a deed of trust which is junior to the lien of the Loan Documents (including the Security Documents) (a "Subordinate Deed of Trust") shall be permitted hereunder so long as there shall have been delivered to Beneficiary, not less than thirty (30) days prior to the date thereof, a copy thereof which shall contain express covenants in form and substance satisfactory to Beneficiary to the effect that: (i) the Subordinate Deed of Trust is in all respects subject and subordinate to this Deed of Trust; (ii) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Trust Estate shall be named as a party defendant nor shall any action be taken with respect to the Trust Estate which would terminate any occupancy or tenancy of the Trust Estate, or any portion thereof, without the consent of Beneficiary; (iii) any Rents, if collected through a receiver or by the holder of the Subordinate Deed of Trust, shall be applied first to the obligations secured by this Deed of Trust, including principal and interest due and owing on or to become due and owing on the Notes, the Guaranty or the other Loan Documents, and then to the payment of maintenance expenses, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operation, and maintenance of the Trust Estate; and (iv) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust, prompt notice of the commencement thereof shall be given to Beneficiary.

(c) Trustor agrees that in the event the ownership of the Trust Estate or any part thereof becomes vested in a person other than Trustor, Beneficiary may, without notice to Trustor, deal in any way with such successor or successors in interest with reference to this Deed of Trust, the Notes, the Guaranty, the other Loan Documents and other Obligations hereby secured without in any way vitiating or discharging Trustor's or any guarantor's, surety's or endorser's liability

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hereunder or upon the obligations hereby secured. No sale of the Trust Estate and no forbearance to any person with respect to this Deed of Trust and no extension to any person of the time for payment of the Obligations, and other sums hereby secured given by Beneficiary shall operate to release, discharge, modify, change or affect the original liability of Trustor, or such guarantor, surety or endorser either in whole or in part.

(d) If Trustor shall fail to make any payment required to be made by it under any FF&E Financing Agreement, except where Trustor is contesting such payment in good faith, then the Beneficiary shall be entitled to make such payment on Trustor's behalf and any and all sums so expended by the Beneficiary shall be secured by this Deed of Trust and shall be repaid by Trustor upon demand, together with interest thereon at the interest at the rate applicable to overdue principal set forth in the Credit Agreement from the date of advance.

1.10 *Partial Releases of Trust Estate.*

(a) Trustor may from time to time make a Permitted Disposition including, but not limited to, (i) transferring a portion of the Trust Estate (including any temporary taking) to any person legally empowered to exercise the power of eminent domain, or pursuant to dedication agreements that are now in effect or entered into in the future in connection with the development of the Project, (ii) granting utility easements reasonably necessary or desirable for the construction and/or operation of the Project, which grant or transfer is for the benefit of the Trust Estate, or (iii) transferring all or a portion of the Trust Estate as permitted pursuant to the Disbursement Agreement or the other Loan Documents. In each such case, Beneficiary shall execute and deliver any instruments necessary or appropriate to effectuate or confirm any such transfer or grant, free from the lien of this Deed of Trust, *provided, however*, that Beneficiary shall execute a lien release or subordination agreement, as appropriate, for matters described in clauses (i) and (iii) above only if:

(A) Such transfer, grant or release is not prohibited by the Credit Agreement or the Guaranty and all conditions precedent contained in the Credit Agreement and the Guaranty for such transfer, grant or release, if any, shall have been satisfied; and

(B) Beneficiary and Trustee shall have received a counterpart of the instrument pursuant to which such transfer, grant or release is to be made, and each instrument which Beneficiary or Trustee is requested to execute in order to effectuate or confirm such transfer, grant or release.

(b) Any consideration received for a transfer to any person empowered to exercise the right of eminent domain shall be subject to *Section 1.6* hereof.

1.11 *Further Assurances.*

(a) At its sole cost and without expense to Trustee or Beneficiary, and subject in all events to compliance with the Nevada Gaming Laws and other applicable Legal Requirements, Trustor shall do, execute, acknowledge and deliver any and all such further acts, deeds, conveyances, notices, requests for notices, financing statements, continuation statements, certificates, assignments, notices of assignments, agreements, instruments and further assurances, and shall mark any chattel paper, deliver any chattel paper or instruments to Beneficiary and take any other actions that are necessary, prudent, or reasonably requested by Beneficiary or Trustee to perfect or continue the perfection and first priority of Beneficiary's security interest in the Trust Estate, to protect the Trust Estate against the rights, claims, or interests of third persons other than holders of Permitted Liens or to effect the purposes of this Deed of Trust, including the security agreement and the absolute assignment of Rents contained herein, or for the filing, registering or recording thereof.

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(b) Trustor shall forthwith upon the execution and delivery of this Deed of Trust, and thereafter from time to time, cause this Deed of Trust and each instrument of further assurance to be filed, indexed, registered, recorded, given or delivered in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the title of Trustee and/or Beneficiary to, the Trust Estate.

1.12 Security Agreement and Financing Statements. Trustor (as debtor) hereby grants to Beneficiary (as creditor and secured party) a present and future security interest in all Tangible Collateral, Intangible Collateral, FF&E, Improvements, all other personal property now or hereafter owned or leased by Trustor or in which Trustor has or will have any interest, to the extent that such property constitutes a part of the Trust Estate (whether or not such items are stored on the premises or elsewhere), Proceeds of the foregoing comprising a portion of the Trust Estate and all products, substitutions, and accessions therefor and thereto, subject to Beneficiary's rights to treat such property as real property as herein provided (collectively, the "**Personal Property**"). Trustor shall execute and/or deliver any and all documents and writings, including without limitation financing statements pursuant to the UCC, as may be necessary or prudent to preserve and maintain the priority of the security interest granted hereby on property which may be deemed subject to the foregoing security agreement or as Beneficiary may reasonably request, and shall pay to Beneficiary on demand any reasonable expenses incurred by Beneficiary in connection with the preparation, execution and filing of any such documents. Trustor hereby authorizes and empowers Beneficiary to file, on Trustor's behalf, all financing statements and refiling and continuations thereof as advisable to create, preserve and protect said security interest. Trustor acknowledges and agrees that it is not authorized to, and will not, authenticate or file, or authorize the filing of, any financing statements or other record with respect to the Personal Property (including any amendments thereto, or continuation or termination statements thereof), except as permitted by the Guaranty. Trustor approves and ratifies any filing or recording of records made by or on behalf of Beneficiary in connection with the perfection of the security interest in favor of Beneficiary hereunder. This Deed of Trust constitutes both a real property deed of trust and a "security agreement," within the meaning of the UCC, and the Trust Estate includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Trust Estate. Trustor by executing and delivering this Deed of Trust has granted to Beneficiary, as security of the Obligations, a security interest in the Trust Estate.

(a) **Fixture Filing.** Without in any way limiting the generality of the immediately preceding paragraph or of the definition of the Trust Estate, this Deed of Trust constitutes a fixture filing under Sections 9-334 and 9-502 of the UCC (NRS 104.9334 and 104.9502). For such purposes, (i) the "debtor" is Trustor and its address is the address given for it in the initial paragraph of this Deed of Trust; (ii) the "secured party" is Beneficiary, and its address for the purpose of obtaining information is the address given for it in the initial paragraph of this Deed of Trust; (iii) the real estate to which the fixtures are or are to become attached is Trustor's interest in the Site; and (iv) the record owner of such real estate is Trustor.

(b) **Remedies.** This Deed of Trust shall be deemed a security agreement as defined in the UCC and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall include any or all of (i) those prescribed herein, and (ii) those available under applicable law, and (iii) those available under the UCC, all at Beneficiary's sole election. In addition, a photographic or other reproduction of this Deed of Trust shall be sufficient as a financing statement for filing wherever filing may be necessary to perfect or continue the security interest granted herein.

(c) **Derogation of Real Property.** It is the intention of the parties that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in anyway derogating from or impairing the express declaration and intention of the parties hereto as hereinabove stated that everything used in connection with the production of

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income from the Trust Estate and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real property encumbered by this Deed of Trust irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (iii) any such item is referred to or reflected in any

such financing statement so filed at any time. It is the intention of the parties that the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Trustor's interest as lessors in any present or future Space Lease or rights to Rents, shall never be construed as in anyway altering any of the rights of Beneficiary as determined by this Deed of Trust or impugning the priority of Beneficiary's real property lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of Beneficiary in the event any court or judge shall at any time hold with respect to the matters set forth in the foregoing clauses (1), (2) and (3) that notice of Beneficiary's priority of interest to be effective against a particular class of persons, including but not limited to, the federal government and any subdivisions or entity of the federal government, must be filed in the UCC records.

(d) **Priority; Permitted Financing of Tangible Collateral.** All Personal Property of any nature whatsoever which is subject to the provisions of this security agreement shall be purchased or obtained by Trustor in its name and free and clear of any lien or encumbrance, except for Permitted Liens and the lien hereof, for use only in connection with the business and operation of the Project, and shall be and at all times remain free and clear of any lease or similar arrangement, chattel financing, installment sale agreement, security agreement and any encumbrance of like kind, so that Beneficiary's security interest shall attach to and vest in Trustor for the benefit of Beneficiary, with the priority herein specified, immediately upon the installation or use of the Personal Property at the Site and Trustor warrants and represents that Beneficiary's security interest in the Personal Property is a validly attached and binding security interest, properly perfected and prior to all other security interests therein except as otherwise permitted in this Deed of Trust. The foregoing shall not be construed as limiting Trustor's rights to transfer Personal Property pursuant to Permitted Dispositions or to obtain releases of Personal Property from the Lien of this Deed of Trust pursuant to *Section 1.10* hereof.

(e) **Preservation of Contractual Rights of Collateral.** Trustor shall, prior to delinquency, default, or forfeiture, perform all obligations and satisfy all material conditions required on its part to be satisfied to preserve its rights and privileges under any contract, lease, license, permit, or other authorization (i) under which it holds any Tangible Collateral or (ii) which constitutes part of the Intangible Collateral, except where Trustor is contesting such obligations in good faith.

(f) **Removal of Collateral.** Except for damaged or obsolete Tangible Collateral which is either no longer usable or which is removed temporarily for repair or improvement or removed for replacement on the Trust Estate with Tangible Collateral of similar function or as otherwise permitted herein, none of the Tangible Collateral shall be removed from the Trust Estate without Beneficiary's prior written consent.

(g) **Change of Name.** Trustor shall not change its corporate (or other entity) or business name, or do business within the State of Nevada under any name other than such name, or any trade name(s) other than those as to which Trustor gives prior written notice to Beneficiary of its intent to use such trade names, or any other business names (if any) specified in the financing statements delivered to Beneficiary for filing in connection with the execution hereof, without, in each case, providing Beneficiary with the additional financing statement(s) and any other similar documents deemed reasonably necessary by Beneficiary to assure that its security interest remains

perfected and of undiminished priority in all such Personal Property notwithstanding such name change.

1.13 **Assignment of Leases and Rents.** Subject to Nevada Gaming Laws and other applicable Legal Requirements, the assignment of Leases and Rents set out above in Granting Clause (G) shall constitute an absolute and present assignment to Beneficiary, subject to the license herein given to Trustor to collect the Rents, and shall be fully operative without any further action on the part of any party, and specifically Beneficiary shall be entitled upon the occurrence of an Event of Default hereunder to all Rents and to enter upon the Site and the Improvements to collect such Rents, provided, however, that Beneficiary shall not be obligated to take possession of the Trust Estate, or any portion thereof. The absolute assignment contained in Granting Clause (G) shall not be deemed to impose upon Beneficiary any of the obligations or duties of Trustor provided in any such Space Lease (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease in the event that any lessee shall have been joined as a party defendant in any action to foreclose this Deed of Trust and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Trust Estate or any part thereof).

1.14 **Expenses.**

(a) Trustor shall pay when due and payable all out-of-pocket costs, including without limitation, those reasonable appraisal fees, recording fees, taxes, abstract fees, title policy fees, escrow fees, attorneys' and paralegal fees, travel expenses, fees for inspecting architect(s) and engineer(s) and all other costs and expenses of every character which may hereafter be incurred by Beneficiary or any assignee of Beneficiary in connection with the preparation and execution of the Guaranty and the other Loan Documents (including the Security Documents) to which Trustor is a party or instruments, agreements or documents of further assurance, the funding of the indebtedness secured hereby, and the enforcement of the Guaranty or any other Loan Document (including any Security Document) to which Trustor is a party. Other than costs associated with the enforcement of any Loan Document, all such costs shall be itemized in reasonable detail; and

(b) Trustor shall, upon demand by Beneficiary, reimburse Beneficiary or any assignee of Beneficiary for all such reasonable expenses which have been incurred or which shall be incurred by it; and

(c) Trustor shall indemnify Beneficiary with respect to any transaction or matter in any way connected with any portion of the Trust Estate, this Deed of Trust, including any occurrence at, in, on, upon or about the Trust Estate (including any personal injury, loss of life, or property damage), or Trustor's use, occupancy, or operation of the Trust Estate, or the filing or enforcement of any mechanic's lien, or otherwise caused in whole or in part by any act, omission or negligence occurring on or at the Trust Estate, including failure to comply with any Legal Requirement or with any requirement of this Deed of Trust that applies to Trustor, except to the extent resulting from the gross negligence, fraud or willful misconduct of Trustee or Beneficiary. If Beneficiary is a party to any litigation as to which either Trustor is required to indemnify Beneficiary (or is made a defendant in any action of any kind against Trustor or relating directly or indirectly to any portion of the Trust Estate) then, at Beneficiary's option, Trustor shall undertake Beneficiary's defense, using counsel reasonably satisfactory to Beneficiary (and any settlement shall be subject to Beneficiary's consent, which consent shall not be unreasonably withheld), and in any case shall indemnify Beneficiary against such litigation. Trustor shall pay all reasonable costs and expenses, including reasonable legal costs, that Beneficiary pays or incurs in connection with any such litigation. Any amount payable under any indemnity in this Deed of Trust shall be a demand obligation, shall be added to, and become a part of, the secured obligations under this Deed of Trust, shall be secured by this Deed of Trust and, if not paid promptly following demand therefor (which demand shall, unless associated with Loan Document enforcement actions, set forth in

reasonable detail an itemization of the amount so demanded) shall bear interest at the interest rate specified in the Credit Agreement. Such indemnity shall survive any release of this Deed of Trust and any foreclosure.

1.15 **Beneficiary's Cure of Trustor's Default.** If Trustor defaults hereunder in the payment of any tax, assessment, lien, encumbrance or other imposition, in its obligation to furnish insurance hereunder, or in the performance or observance of any other covenant, condition or term of this Deed of Trust or any other Financing Agreement or any FF&E Financing Agreement, Beneficiary may, but is not obligated to, to preserve its interest in the Trust Estate, perform or observe the same, and all payments made (whether such payments are regular or accelerated payments) and reasonable costs and expenses incurred or paid by Beneficiary in connection therewith shall become due and payable immediately. The amounts so incurred or paid by Beneficiary, together with interest thereon at the interest rate applicable to overdue principal set forth in the Credit Agreement, from the date incurred until paid by Trustor, shall be added to the indebtedness and secured by the lien of this Deed of Trust. Beneficiary, is hereby empowered to enter and to authorize others to enter upon the Site or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Trustor or any person in possession holding under Trustor. No exercise of any rights under this Section 1.15 by Beneficiary shall cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

1.16 **Use of Land.** Trustor covenants that the Trust Estate shall be used and operated in a manner consistent with the requirements of the Loan Documents.

1.17 **Compliance with Permitted Lien Agreements.** Trustor shall comply with each and every material obligation contained in any agreement pertaining to a Permitted Lien.

1.18 **Defense of Actions.** Trustor shall appear in and defend any action or proceeding affecting or purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and shall pay all costs and expenses, including cost of title search and insurance or other evidence of title, preparation of survey, and reasonable attorneys' fees in any such action or proceeding in which Beneficiary or Trustee may appear or may be joined as a party and in any suit brought by Beneficiary based upon or in connection with this Deed of Trust, the Guaranty or any other Loan Document to which Trustor is a party. Nothing contained in this section shall, however, limit the right of Beneficiary to appear in such action or proceeding with counsel of its own choice, either on its own behalf or on behalf of Trustor.

1.19 **Affiliates.**

(a) **Subject to Trust Deed.** Subject to compliance with the requirements of applicable Nevada Gaming Laws, Trustor shall cause all of its Affiliates in any way involved with the operation of the Trust Estate or the Project to observe the covenants and conditions of this Deed of Trust to the extent necessary to give the full intended effect to such covenants and conditions and to protect and preserve the security of Beneficiary hereunder.

(b) **Restriction on Use of Subsidiary or Affiliate.** Except as permitted under the Credit Agreement, the Notes, the Guaranty or the other Loan Documents (including any Security Document), Trustor shall not use any Affiliate in the operation of the Trust Estate or the Project if such use would in any way impair the security for the Obligations or circumvent any covenant or condition of this Deed of Trust, the Guaranty or of any other Loan Document.

1.20 **Title Insurance.** On the Closing Date, Trustor shall cause to be delivered to Trustee at Trustor's expense, one or more ALTA extended coverage Lender's Policies of Title Insurance showing fee title to the real property situated in the County of Clark, State of Nevada, more specifically described in Schedule A attached hereto, vested in Trustor and the lien of this Deed of Trust to be a

perfected lien, prior to any and all encumbrances other than Permitted Encumbrances (excluding, however, any such non-Permitted Encumbrances for which the Title Insurer has agreed to provide an endorsement or affirmative coverage protecting the lien of this Deed of Trust against such non-Permitted Encumbrances).

ARTICLE TWO

GUARANTY PROVISIONS

2.1 **Interaction with Guaranty**

(a) **Incorporation by Reference.** All terms, covenants, conditions, provisions and requirements of the Guaranty are incorporated by reference in this Deed of Trust.

(b) **Conflicts.** In the event of any conflict or inconsistency between the provisions of this Deed of Trust and those of the Guaranty, Credit Agreement or the Disbursement Agreement, the provisions of the Guaranty, Credit Agreement or the Disbursement Agreement, as applicable, shall govern.

2.2 **Other Collateral.** This Deed of Trust is one of a number of security agreements delivered by or on behalf of Trustor and other Persons pursuant to the Credit Agreement and the other Loan Documents (including the Security Documents) and securing the Obligations secured hereunder. All potential junior Lien claimants are placed on notice that, under any of the Loan Documents (including the Security Documents) (including a separate future unrecorded agreement between Trustor and Beneficiary), other collateral for the Obligations secured hereunder (*i.e.*, collateral other than the Trust Estate) may, under certain circumstances, be released without a corresponding reduction in the total principal amount secured by this Deed of Trust. Such a release would decrease the amount of collateral securing the same indebtedness, thereby increasing the burden on the remaining Trust Estate created and continued by this Deed of Trust. No such release shall impair the priority of the lien of this Deed of Trust. By accepting its interest in the Trust Estate, each and every junior Lien claimant shall be deemed to have acknowledged the possibility of, and consented to, any such release. Nothing in this paragraph shall impose any obligation upon Beneficiary.

ARTICLE THREE

DEFAULTS

3.1 **Event of Default.** The term "Event of Default," wherever used in this Deed of Trust, shall mean any of (i) one or more of the events of default listed in the Credit Agreement or the Guaranty (ii) so long as the Disbursement Agreement is in effect, one or more of the events of default listed in the Disbursement Agreement (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) or (iii) if any "borrower" (as that term is defined in NRS 106.310) who may send a notice pursuant to NRS 106.380(1), (x) delivers, sends by mail or otherwise gives, or purports to deliver, send by mail or otherwise give, to a beneficiary under this Deeds of Trust (A) any notice of an election to terminate the operation of this Deed of Trust as security for any secured obligation, including, without limitation, any obligation to repay any "future advance" (as defined in NRS 106.320) of "principal" (as defined in NRS 106.345), or (B) any other notice pursuant to NRS 106.380(l), (y) records a statement pursuant to NRS 106.380(3), or (z) causes this Deed of Trust, any secured obligation, or any Secured Party to be subject to NRS 106.380(2), 106.380(3) or 106.400.

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ARTICLE FOUR

REMEDIES

4.1 **Acceleration of Maturity.** If an Event of Default occurs, Beneficiary may (except that such acceleration shall be automatic if the Event of Default is caused by Borrower's or Trustor's Bankruptcy), in accordance with the Loan Documents, declare the Obligations to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become due and payable without demand, presentment, notice or other requirements of any kind (all of which Trustor waives) notwithstanding anything in this Deed of Trust or any Loan Document or applicable law to the contrary.

4.2 **Protective Advances.** If Borrower or Trustor fails to make any payment or perform any other obligation under the Notes, Credit Agreement, Guaranty or any other Financing Agreement, then without thereby limiting Beneficiary's other rights or remedies, waiving or releasing any of Trustor's obligations, or imposing any obligation on Beneficiary, Beneficiary may either advance any amount owing or perform any or all actions that Beneficiary considers necessary or appropriate to cure such default. All such advances shall constitute "Protective Advances" and shall bear interest thereon at the interest rate applicable to overdue principal set forth in the Credit Agreement from the date incurred until paid by Trustor. No sums advanced or performance rendered by Beneficiary shall cure, or be deemed a waiver of any Event of Default.

4.3 **Institution of Equity Proceedings.** If an Event of Default occurs, Beneficiary may institute an action, suit or proceeding in equity for specific performance of this Deed of Trust, the Notes, the Guaranty or any other Loan Document (including any Security Document), all of which shall be specifically enforceable by injunction or other equitable remedy. Trustor waives any defense based on laches or any applicable statute of limitations.

4.4 **Beneficiary's Power of Enforcement.**

(a) If an Event of Default occurs, Beneficiary shall be entitled, at its option and in its sole and absolute discretion, to prepare and record on its own behalf, or to deliver to Trustee for recording, if appropriate, written declaration of default and demand for sale and written Notice of Breach and Election to Sell (NRS 107.080(3)) (or other statutory notice) to cause the Trust Estate to be sold to satisfy the obligations hereof, and in the case of delivery to Trustee, Trustee shall cause said notice to be filed for record.

(b) After the lapse of such time as may then be required by law following the recordation of said Notice of Breach and Election to Sell, and notice of sale having been given as then required by law, including compliance with any applicable Nevada Gaming Laws, Trustee without demand on Trustor, shall sell the Trust Estate or any portion thereof at the time and place fixed by it in said notice, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder, of cash in lawful money of the United States payable at the time of sale. Trustee may, for any cause it deems expedient, postpone the sale of all or any portion of said property until it shall be completed and, in every case, notice of postponement shall be given by public announcement thereof at the time and place last appointed for the sale and from time to time thereafter Trustee may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall execute and deliver to the purchaser its Deed, Bill of Sale, or other instrument conveying said property so sold, but without any covenant or warranty, express or implied. The recitals in such instrument of conveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale.

(c) After deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including, without limitation, costs of evidence of title and reasonable attorneys' fees and other legal expenses of Trustee or Beneficiary in connection with a sale, Trustee shall apply the proceeds

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of such sale to payment of all sums expended under the terms hereof not then repaid, with accrued interest at the rate applicable to overdue principal set forth in the Credit Agreement to the payment of all other sums then secured hereby and the remainder, if any, to the person or persons legally entitled thereto as provided in NRS 40.462.

(d) Subject to compliance with applicable Nevada Gaming Laws, if any Event of Default occurs, Beneficiary may, either with or without entry or taking possession of the Trust Estate, and without regard to whether or not the indebtedness and other sums secured hereby shall be due and without prejudice to the right of Beneficiary thereafter to bring an action or proceeding to foreclose or any other action for any default existing at the time such earlier action was commenced, proceed by any appropriate action or proceeding: (1) to enforce payment of the Obligations, to the extent permitted by law, or the performance of any term hereof or any other right; (2) to foreclose this Deed of Trust in any manner provided by law for the foreclosure of mortgages or deeds of trust on real property and to sell, as an entirety or in separate lots or parcels, the Trust Estate or any portion thereof pursuant to the laws of the State of Nevada or under the judgment or decree of a court or courts of competent jurisdiction, and Beneficiary shall be entitled to recover in any such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees in such amount as shall be awarded by the court; (3) to

exercise any or all of the rights and remedies available to it under the Loan Documents; and (4) to pursue any other remedy available to it. Beneficiary shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Beneficiary may determine.

(e) The remedies described in this *Section 4.4* may be exercised with respect to all or any portion of the Personal Property, either simultaneously with the sale of any real property encumbered hereby or independent thereof. Beneficiary shall at any time be permitted to proceed with respect to all or any portion of the Personal Property in any manner permitted by the UCC. Trustor agrees that Beneficiary's inclusion of all or any portion of the Personal Property (and all personal property that is subject to a security interest in favor, or for the benefit, of Beneficiary) in a sale or other remedy exercised with respect to the real property encumbered hereby, as permitted by the UCC, is a commercially reasonable disposition of such property.

4.5 *Beneficiary's Right to Enter and Take Possession, Operate and Apply Income.*

(a) Subject to compliance with applicable Nevada Gaming Laws, if an Event of Default occurs, (i) Trustor, upon demand of Beneficiary, shall forthwith surrender to Beneficiary the actual possession and, if and to the extent permitted by law, Beneficiary itself, or by such officers or agents as it may appoint, may enter and take possession of all the Trust Estate including the Personal Property, without liability for trespass, damages or otherwise, and may exclude Trustor and its agents and employees wholly therefrom and may have joint access with Trustor to the books, papers and accounts of Trustor; and (ii) Trustor shall pay monthly in advance to Beneficiary on Beneficiary's entry into possession, or to any receiver appointed to collect the Rents, all Rents then due and payable.

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(b) If Trustor shall for any reason fail to surrender or deliver the Trust Estate, the Personal Property or any part thereof after Beneficiary's demand, Beneficiary may obtain a judgment or decree conferring on Beneficiary or Trustee the right to immediate possession or requiring Trustor to deliver immediate possession of all or part of such property to Beneficiary or Trustee and Trustor hereby specifically consents to the entry of such judgment or decree. Trustor shall pay to Beneficiary or Trustee, upon demand, all reasonable costs and expenses of obtaining such judgment or decree and reasonable compensation to Beneficiary or Trustee, their attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Deed of Trust.

(c) Subject to compliance with applicable Nevada Gaming Laws, upon every such entering upon or taking of possession, Beneficiary or Trustee may hold, store, use, operate, manage and control the Trust Estate and conduct the business thereof, and, from time to time in its sole and absolute discretion and without being under any duty to so act:

- (1) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;
- (2) insure or keep the Trust Estate insured;
- (3) manage and operate the Trust Estate and exercise all the rights and powers of Trustor in their name or otherwise with respect to the same;
- (4) enter into agreements with others to exercise the powers herein granted Beneficiary or Trustee, all as Beneficiary or Trustee from time to time may determine; and, subject to the absolute assignment of the Leases and Rents to Beneficiary, Beneficiary or Trustee may collect and receive all the Rents, including those past due as well as those accruing thereafter; and shall apply the monies so received by Beneficiary or Trustee in such priority as Beneficiary may determine to (1) the payment of interest and principal due and payable on the Notes or the other Loan Documents, (2) the deposits for taxes and assessments and insurance premiums due, (3) the cost of insurance, taxes, assessments and other proper charges upon the Trust Estate or any part thereof; (4) the compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary or Trustee; and (5) any other charges or costs required to be paid by Trustor under the terms hereof; and
- (5) rent or sublet the Trust Estate or any portion thereof for any purpose permitted by this Deed of Trust.

Beneficiary or Trustee shall surrender possession of the Trust Estate and the Personal Property to Trustor only when all that is due upon such interest and principal, tax and insurance deposits, and all amounts under any of the terms of the Credit Agreement or this Deed of Trust, shall have been paid and all defaults made good. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.6 **Leases.** Beneficiary is authorized to foreclose this Deed of Trust subject to the rights of any tenants of the Trust Estate, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights shall not be, nor be asserted by Trustor to be, a defense to any proceedings instituted by Beneficiary to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Trust Estate, or any portion thereof. Unless otherwise agreed by Beneficiary in writing, all Space Leases executed subsequent to the date hereof, or any part thereof, shall be subordinate and inferior to the lien of this Deed of Trust; provided, however that (i) in accordance with the terms of the Loan Documents, Beneficiary may be required to execute a non-disturbance and attornment agreement in connection with certain Space Leases; and (ii) from time to time Beneficiary may execute and record among the land records of the

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jurisdiction where this Deed of Trust is recorded, subordination statements with respect to such of said Space Leases as Beneficiary may designate in its sole discretion, whereby the Space Leases so designated by Beneficiary shall be made superior to the lien of this Deed of Trust for the term set forth in such subordination statement. From and after the recordation of such subordination statements, and for the respective periods as may be set forth therein, the Space Leases therein referred to shall be superior to the lien of this Deed of Trust and shall not be affected by any foreclosure hereof. All such Space Leases shall contain a provision to the effect that the Trustor and Space Lessee recognize the right of Beneficiary to elect and to effect such subordination of this Deed of Trust and consents thereto.

4.7 **Purchase by Beneficiary.** Upon any foreclosure sale (whether judicial or nonjudicial), Beneficiary may bid for and purchase the property subject to such sale and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further

4.8 Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws. Trustor agrees to the full extent permitted by law that if an Event of Default occurs, neither Trustor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust or the absolute sale of the Trust Estate or any portion thereof or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof, and Trustor for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Trust Estate marshalled upon any foreclosure of the lien hereof and agrees that Trustee or any court having jurisdiction to foreclose such lien may sell the Trust Estate in part or as an entirety.

4.9 Receiver. If an Event of Default occurs, Beneficiary, to the extent permitted by law and subject to compliance with all applicable Nevada Gaming Laws, and without regard to the value, adequacy or occupancy of the security for the indebtedness and other sums secured hereby, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Trust Estate and to collect all Rents and apply the same as the court may direct, and such receiver may be appointed by any court of competent jurisdiction upon application by Beneficiary. Beneficiary may have a receiver appointed without notice to Trustor or any third party, and Beneficiary may waive any requirement that the receiver post a bond. Beneficiary shall have the power to designate and select the Person who shall serve as the receiver and to negotiate all terms and conditions under which such receiver shall serve. Any receiver appointed on Beneficiary's behalf may be an Affiliate of Beneficiary. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Deed of Trust. The right to enter and take possession of and to manage and operate the Trust Estate and to collect all Rents, whether by a receiver or otherwise, shall be cumulative to any other right or remedy available to Beneficiary under this Deed of Trust, the Guaranty or the other Loan Documents or otherwise available to Beneficiary and may be exercised concurrently therewith or independently thereof. Beneficiary shall be liable to account only for such Rents (including, without limitation, security deposits) actually received by Beneficiary, whether received pursuant to this section or any other provision hereof. Notwithstanding the appointment of any receiver or other custodian, Beneficiary shall be entitled as pledgee to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Deed of Trust to, Beneficiary.

4.10 Suits to Protect the Trust Estate. Beneficiary shall have the power and authority to institute and maintain any suits and proceedings as Beneficiary, in its sole and absolute discretion, may deem advisable (a) to prevent any impairment of the Trust Estate by any acts which may be unlawful or in violation of this Deed of Trust, (b) to preserve or protect its interest in the Trust Estate, or (c) to

restrain the enforcement of or compliance with any legislation or other Legal Requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Beneficiary's interest.

4.11 Proofs of Claim. In the case of any receivership, Insolvency, Bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Trustor, or, to the extent the same would result in an Event of Default hereunder, any Subsidiary, or any guarantor, co-maker or endorser of any of Trustor's obligations, its creditors or its property, Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim or other documents as it may deem to be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Trustor under the Loan Documents, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Trustor after such date.

4.12 Trustor to Pay the Obligations on Any Default in Payment; Application of Monies by Beneficiary.

(a) In case of a foreclosure sale of all or any part of the Trust Estate and of the application of the proceeds of sale to the payment of the sums secured hereby, Beneficiary shall be entitled to enforce payment from Trustor of any additional amounts then remaining due and unpaid with respect to the Obligations and to recover judgment against Trustor for any portion thereof remaining unpaid, with interest at the rate applicable to overdue principal as set forth in the Credit Agreement.

(b) Trustor hereby agrees to the extent permitted by law, that no recovery of any judgment by Beneficiary or other action by Beneficiary and no attachment or levy of any execution upon any Property of Trustor by Beneficiary (other than a foreclosure of the entire Trust Estate hereunder) shall in any way affect the Lien and security interest of this Deed of Trust upon the Trust Estate or any part thereof or any Lien, rights, powers or remedies of Beneficiary hereunder, but such Lien, rights, powers and remedies shall continue unimpaired as before.

(c) Any monies collected or received by Beneficiary under this *Section 4.12* shall be first applied to the payment of reasonable compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary, and the balance remaining shall be applied to the Obligations.

(d) The provisions of this section shall not be deemed to limit or otherwise modify the provisions of any guaranty of the indebtedness evidenced by the Notes or the other Loan Documents.

4.13 Delay or Omission; No Waiver. No delay or omission of Beneficiary or any Bank to exercise any right, power or remedy upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Beneficiary whether contained herein or in the other Loan Documents or otherwise available to Beneficiary may be exercised from time to time and as often as may be deemed expedient by Beneficiary.

4.14 No Waiver of One Default to Affect Another. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If Beneficiary or the required percentage of the Banks (as determined pursuant to the Credit Agreement), to the extent applicable under the Credit Agreement, (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Notes, the Credit Agreement, this Deed of Trust, the Guaranty, the Disbursement Agreement or any other Loan Document (including any Security Document); (d) releases any part of the Trust Estate from the lien or security interest of this Deed of Trust or any

other instrument securing the Obligations; (e) consents to the filing of any map, plat or replat of the Site (to the extent such consent is required); (f) consents to the granting of any easement on the Site (to the extent such consent is required); or (g) makes or consents to any agreement changing the terms of this Deed of Trust or any other Loan Document subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability of Trustor under the Guaranty or any other Loan Document (including any Security Document) or otherwise, or any subsequent purchaser of the Trust Estate or any part thereof or any maker, co-signer, surety or guarantor. No such act or omission shall preclude Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by Beneficiary, shall the lien or security interest of this Deed of Trust be altered thereby, except to the extent expressly provided in any releases, maps, easements or subordinations described in clause (d), (e), (f) or (g) above of this Section 4.14. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Trust Estate, Beneficiary, without notice to any person, firm or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Trust Estate or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder, or waiving its right to declare such sale or transfer an Event of Default as provided herein. Notwithstanding anything to the contrary contained in this Deed of Trust or any other Loan Document (including any Security Document), (i) in the case of any non-monetary Event of Default, Beneficiary may continue to accept payments secured hereunder without thereby waiving the existence of such or any other Event of Default and (ii) in the case of any monetary Event of Default, Beneficiary may accept partial payments of any sums secured hereunder without thereby waiving the existence of such Event of Default if the partial payment is not sufficient to completely cure such Event of Default.

4.15 Discontinuance of Proceedings; Position of Parties Restored. If Beneficiary shall have proceeded to enforce any right or remedy under this Deed of Trust by foreclosure, entry of judgment or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Beneficiary, then and in every such case Trustor and Beneficiary shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Beneficiary shall continue as if no such proceedings had occurred or had been taken.

4.16 Remedies Cumulative. No right, power or remedy, including without limitation remedies with respect to any security for Obligations, conferred upon or reserved to Beneficiary by this Deed of Trust or any other Loan Document (including any Security Document) is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or any other Loan Document (including any Security Document), now or hereafter existing at law, in equity or by statute, and Beneficiary shall be entitled to resort to such rights, powers, remedies or security as Beneficiary shall in its sole and absolute discretion deem advisable.

4.17 Interest After Event of Default. If an Event of Default shall have occurred and is continuing, all sums outstanding and unpaid under the Obligations shall, at Beneficiary's option, bear interest at the rate applicable to overdue principal set forth in the Credit Agreement until such Event of Default has been cured. Trustor's obligation to pay such interest shall be secured by this Deed of Trust.

4.18 Foreclosure; Expenses of Litigation. If Trustee forecloses, reasonable attorneys' fees for services in the supervision of said foreclosure proceeding shall be allowed to the Trustee and Beneficiary as part of the foreclosure costs. In the event of foreclosure of the lien hereof, there shall be allowed and included as additional indebtedness all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary for attorneys' fees, appraiser's fees, outlays for

documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after foreclosure sale or entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and guarantees, and similar data and assurances with respect to title as Beneficiary may deem reasonably advisable either to prosecute such suit or to evidence to a bidder at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Trust Estate or any portion thereof. All expenditures and expenses of the nature in this section mentioned, and such expenses and fees as may be incurred in the protection of the Trust Estate and the maintenance of the lien and security interest of this Deed of Trust, including the fees of any attorney employed by Beneficiary in any litigation or proceeding affecting this Deed of Trust, the Guaranty or any other Loan Document (including any Security Document), the Trust Estate or any portion thereof, including, without limitation, civil, probate, appellate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Trustor, with interest thereon at the rate applicable to overdue principal set forth in the Credit Agreement, and shall be secured by this Deed of Trust. Trustee waives its right to any statutory fee in connection with any judicial or nonjudicial foreclosure of the lien hereof and agrees to accept a reasonable fee for such services.

4.19 Deficiency Judgments. If after foreclosure of this Deed of Trust or Trustee's sale hereunder, there shall remain any deficiency with respect to any Obligations, and Beneficiary shall institute any proceedings to recover such deficiency or deficiencies, all such amounts shall continue to bear interest at the rate applicable to overdue principal set forth in the Credit Agreement. Trustor waives any defense to Beneficiary's recovery against Trustor of any deficiency after any foreclosure sale of the Trust Estate. Trustor expressly waives any defense or benefits that may be derived from any statute granting Trustor any defense to any such recovery by Beneficiary. In addition, Beneficiary and Trustee shall be entitled to recovery of all of their reasonable costs and expenditures (including without limitation any court imposed costs) in connection with such proceedings, including their reasonable attorneys' fees, appraisal fees and the other costs, fees and expenditures referred to in Section 4.18 above. This provision shall survive any foreclosure or sale of the Trust Estate, any portion thereof and/or the extinguishment of the lien hereof.

4.20 Waiver of Jury Trial. Beneficiary and Trustor each waive any right to have a jury participate in resolving any dispute whether sounding in contract, tort or otherwise arising out of, connected with, related to or incidental to the relationship established between them in connection with the Obligations. Any such disputes shall be resolved in a bench trial without a jury.

4.21 Exculpation of Beneficiary. The acceptance by Beneficiary of the assignment contained herein with all of the rights, powers, privileges and authority created hereby shall not, prior to entry upon and taking possession of the Trust Estate by Beneficiary, be deemed or construed to make Beneficiary a "mortgagee in possession"; nor thereafter or at any time or in any event obligate Beneficiary to appear in or defend any action or proceeding relating to the Space Leases, the Rents or the Trust Estate, or to take any action hereunder or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under any Space Lease or to assume any obligation or responsibility for any security deposits or other deposits except to the extent such deposits are actually received by Beneficiary, nor shall Beneficiary, prior to such entry and taking, be liable in any way for any injury or damage to person or property sustained by any Person in or about the Trust Estate.

ARTICLE FIVE

**RIGHTS AND RESPONSIBILITIES OF TRUSTEE;
OTHER PROVISIONS RELATING TO TRUSTEE**

Notwithstanding anything to the contrary in this Deed of Trust, Trustor and Beneficiary agree as follows.

5.1 **Exercise of Remedies by Trustee.** To the extent that this Deed of Trust or applicable law, including all applicable Nevada Gaming Laws, authorizes or empowers, or does not require approval for, Beneficiary to exercise any remedies set forth in Article Four hereof or otherwise, or perform any acts in connection therewith, Trustee (but not to the exclusion of Beneficiary unless so required under the law of the State of Nevada) shall have the power to exercise any or all such remedies, and to perform any acts provided for in this Deed of Trust in connection therewith, all for the benefit of Beneficiary and on Beneficiary's behalf in accordance with applicable law of the State of Nevada. In connection therewith, Trustee: (a) shall not exercise, or waive the exercise of, any of Beneficiary's remedies (other than any rights of Trustee to any indemnity or reimbursement), except at Beneficiary's request, and (b) shall exercise, or waive the exercise of, any or all of Beneficiary's remedies at Beneficiary's request, and in accordance with Beneficiary's directions as to the manner of such exercise or waiver. Trustee may, however, decline to follow Beneficiary's request or direction if Trustee shall be advised by counsel that the action or proceeding, or manner thereof, so directed may not lawfully be taken or waived.

5.2 **Rights and Privileges of Trustee.** To the extent that this Deed of Trust requires Trustor to indemnify Beneficiary or reimburse Beneficiary for any expenditures Beneficiary may incur, Trustee shall be entitled to the same indemnity and the same rights to reimbursement of expenses as Beneficiary, subject to such limitations and conditions as would apply in the case of Beneficiary. To the extent that this Deed of Trust negates or limits Beneficiary's liability as to any matter, Trustee shall be entitled to the same negation or limitation of liability. To the extent that Trustor, pursuant to this Deed of Trust, appoints Beneficiary as Trustor's attorney in fact for any purpose, Beneficiary or (when so instructed by Beneficiary) Trustee shall be entitled to act on Trustor's behalf without joinder or confirmation by the other.

5.3 **Resignation or Replacement of Trustee.** Trustee may resign by an instrument in writing addressed to Beneficiary, and Trustee may be removed at any time with or without cause (i.e., in Beneficiary's sole and absolute discretion) by an instrument in writing executed by Beneficiary. In case of the death, resignation, removal or disqualification of Trustee or if for any reason Beneficiary shall deem it desirable to appoint a substitute, successor or replacement Trustee to act instead of Trustee originally named (or in place of any substitute, successor or replacement Trustee), then Beneficiary shall have the right and is hereby authorized and empowered to appoint a successor, substitute or replacement Trustee, without any formality other than appointment and designation in writing executed by Beneficiary, which instrument shall be recorded in the Office of the Recorder of Clark County, Nevada. The law of the State of Nevada (including, without limitation, the Nevada Gaming Laws) shall govern the qualifications of any Trustee. The authority conferred upon Trustee by this Deed of Trust shall automatically extend to any and all other successor, substitute and replacement Trustee(s) successively until the obligations secured hereunder have been paid in full or the Trust Estate has been sold hereunder or released in accordance with the provisions of the Guaranty and the other Loan Documents (including the Security Documents). Beneficiary's written appointment and designation of any Trustee shall be full evidence of Beneficiary's right and authority to make the same and of all facts therein recited. No confirmation, authorization, approval or other action by Trustor shall be required in connection with any resignation or other replacement of Trustee.

5.4 **Authority of Beneficiary.** If Beneficiary is a banking corporation, state banking corporation or a national banking association and the instrument of appointment of any successor or replacement

Trustee is executed on Beneficiary's behalf by an officer of such corporation, state banking corporation or national banking association, then such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of Beneficiary.

5.5 **Effect of Appointment of Successor Trustee.** Upon the appointment and designation of any successor, substitute or replacement Trustee, and subject to compliance with applicable Nevada Gaming Laws and other applicable laws, Trustee's entire estate and title in the Trust Estate shall vest in the designated successor, substitute or replacement Trustee. Such successor, substitute or replacement Trustee shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon Trustee. All references herein to Trustee shall be deemed to refer to Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder.

5.6 **Confirmation of Transfer and Succession.** Upon the written request of Beneficiary or of any successor, substitute or replacement Trustee, any former Trustee ceasing to act shall execute and deliver an instrument transferring to such successor, substitute or replacement Trustee all of the right, title, estate and interest in the Trust Estate of Trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon Trustee, and shall duly assign, transfer and deliver all properties and moneys held by said Trustee hereunder to said successor, substitute or replacement Trustee.

5.7 **Exculpation.** Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or otherwise be responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence, willful misconduct or knowing violation of law. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law). Trustee shall be under no liability for interest on any moneys received by it hereunder.

5.8 **Endorsement and Execution of Documents.** Upon Beneficiary's written request, Trustee shall, without liability or notice to Trustor, execute, consent to, or join in any instrument or agreement in connection with or necessary to effectuate the purposes of the Guaranty and the other Loan Documents (including the Security Documents). Trustor hereby irrevocably designates Trustee as its attorney in fact to execute, acknowledge and deliver, on Trustor's behalf and in

Trustor's name, all instruments or agreements necessary to implement any provision(s) of this Deed of Trust or to further perfect the lien created by this Deed of Trust on the Trust Estate. This power of attorney shall be deemed to be coupled with an interest and shall survive any disability of Trustor.

5.9 **Multiple Trustees.** If Beneficiary appoints multiple trustees, then any Trustee, individually, may exercise all powers granted to Trustee under this instrument, without the need for action by any other Trustee(s).

5.10 **Terms of Trustee's Acceptance.** Trustee accepts the trust created by this Deed of Trust upon the following terms and conditions:

(a) **Delegation.** Trustee may exercise any of its powers through appointment of attorney(s) in fact or agents.

(b) **Counsel.** Trustee may select and employ legal counsel (including any law firm representing Beneficiary). Trustor shall reimburse all reasonable legal fees and expenses that Trustee may thereby incur.

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(c) **Security.** Trustee shall be under no obligation to take any action upon any Event of Default unless furnished security or indemnity, in form satisfactory to Trustee, against costs, expenses, and liabilities that Trustee may incur.

(d) **Costs and Expenses.** Trustor shall reimburse Trustee, as part of the Obligations secured hereunder, for all reasonable disbursements and expenses (including reasonable legal fees and expenses) incurred by reason of and as provided for in this Deed of Trust, including any of the foregoing incurred in Trustee's administering and executing the trust created by this Deed of Trust, in complying with all applicable Nevada Gaming Laws and performing Trustee's duties and exercising Trustee's powers under this Deed of Trust.

(e) **Release.** Upon full and indefeasible payment and performance of the Obligations secured hereunder, Beneficiary shall request that Trustee release this Deed of Trust. Upon receipt of such request Trustee shall release this Deed of Trust to Trustor. Trustor shall pay all costs of recordation, if any.

ARTICLE SIX

MISCELLANEOUS PROVISIONS

6.1 **Heirs, Successors and Assigns Included in Parties.** Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included, and subject to the limitations set forth in Section 1.9, all covenants and agreements contained in this Deed of Trust, by or on behalf of Trustor or Beneficiary shall bind and inure to the benefit of its heirs, successors and assigns, whether so expressed or not.

6.2 **Addresses for Notices, Etc.** Any notice, report, demand or other instrument authorized or required to be given or furnished under this Deed of Trust to Trustor or Beneficiary shall be deemed given or furnished (i) when addressed to the party intended to receive the same, at the address of such party set forth below, and delivered by hand at such address or (ii) three (3) days after the same is

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deposited in the United States mail as first class certified mail, return receipt requested, postage paid, whether or not the same is actually received by such party:

Beneficiary: Deutsche Bank Trust Company Americas
31 West 52nd Street, 7th Floor
New York, New York 10019
Attn: Jeff Baevsky

With a copy to: Latham & Watkins
701 B. Street, Suite 2100
San Diego, California 92101
Attn: Sony Ben-Moshe, Esq.

Trustor: Palo, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Legal Department

With a copy to: Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Attn: C. Kevin McGeehan

Trustee: Nevada Title Company
2500 North Buffalo, Suite 150
Las Vegas, Nevada 89128
Attn: Robbie Graham

6.3 **Change of Notice Address.** Any Person may change the address to which any such notice, report, demand or other instrument is to be delivered or mailed to that person, by furnishing written notice of such change to the other parties, but no such notice of change shall be effective unless and until received by

such other parties.

6.4 **Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Deed of Trust are for convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

6.5 **Invalid Provisions to Affect No Others.** In the event that any of the covenants, agreements, terms or provisions contained herein or in the Notes, the Credit Agreement, the Guaranty or any other Loan Document (including the Security Documents) shall be invalid, illegal or unenforceable in any respect, the validity of the lien hereof and the remaining covenants, agreements, terms or provisions contained herein or in the Notes, the Credit Agreement, the Guaranty or any other Loan Document (including the Security Documents) shall be in no way affected, prejudiced or disturbed thereby. To the extent permitted by law, Trustor waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

6.6 **Changes and Priority Over Intervening Liens.** Neither this Deed of Trust nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Trustor and Beneficiary relating to this Deed of Trust shall be superior to the rights of the holder of any intervening lien or encumbrance.

6.7 **Estoppel Certificates.** Within ten (10) Business Days after Beneficiary's written request, Trustor shall from time to time execute a certificate, in recordable form (an "Estoppel Certificate"), stating, except to the extent it would be inaccurate to so state: (a) the current amount of the

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Obligations secured hereunder and all elements thereof, including principal, interest, and all other elements; (b) that Trustor has no defense, offset, claim, counterclaim, right of recoupment, deduction, or reduction against any of the Obligations secured hereunder; (c) that neither the Guaranty, this Deed of Trust nor any other Loan Documents (including the Security Documents) to which it is a party have been amended, whether orally or in writing; (d) that Trustor has no claims against Beneficiary of any kind; (e) that any power of attorney granted to Beneficiary is in full force and effect; and (f) such other matters relating to this Deed of Trust, the Guaranty or any other Loan Document (including any Security Document) to which it is a party and the relationship of Trustor and Beneficiary as Beneficiary shall request. In addition, the Estoppel Certificate shall set forth the reasons why it would be inaccurate to make any of the foregoing assurances.

6.8 **Waiver of Setoff and Counterclaim.** All Obligations shall be payable without setoff, counterclaim or any deduction whatsoever. Trustor hereby waives the right to assert a counterclaim (other than a compulsory counterclaim) in any action or proceeding brought against it by Beneficiary and/or any Bank under the Loan Documents, or arising out of or in any way connected with this Deed of Trust or the other Loan Documents (including the Security Documents) or the Obligations.

6.9 **Governing Law.** The Credit Agreement, the Notes and the Guaranty provide that they are governed by, and construed and enforced in accordance with, the laws of the State of New York. This Deed of Trust shall also be construed under and governed by the laws of the State of New York; provided, however, that (i) the terms and provisions of this Deed of Trust pertaining to the priority, perfection, enforcement or realization by Beneficiary of its respective rights and remedies under this Deed of Trust with respect to the Trust Estate shall be governed and construed and enforced in accordance with the internal laws of the State of Nevada (the "State") without giving effect to the conflicts-of-law rules and principles of the State; (ii) Trustor agrees that to the extent deficiency judgments are available under the laws of the State after a foreclosure (judicial or nonjudicial) of the Trust Estate, or any portion thereof, or any other realization thereon by Beneficiary or any Bank under the Loan Documents, Beneficiary or such Bank, as the case may be, shall have the right to seek such a deficiency judgment against Trustor in the State; and (iii) Trustor agrees that if Beneficiary or any Bank under the Loan Documents obtains a deficiency judgment in another state against Trustor, then Beneficiary or such Bank, as the case may be, shall have the right to enforce such judgment in the State to the extent permitted under the laws of the State, as well as in other states.

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6.10 **Required Notices.** Trustor shall notify Beneficiary promptly of the occurrence of any of the following and shall immediately provide Beneficiary a copy of the notice or documents referred to: (i) receipt of notice from any Governmental Authority relating to all or any material part of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (ii) receipt of any notice from any tenant leasing all or any material portion of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iii) receipt of notice from the holder of any Permitted Lien relating to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iv) the commencement of any proceedings or the entry of any judgment, decree or order materially affecting all or any portion of the Trust Estate or which involve the potential liability of Trustor or its Affiliates in an amount in excess of \$25,000,000 (other than for personal injury actions and related property damage suits which are covered by such insurance); or (v) commencement of any judicial or administrative proceedings or the entry of any judgment, decree or order by or against or otherwise affecting Trustor or any Affiliate of Trustor, a material portion of the Trust Estate, or a material portion of the Personal Property, or any other action by any creditor or lessor thereof as a result of any default under the terms of any lease.

6.11 **Reconveyance.** Upon written request of Trustor when the Obligations secured hereby have been satisfied in full, Beneficiary shall cause Trustee to reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

6.12 **Attorneys' Fees.** Without limiting any other provision contained herein, Trustor agrees to pay all costs of Beneficiary or Trustee incurred in connection with the enforcement of this Deed of Trust, the Guaranty or the other Loan Documents to which it is a party, including without limitation all reasonable attorneys' fees whether or not suit is commenced, and including, without limitation, fees incurred in connection with any probate, appellate, bankruptcy, deficiency or any other litigation proceedings, all of which sums shall be secured hereby.

6.13 **Late Charges.** By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to collect any late charge thereon or interest thereon at the interest rate on the Notes or as otherwise specified in the Credit Agreement, if so provided, not then paid or its right either to require prompt payment when due of all other sums so secured or to declare default for failure to pay any amounts not so paid.

6.14 **Cost of Accounting.** Trustor shall pay to Beneficiary, for and on account of the preparation and rendition of any accounting, which Trustor may be entitled to require under any law or statute now or hereafter providing therefor, the reasonable costs thereof.

6.15 **Right of Entry.** Subject to compliance with applicable Nevada Gaming Laws, Beneficiary may at any reasonable time or times and on reasonable prior written notice to Trustor make or cause to be made entry upon and inspections of the Trust Estate or any part thereof in person or by agent.

6.16 **Corrections.** Trustor shall, upon request of Beneficiary or Trustee, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust (including, but not limited to, in the exhibits and schedules attached hereto) or in the execution or acknowledgement hereof, and shall execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Trustee to carry out more effectively the purposes of this Deed of Trust, to subject to the lien and security interest hereby created any of Trustor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.

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6.17 **Statute of Limitations.** To the fullest extent allowed by the law, the right to plead, use or assert any statute of limitations as a plea or defense or bar of any kind, or for any purpose, to any debt, demand or obligation secured or to be secured hereby, or to any complaint or other pleading or proceeding filed, instituted or maintained for the purpose of enforcing this Deed of Trust or any rights hereunder, is hereby waived by Trustor.

6.18 **Subrogation.** Should the proceeds of any loan or advance made by Beneficiary or any Bank under the Credit Agreement, repayment of which is hereby secured, or any part thereof, or any amount paid out or advanced by Beneficiary or any Bank under the Credit Agreement, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior or superior lien or encumbrance upon the Trust Estate, or any part thereof, then, as additional security hereunder, Trustee, on behalf of Beneficiary, shall be subrogated to any and all rights, superior titles, liens, and equities owned or claimed by any owner or holder of said outstanding liens, charges, and indebtedness, however remote, regardless of whether said liens, charges, and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

6.19 **Joint and Several Liability.** All obligations of Trustor hereunder, if more than one, are joint and several. Recourse for deficiency after sale hereunder may be had against the property of Trustor, without, however, creating a present or other lien or charge thereon.

6.20 **Homestead.** Trustor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Trust Estate as against the collection of the Obligations, or any part hereof.

6.21 **Context.** In this Deed of Trust, whenever the context so requires, the neuter includes the masculine and feminine, and the singular including the plural, and vice versa.

6.22 **Time.** Time is of the essence of each and every term, covenant and condition hereof. Unless otherwise specified herein, any reference to "days" in this Deed of Trust shall be deemed to mean "calendar days."

6.23 **Interpretation.** As used in this Deed of Trust unless the context clearly requires otherwise: The terms "herein" or "hereunder" and similar terms without reference to a particular section shall refer to the entire Deed of Trust and not just to the section in which such terms appear; the term "lien" shall also mean a security interest, and the term "security interest" shall also mean a lien.

6.24 **Effect of NRS 107.030.** To the extent not inconsistent herewith, the provisions of NRS 107.030 (1), (2) (in amounts as hereinafter provided for), (3), (4) (with interest at the default rate provided for under the Credit Agreement), (5), (6), (7) (reasonable), (8) and (9) are included herein by reference and made part of this Deed of Trust.

6.25 **Amendments.** This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought and only as permitted by the provisions of the Guaranty.

6.26 **No Conflicts.** In the event that any of the provisions contained here conflict with the Guaranty, the provisions contained in the Guaranty shall prevail.

6.27 **Amendment and Restatement.** This Deed of Trust amends and restates that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing by Trustor to Trustee for the benefit of Beneficiary recorded on July 2, 2002 in Book No. 20020702 as Instrument No. 00148 of Official Records in the office of the County Recorder of Clark County, Nevada, as re-recorded September 11, 2002 in Book No. 20020911 as Instrument No. 01788 of Official Records in the office of the County Recorder of Clark County, Nevada (the "**Original Deed of Trust**") in its entirety. This Deed

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of Trust is not intended and shall not be construed or interpreted as to affect the effectiveness or priority of the Original Deed of Trust.

ARTICLE SEVEN

POWER OF ATTORNEY

7.1 **Grant of Power.** Subject to compliance with applicable Nevada Gaming Laws, Trustor irrevocably appoints Beneficiary and any successor thereto as its attorney-in-fact, with full power and authority, including the power of substitution, exercisable only during the continuance of an Event of Default to act for Trustor in its name, place and stead as hereinafter provided:

7.1.1 **Possession and Completion.** To take possession of the Site and the Project, remove all employees, contractors and agents of Trustor therefrom, complete or attempt to complete the work of construction, and market, sell or lease the Site and the Project.

7.1.2 **Plans.** To make such additions, changes and corrections in the current Plans and Specifications as may be necessary or desirable, in Beneficiary's reasonable discretion, or as it deems proper to complete the Project.

7.1.3 **Employment of Others.** To employ such contractors, subcontractors, suppliers, architects, inspectors, consultants, property managers and other agents as Beneficiary, in its discretion, deems proper for the completion of the Project, for the protection or clearance of title to the Site or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.4 **Security Guards.** To employ watchmen to protect the Site and the Project from injury.

7.1.5 **Compromise Claims.** To pay, settle or compromise all bills and claims then existing or thereafter arising against Trustor, which Beneficiary, in its discretion, deems proper for the protection or clearance of title to the Site or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.6 **Legal Proceedings.** To prosecute and defend all actions and proceedings in connection with the Site or the Project.

7.2 **Other Acts.** To execute, acknowledge and deliver all other instruments and documents in the name of Trustor that are necessary or desirable, to exercise Trustor's rights under all contracts concerning the Site or the Project, including, without limitation, under any Space Leases, and to do all other acts with respect to the Site or the Project that Trustor might do on its own behalf, as Beneficiary, in its reasonable discretion, deems proper.

ARTICLE EIGHT

GUARANTOR PROVISIONS

8.1 **Absolute and Unconditional Obligations.** All rights of Administrative Agent and all obligations of Trustor hereunder shall be absolute and unconditional irrespective of (i) any lack of validity, legality or enforceability of the Credit Agreement, any Note, or any other Loan Document, (ii) the failure of any Bank or any holder of any of the Obligations to assert any claim or demand or to enforce any right or remedy against Borrower, Trustor or any other Person (including any other guarantor of the Obligations) under the provisions of the Credit Agreement, any Note, any other Loan Document or otherwise or to exercise any right or remedy against any other guarantor of, or collateral securing, any of the Obligations, (iii) any change in the time, manner or place of payment of, or in any other term of, all of the Obligations, or any other extension or renewal of any Obligation, (iv) any reduction, limitation, impairment or termination of any of the Obligations for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to, and Trustor hereby

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waives any right to or claim of, any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, nongenuineness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, any Obligation, (v) any amendment to, rescission, waiver, or other modification of, or any consent to departure from, any of the terms of the Credit Agreement, any Note or any other Loan Document, (vi) any sale, exchange, release or surrender of, realization upon or other manner or order of dealing with any property by whomsoever pledged or mortgaged to secure or howsoever securing the Obligations or any liabilities or obligations (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof and/or any offset there against, (vii) the application of any sums by whomsoever paid or howsoever realized to any obligations and liabilities of Borrower or any other Person to the Banks under the Loan Documents in the manner provided therein regardless of what obligations and liabilities remain unpaid, (viii) any action or failure to act in any manner referred to in this Deed of Trust which may deprive Trustor of its right to subrogation against Borrower or any other Person to recover full indemnity for any payments or performances made pursuant to this Deed of Trust or of its right of contribution against any other party and (ix) any other circumstance which might otherwise constitute a defense available to, or a legal or equitable discharge of, Borrower, any other Person, Trustor, any surety or any guarantor.

8.2 **Waiver.** Trustor hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including (i) any right to require Administrative Agent or any other Bank to proceed against Borrower or any other Person or to proceed against or exhaust any security held by Administrative Agent or any other Bank at any time or to pursue any other remedy in Administrative Agent's or any other Bank's power before proceeding against Trustor, (ii) any defense that may arise by reason of the incapacity, lack of power or authority, death, dissolution, merger, termination or disability of Borrower or any other Person or the failure of Administrative Agent or any other Bank to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of Borrower or any other Person, (iii) demand, presentment, protest and notice of any kind except as provided herein, including notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Borrower, Administrative Agent, any other Bank, any endorser or creditor of Borrower, Trustor or on the part of any other Person under this or any other instrument in connection with any obligation or evidence of indebtedness held by Administrative Agent or any other Bank as collateral or in connection with any Obligation, (iv) any defense based upon an election of remedies by Administrative Agent or any other Bank, including an election to proceed by non-judicial rather than judicial foreclosure, which destroys or otherwise impairs the subrogation rights of Trustor, the right of Trustor to proceed against Borrower or any other Person for reimbursement, or both, (v) any defense based on any offset against any amounts which may be owed by any Person to Trustor for any reason whatsoever, (vi) any defense based on any act, failure to act, delay or omission whatsoever on the part of Borrower or any other Person of the failure by Borrower or any other Person to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the Loan Documents, (vii) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal, provided, that, upon payment or performance in full of the Obligations, this Deed of Trust shall no longer be of any force or effect, (viii) any defense, setoff or counterclaim which may at any time be available to or asserted by Borrower or any other Person against Administrative Agent, any other Bank or any other Person under the Loan Documents, (ix) any duty on the part of Administrative Agent or any other Bank to disclose to Trustor any facts Administrative Agent or any other Bank may now or hereafter know about Borrower or any other Person, regardless of whether Administrative Agent or such Bank have reason to believe that any such facts materially increase the risk beyond that which Trustor intends to assume, or have reason to believe that such facts are unknown to Trustor, or have a reasonable opportunity to communicate such facts to Trustor, since Trustor acknowledges that Trustor is fully responsible for being and keeping

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informed of the financial condition of Borrower and any other Person liable for the Obligations and of all circumstances bearing on the risk of non-payment or non-performance of any obligations and liabilities hereby guaranteed, (x) the fact that Trustor may at any time in the future dispose of all or part of its direct or indirect interest in Borrower or any other Person or otherwise cease to be an Affiliate of Borrower or any other Person, as the case may be, (xi) any defense based on any change in the time, manner or place of any payment or performance under, or in any other term of, the Loan Documents or any other amendment, renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of the Loan Documents, (xii) any defense arising because of Administrative Agent's or any other Bank's election, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code, and (xiii) any defense based upon any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code. To the fullest extent permitted by NRS 40.485 (1) and (2), the provisions of NRS 40.430 are waived.

8.3 **Net Worth Limitation.** If, notwithstanding the representation and warranty set forth in Section 1.2(b) hereof or anything to the contrary herein, enforcement of the liability of Trustor under this Deed of Trust for the full amount of the Obligations would be an unlawful or voidable transfer under any applicable fraudulent conveyance or fraudulent transfer law or any comparable law, then the liability of Trustor hereunder shall be reduced to the highest amount for which such liability may then be enforced without giving rise to an unlawful or voidable transfer under any such law.

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IN WITNESS WHEREOF, Trustor has executed this Amended and Restated Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing as of the day and year first above written.

TRUSTOR:

PALO, LLC,
a Delaware limited liability company,

By: Wynn Resorts Holdings, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein

Title: *Senior Vice President, General Counsel and Secretary*

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QuickLinks

[EXHIBIT 10.38](#)

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APNs: 162-16-511-009,
162-16-510-007 through 018, inclusive, 162-16-510-021 through 022, inclusive,
162-16-510-024 through 025, inclusive, 162-16-510-028 through 031, inclusive,
162-16-610-028 through 030, inclusive, 162-16-610-021 through 022, inclusive,
162-16-610-017 through 019, inclusive, 162-16-610-008 through 015, inclusive,
162-16-611-001 through 014, inclusive,
162-16-511-002 and 162-16-511-003

Recording requested by and recorded counterparts should be returned to:

Sony Ben-Moshe, Esq.
Latham & Watkins
701 B Street, Suite 2100
San Diego, California 92101

Mail Property Tax Statements to:

Wynn Resorts Holdings, LLC
Legal Department
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109

**AMENDED AND RESTATED DEED OF TRUST, ASSIGNMENT OF RENTS AND
LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

MADE BY

**WYNN RESORTS HOLDINGS, LLC,
a Nevada limited liability company,
as Trustor,**

to

**Nevada Title Company,
a Nevada corporation,
as Trustee,
for the benefit of**

**DEUTSCHE BANK TRUST COMPANY AMERICAS,
in its capacity as Administrative Agent for the benefit of the Banks,
as Beneficiary**

THIS INSTRUMENT IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS OF CLARK COUNTY, NEVADA UNDER THE NAMES OF WYNN RESORTS HOLDINGS, LLC AS "DEBTOR" AND DEUTSCHE BANK TRUST COMPANY AMERICAS AS "SECURED PARTY." TRUSTOR'S ORGANIZATIONAL NUMBER IS NEVADA FILE NUMBER LLC4390-LLC.

THIS INSTRUMENT IS A "CONSTRUCTION MORTGAGE" AS THAT TERM IS DEFINED IN SECTION 104.9334(8) OF THE NEVADA REVISED STATUTES AND SECURES AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT UPON LAND.

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**AMENDED AND RESTATED DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS AMENDED AND RESTATED DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (hereinafter called "**Deed of Trust**") is made and effective as of October 30, 2002, by WYNN RESORTS HOLDINGS, LLC, a Nevada limited liability company (together with all successors and assigns of the Trust Estate (as hereinafter defined), "**Trustor**"), whose address is 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109, to Nevada Title Company, a Nevada corporation, whose address is 2500 North Buffalo, Suite 150, Las Vegas, Nevada 89128, as Trustee ("**Trustee**"), for the benefit of DEUTSCHE BANK TRUST COMPANY AMERICAS ("**Beneficiary**"), in its capacity as Administrative Agent under (i) that certain Amended and Restated Commitment Letter (as the same may be amended or modified from time to time, the "**Commitment Letter**") dated as of June 14, 2002, among Trustor (formerly known as Wynn Resorts, LLC), Beneficiary, Deutsche Bank Securities Inc., Bank of America, N.A., Banc of America Securities LLC, Bear Stearns Corporate Lending, Inc., Bear, Stearns & Co. Inc., Valvino Lamore, LLC, a Nevada limited liability company, and Wynn Las Vegas, LLC, a Nevada limited liability company (Wynn Las Vegas, LLC being hereinafter referred to as "**Borrower**"), and that certain Credit Agreement (as the same may be amended or modified from time to time, the "**Credit Agreement**") dated as of even date herewith (and entered into in connection with and in furtherance of the Commitment Letter) among Borrower, Beneficiary and the other parties signatory thereto (such other parties, together with Beneficiary, the "**Banks**") pursuant to which the Banks have agreed to lend to Borrower an aggregate principal amount of \$1,000,000,000 and (ii) that certain Guarantee and Collateral Agreement (as the same may be amended or modified from time to time, the "**Guaranty**") dated as of even date herewith (and entered into in connection with and in furtherance of the Commitment Letter and the Credit Agreement) by Trustor and the other parties thereto for the benefit of Beneficiary on behalf of the Banks pursuant to which Trustor will guaranty the payment and performance of all obligations of Borrower under the Credit Agreement and the other Loan Documents.

THIS INSTRUMENT SECURES FUTURE ADVANCES. THE MAXIMUM AMOUNT OF PRINCIPAL TO BE SECURED HEREBY IS \$1,000,000,000. THIS INSTRUMENT IS TO BE GOVERNED BY THE PROVISIONS OF NRS 106.300 THROUGH NRS 106.400 INCLUSIVE.

THE OBLIGATIONS SECURED HEREBY INCLUDE REVOLVING CREDIT OBLIGATIONS WHICH PERMIT BORROWING, REPAYMENT AND REBORROWING. INTEREST ON OBLIGATIONS SECURED HEREBY ACCRUES AT A RATE WHICH MAY FLUCTUATE FROM TIME TO TIME.

DEFINITIONS—As used in this Deed of Trust, the following terms have the meanings hereinafter set forth:

"**Accounts Receivable**" shall have the meaning set forth in Section 9-102 (NRS 104.9102) of the UCC for the term "account."

"**Appurtenant Rights**" means all and singular tenements, hereditaments, rights, reversions, remainders, development rights, privileges, benefits, easements (in gross or appurtenant), rights-of-way, licenses, gores or strips of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, and all appurtenances whatsoever and claims or demands of Trustor at law or in equity in any way belonging, benefiting, relating or appertaining to the Land, the Trustor, the Project, the airspace over the Land, the Improvements or any of the Trust Estate encumbered by this Deed of Trust, or which hereinafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Trustor, including, without limitation, the Appurtenant Rights more specifically described in *Schedule B* attached hereto and incorporated herein.

"**Bankruptcy**" means, with respect to any Person, that (i) a court having jurisdiction in the Trust Estate shall have entered a decree or order for relief in respect of such Person in an involuntary case

under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order has not been stayed; or any other similar relief shall have been granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against such Person, under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the Trust Estate for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over such Person, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of such Person, for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of such Person, and any such event described in this clause (ii) shall continue for 60 days unless dismissed, bonded or discharged; or (iii) such Person shall have an order for relief entered with respect to it or shall commence a voluntary case under the

Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or such Person shall make any assignment for the benefit of creditors, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable or if the fair market value of its assets does not exceed its aggregate liabilities; or (iv) such Person shall, or the Board of Directors of such Person (or any committee thereof) shall, adopt any resolution or otherwise authorize any action to approve any of the actions referred to in clause (iii) above.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute thereto.

"Business Day" means any day that is not a Saturday, a Sunday or a day on which banking institutions in the State of Nevada or the City of New York are not required to be open.

"Deed of Trust" means this Deed of Trust as it may be amended, increased or modified from time to time.

"Disbursement Agreement" means that certain Master Disbursement Agreement dated as of even date herewith, among Borrower, Beneficiary, Wells Fargo Bank, National Association, as the trustee for holders of mortgage notes issued in connection with the financing of the Project, Deutsche Bank Trust Company Americas, as disbursement agent, and the other parties signatory thereto, as the same may hereafter be amended or modified in accordance with its terms and the terms of the Credit Agreement.

"Event of Default" has the meaning set forth in *Section 3.1* hereof.

"FF&E" means all furniture, fixtures, equipment, appurtenances and personal property now or in the future contained in, used in connection with, attached to, or otherwise useful or convenient to the use, operation, or occupancy of, or placed on, but unattached to, any part of the Site or Improvements whether or not the same constitutes real property or fixtures in the State of Nevada, including all removable window and floor coverings, all furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator and escalator plants, cooking facilities, vacuum cleaning systems, public address and communications systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings, fixtures, and building materials, all gaming and financial equipment, computer equipment, calculators, adding machines, gaming tables, video game and slot machines, and any other electronic equipment of every nature used or located on any part of the Site or Improvements, together with all Venetian blinds, shades, draperies, drapery and curtain rods, brackets, bulbs, cleaning apparatus, mirrors, lamps, ornaments, cooling apparatus and equipment, ranges and ovens, garbage

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disposals, dishwashers, mantels, and any and all such property which is at any time installed in, affixed to or placed upon the Site or Improvements.

"FF&E Financing Agreement" means any financing agreement entered into by Trustor (i) the proceeds of which are used by Trustor for the acquisition or lease of FF&E, (ii) pursuant to which Trustor grants to the lender or lessor thereunder a security interest in the FF&E so acquired or leased and (iii) which is permitted by the Credit Agreement and the Guaranty.

"Governmental Authority" means any agency, authority, board, bureau, commission, department, office, public entity, or instrumentality of any nature whatsoever of the United States federal or foreign government, any state, province or any city or other political subdivision or otherwise, whether now or hereafter in existence, or any officer or official thereof, including, without limitation, any Nevada Gaming Authority.

"Imposition" means any taxes, assessments, water rates, sewer rates, maintenance charges, other governmental impositions and other charges now or hereafter levied or assessed or imposed against the Trust Estate or any part thereof.

"Improvements" means (1) all the buildings, structures, facilities and improvements of every nature whatsoever now or hereafter situated on the Site or any real property encumbered hereby, and (2) all fixtures, machinery, appliances, goods, building or other materials, equipment, including without limitation all gaming equipment and devices, and all machinery, equipment, engines, appliances and fixtures for generating or distributing air, water, heat, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse or garbage; all wall-beds, wall-safes, built-in furniture and installations, shelving, lockers, partitions, doorstops, vaults, motors, elevators, dumb-waiters, awnings, window shades, Venetian blinds, light fixtures, fire hoses and brackets and boxes for the same, fire sprinklers, alarm, surveillance and security systems, computers, drapes, drapery rods and brackets, mirrors, mantels, screens, linoleum, carpets and carpeting, plumbing, bathtubs, sinks, basins, pipes, faucets, water closets, laundry equipment, washers, dryers, ice-boxes and heating units; all kitchen and restaurant equipment, including but not limited to silverware, dishes, menus, cooking utensils, stoves, refrigerators, ovens, ranges, dishwashers, disposals, water heaters, incinerators, furniture, fixtures and furnishings, communication systems, and equipment; all cocktail lounge supplies, including but not limited to bars, glassware, bottles and tables used in connection with the Site; all chaise lounges, hot tubs, swimming pool heaters and equipment and all other recreational equipment (computerized and otherwise), beauty and barber equipment, and maintenance supplies used in connection with the Site; all amusement rides and attractions attached to the Site, all specifically designed installations and furnishings, and all furniture, furnishings and personal property of every nature whatsoever now or hereafter owned or leased by Trustor or in which Trustor has any rights or interest and located in or on, or attached to, or used or intended to be used or which are now or may hereafter be appropriated for use on or in connection with the operation of the Site or any real or personal property encumbered hereby or any other Improvements, or in connection with any construction being conducted or which may be conducted thereon, and all extensions, additions, accessions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing, and all of the right, title and interest of Trustor in and to any such property, which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and improvements and a part of the real property hereby encumbered.

"Indemnity Agreement" means that certain Indemnity Agreement dated as of even date herewith by Trustor for the benefit of Beneficiary and certain other indemnified parties named therein.

"Insolvent" means with respect to any person or entity, that such person or entity shall be deemed to be insolvent if it shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable and/or if the fair market value of its assets does not exceed its aggregate liabilities.

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"Intangible Collateral" means (a) the rights to use all names and all derivations thereof now or hereafter used by Trustor in connection with the Site or Improvements, including, without limitation, the name "Le Reve", including any variations thereon, together with the goodwill associated therewith, and all names, logos, and designs used by Trustor, or in connection with the Site or in which Trustor has rights, with the exclusive right to use such names, logos and designs wherever they are now or hereafter used in connection with the Project (or in connection with the marketing of the Project), and any and all other trade names, trademarks or service marks, whether or not registered, now or hereafter used in the operation of the Project, including, without limitation, any interest as a lessee, licensee or franchisee, and, in each case, together with the goodwill associated therewith; (b) subject to the absolute assignment contained herein, the Rents; (c) any and all books, records, customer lists, concession agreements, supply or service contracts, licenses, permits, governmental approvals (to the extent such licenses, permits and approvals may be pledged under applicable law), signs, goodwill, casino and hotel credit and charge records, supplier lists, checking accounts, safe deposit boxes (excluding the contents of such deposit boxes owned by persons other than Trustor and its subsidiaries), cash, instruments, chattel papers, including inter-company notes and pledges, documents, unearned premiums, deposits, refunds, including but not limited to income tax refunds, prepaid expenses, rebates, tax and insurance escrow and impound accounts, if any, actions and rights in action, and all other claims, including without limitation condemnation awards and insurance proceeds, and all other contract rights and general intangibles resulting from or used in connection with the operation and occupancy of the Trust Estate and the Improvements and in which Trustor now or hereafter has rights; and (d) general intangibles, vacation license resort agreements or other time share license or right to use agreements, including without limitation all rents, issues, profits, income and maintenance fees resulting therefrom, whether any of the foregoing is now owned or hereafter acquired.

"Land" means the real property situated in the County of Clark, State of Nevada, more specifically described in *Schedule A* attached hereto and incorporated herein by reference, including any after acquired title thereto.

"Legal Requirements" means all applicable restrictive covenants, applicable zoning and subdivision ordinances and building codes, all applicable health and Environmental Laws and regulations, all applicable gaming laws and regulations, and all other applicable laws, ordinances, rules, regulations, judicial decisions, administrative orders, and other requirements of any Governmental Authority having jurisdiction over Trustor, the Trust Estate and/or any Affiliate of Trustor, in effect either at the time of execution of this Deed of Trust or at any time during the term hereof, including, without limitation, all Environmental Laws and Nevada Gaming Laws.

"Nevada Gaming License" means any gaming license necessary for the ownership, construction, maintenance, financing or operation of the Project, whether issued and/or required by Nevada Gaming Authorities, Nevada Gaming Laws or otherwise.

"Notes" means, collectively, those certain promissory note(s) to be issued pursuant to the Credit Agreement, as the same may be amended or replaced from time to time in accordance with its terms.

"NRS" means the Nevada Revised Statutes as in effect from time to time.

"Obligations" means (i) the payment and performance by Borrower of each covenant and agreement of Borrower contained in the Commitment Letter, the Credit Agreement, the Notes and the other Loan Documents (including the Security Documents) and (ii) the payment and performance by Trustor of each covenant and agreement of Trustor contained in the Guaranty, this Deed of Trust, the Indemnity Agreement and the other Loan Documents.

"Permitted Dispositions" means (a) the sale, transfer, lease or other disposition of assets in the Trust Estate, in the ordinary course of business, of inventory held in the ordinary course of business (b) the dispositions set forth in *Section 1.10* hereof and (c) other sales, transfers, leases or other dispositions of

assets in the Trust Estate, including entering into Space Leases; *provided* that, in each case, all applicable provisions of the Loan Documents, including the Guaranty, are complied with.

"Personal Property" has the meaning set forth in *Section 1.12* hereof.

"Proceeds" has the meaning assigned to it under the UCC and, in any event, shall include but not be limited to (i) any and all proceeds of any insurance (including without limitation property casualty and title insurance), indemnity, warranty or guaranty payable from time to time with respect to any of the Trust Estate; (ii) any and all proceeds in the form of accounts, security deposits, tax escrows (if any), down payments (to the extent the same may be pledged under applicable law), collections, contract rights, documents, instruments, chattel paper, liens and security instruments, guarantees or general intangibles relating in whole or in part to the Project and all rights and remedies of whatever kind or nature Trustor may hold or acquire for the purpose of securing or enforcing any obligation due Trustor thereunder; (iii) any and all payments in any form whatsoever made or due and payable from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Trust Estate by any Governmental Authority; (iv) subject to the absolute assignment contained herein, the Rents or other benefits arising out of, in connection with or pursuant to any Space Lease of the Trust Estate; and (v) any and all other amounts from time to time paid or payable in connection with any of the Trust Estate; *provided, however*, that the Trustor is not authorized to dispose of any of the Trust Estate unless such disposition is a Permitted Disposition.

"Project" means the resort-hotel-casino-mall complex proposed to be constructed in Clark County, Nevada as described in the Plans and Specifications and as applicable to the Site and the Improvements, as such Plans and Specifications may be amended pursuant to the Disbursement Agreement.

"Rents" means all rents, room revenues, income, receipts, issues, profits, revenues and maintenance fees, room, food and beverage revenues, license and concession fees, income, proceeds and other benefits to which Trustor may now or hereafter be entitled from the Site, the Improvements, the Space Leases or any property encumbered hereby or any business or other activity conducted by Trustor at the Site or the Improvements.

"Site" means the Land and the Appurtenant Rights.

"Space Leases" means any and all leases, subleases, lettings, licenses, concessions, operating agreements, management agreements, and all other agreements affecting the Trust Estate that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, that give any person the right to conduct its business on, or otherwise use, operate or occupy, all or any portion of the Site or Improvements and any leases, agreements or arrangements permitting anyone to enter upon or use any of the Trust Estate to extract or remove natural resources of any kind, together

with all amendments, extensions, and renewals of the foregoing entered into in compliance with this Deed of Trust, together with all rental, occupancy, service, maintenance or any other similar agreements pertaining to use or occupation of, or the rendering of services at the Site, the Improvements or any part thereof.

"**Space Lessee(s)**" means any and all tenants, licensees, or other grantees of the Space Leases and any and all guarantors, sureties, endorsers or others having primary or secondary liability with respect to such Space Leases.

"**Tangible Collateral**" means all personal property, goods, equipment, supplies, building and other materials of every nature whatsoever and all other tangible personal property constituting a part or portion of the Project and/or used in the operation of the hotel, casino, restaurants, stores, parking facilities, observation tower and all other commercial operations on the Site or Improvements, including but not limited to communication systems, visual and electronic surveillance systems and transportation systems and not constituting a part of the real property subject to the real property lien

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of this Deed of Trust and including all property and materials stored therein in which Trustor has an interest and all tools, utensils, food and beverage, liquor, uniforms, linens, housekeeping and maintenance supplies, vehicles, fuel, advertising and promotional material, blueprints, surveys, plans and other documents relating to the Site or Improvements, and all construction materials and all furnishings, fixtures and equipment, including, but not limited to, all FF&E and all equipment and devices which are or are to be installed and used in connection with the operation of the Project, those items of furniture, fixtures and equipment which are to be purchased or leased by Trustor, machinery and any other item of personal property in which Trustor now or hereafter own or acquire an interest or right, and which are used or useful in the construction, operation, use and occupancy of the Project and all present and future right and interest of Trustor in and to any casino operator's agreement, license agreement or sublease agreement used in connection with the Site or the Improvements.

"**Title Insurer**" means Chicago Title Insurance Company.

"**Trust Estate**" means all of the property described in Granting Clauses (A) through (O) below, inclusive, and each item of property therein described, provided, however, that such term shall not include the property described in Granting Clause (P) below.

"**UCC**" means the Uniform Commercial Code in effect in the State of Nevada from time to time, NRS chapters 104 and 104A.

The following terms shall have the meaning assigned to such terms in the Disbursement Agreement:

**Disbursement Agent
Plans and Specifications**

The following terms shall have the meaning assigned to such terms in the Credit Agreement:

**Affiliate
Closing Date
Environmental Laws
Financing Agreements
Lien
Loan Documents
Nevada Gaming Authorities
Nevada Gaming Laws
Permitted Encumbrance
Permitted Liens
Person
Security Documents**

In addition, any capitalized terms used in this Deed of Trust which are not otherwise defined herein shall have the meaning ascribed to such terms in the Disbursement Agreement and, if not defined therein, the meaning ascribed to such terms in the Credit Agreement and, if not defined therein, the meaning ascribed to such terms in the Guaranty; *provided*, that upon termination of the Disbursement Agreement, any defined terms used herein having meanings given to such terms in the Disbursement Agreement shall continue to have the meanings given to such terms in the Disbursement Agreement immediately prior to such termination.

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WITNESSETH:

IN CONSIDERATION OF TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION; THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, AND FOR THE PURPOSE OF SECURING in favor of Beneficiary (1) the Obligations; (2) the payment of such additional loans or advances as hereafter may be made to Trustor (individually or jointly and severally with any other Person) or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; *provided, however*, that any and all future advances by Beneficiary to Trustor made for the improvement, protection or preservation of the Trust Estate, together with interest at the rate applicable to overdue principal set forth in the Credit Agreement, shall be automatically secured hereby unless such a note or instrument evidencing such advances specifically recites that it is not intended to be secured hereby and (3) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof or to protect the security hereof (including Protective Advances as such term is defined in *Section 4.2* hereof), together with interest thereon as herein provided (without limiting the generality of the protections afforded by NRS Chapter 106, funds disbursed that, in the reasonable exercise of Beneficiary's judgment, are needed to complete Improvements to the Land or to protect Beneficiary's security interest in the Trust Estate are to be deemed obligatory advances hereunder and will be added to the total indebtedness secured by this Deed of Trust and such indebtedness shall be increased accordingly), Trustor, in consideration of the premises, and for the purposes aforesaid, does hereby ASSIGN, BARGAIN, CONVEY, PLEDGE, RELEASE, HYPOTHECATE, WARRANT, AND TRANSFER WITH POWER OF SALE UNTO TRUSTEE IN TRUST FOR THE BENEFIT OF BENEFICIARY AND THE BANKS each of the following:

(A) The Land;

(B) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Improvements;

(C) TOGETHER WITH all Appurtenant Rights;

(D) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Tangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(E) TOGETHER WITH the Intangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(F) TOGETHER WITH (i) all the estate, right, title and interest of Trustor of, in and to all judgments and decrees, insurance proceeds, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of any of the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof, or to any Appurtenant Rights thereto, and Beneficiary is (subject to the terms hereof) hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittance therefor, and (subject to the terms hereof) to apply the same toward the payment of the indebtedness and other sums secured hereby, notwithstanding the fact that the amount owing thereon may not then be due and payable; (ii) all proceeds of any sales or other dispositions of the property or rights described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof whether voluntary or involuntary, provided, however, that the foregoing shall not be deemed to permit such sales, transfers, or other dispositions except as specifically permitted herein; and (iii) whether arising from any voluntary or involuntary disposition of the property described in Granting Clauses (A), (B), (C), (D) and (E), all Proceeds, products,

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replacements, additions, substitutions, renewals and accessions, remainders, reversions and after-acquired interest in, of and to such property;

(G) TOGETHER WITH the absolute assignment of any Space Leases or any part thereof that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, together with all of the following (including all "Cash Collateral" within the meaning of the Bankruptcy Law) arising from the Space Leases: (a) Rents (subject, however, to the aforesaid absolute assignment to Trustee for the benefit of Beneficiary and the conditional permission hereinbelow given to Trustor to collect the Rents), (b) all guarantees, letters of credit, security deposits, collateral, cash deposits, and other credit enhancement documents, arrangements and other measures with respect to the Space Leases, (c) all of Trustor's right, title, and interest under the Space Leases, including the following: (i) the right to receive and collect the Rents from the lessee, sublessee or licensee, or their successor(s), under any Space Lease(s) and (ii) the right to enforce against any tenants thereunder and otherwise any and all remedies under the Space Leases, including Trustor's right to evict from possession any tenant thereunder or to retain, apply, use, draw upon, pursue, enforce or realize upon any guaranty of any Space Lease; to terminate, modify, or amend the Space Leases; to obtain possession of, use, or occupy, any of the real or personal property subject to the Space Leases; and to enforce or exercise, whether at law or in equity or by any other means, all provisions of the Space Leases and all obligations of the tenants thereunder based upon (A) any breach by such tenant under the applicable Space Lease (including any claim that Trustor may have by reason of a termination, rejection, or disaffirmance of such Space Lease pursuant to any Bankruptcy Law) and (B) the use and occupancy of the premises demised, whether or not pursuant to the applicable Space Lease (including any claim for use and occupancy arising under landlord-tenant law of the State of Nevada or any Bankruptcy Law). Permission is hereby given to Trustor, so long as no Event of Default has occurred and is continuing hereunder, to collect and use the Rents, as they become due and payable, but not more than one (1) month in advance thereof. Upon the occurrence of an Event of Default, the permission hereby given to Trustor to collect the Rents shall automatically terminate, but such permission shall be reinstated upon a cure or waiver of such Event of Default. Beneficiary shall have the right, at any time and from time to time, to notify any Space Lessee of the rights of Beneficiary as provided by this section;

Notwithstanding anything to the contrary contained herein, the foregoing provisions of this Paragraph (G) shall not constitute an assignment for purposes of security but shall constitute an absolute and present assignment of the Rents to Beneficiary, subject, however, to the conditional license given to Trustor to collect and use the Rents as hereinabove provided; and the existence or exercise of such right of Trustor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Trustor;

(H) TOGETHER WITH all of Trustor's right, title and interest in and to any and all Plans and Specifications and all maps, plans, specifications, surveys, studies, tests, reports, data and drawings relating to the development of the Site or the Project and the construction of the Improvements, including, without limitation, all marketing plans, feasibility studies, soils tests, design contracts and all contracts and agreements of Trustor relating thereto including, without limitation, architectural, structural, mechanical and engineering plans and specifications, studies, data and drawings prepared for or relating to the development of the Site or the Project or the construction, renovation or restoration of any of the Improvements or the extraction of minerals, sand, gravel or other valuable substances from the Site and purchase contracts or any agreement granting Trustor a right to acquire any land situated within Clark County, Nevada;

(I) TOGETHER WITH, to the extent permitted by applicable law, all of Trustor's right, title, and interest in and to any and all licenses, permits, variances, special permits, franchises, certificates, rulings, certifications, validations, exemptions, filings, registrations, authorizations, consents, approvals, waivers, orders, rights and agreements (including, without limitation, options, option rights, contract

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rights now or hereafter obtained by Trustor from any Governmental Authority having or claiming jurisdiction over the Land, the FF&E, the Project, or any other element of the Trust Estate or providing access thereto, or the operation of any business on, at, or from the Site including, without limitation, any liquor or Nevada Gaming Licenses (except for any registrations, licenses, findings of suitability or approvals issued by the Nevada Gaming Authorities or any other liquor or gaming licenses which are non-assignable); provided, that upon an Event of Default hereunder or under the Credit Agreement or under the Guaranty, if Beneficiary is not qualified under the Nevada Gaming Laws to hold such Nevada Gaming Licenses, then Beneficiary may designate an appropriately qualified third party to which an assignment of such Nevada Gaming Licenses can be made in compliance with the Nevada Gaming Laws;

(J) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to all water stock, water permits and other water rights relating to the Site;

(K) TOGETHER WITH all oil and gas and other mineral rights, if any, in or pertaining to the Site and all royalty, leasehold and other rights of Trustor pertaining thereto;

(L) TOGETHER WITH any and all monies and other property, real or personal, which may from time to time be subjected to the lien hereof by Trustor or by anyone on its behalf or with its consent, or which may come into the possession or be subject to the control of Trustee or Beneficiary pursuant to this Deed of Trust, the Commitment Letter, the Credit Agreement, the Guaranty or any other Loan Document (including any Security Document), including, without limitation, any Protective Advances (as defined in Section 4.2 hereof) under this Deed of Trust; and all of Trustor's right, title, and interest in and to all extensions, improvements, betterments, renewals, substitutes for and replacements of, and all additions, accessions, and appurtenances to, any of the foregoing that Trustor may subsequently acquire or obtain by any means, or construct, assemble, or otherwise place on any of the Trust Estate, and all conversions of any of the foregoing; it being the intention of Trustor that all property hereafter acquired by Trustor and required by the Commitment Letter, the Credit Agreement, the Guaranty, any other Loan Document (including any Security Document) or this Deed of Trust to be subject to the lien of this Deed of Trust or intended so to be shall forthwith upon the acquisition thereof by Trustor be subject to the lien of this Deed of Trust as if such property were now owned by Trustor and were specifically described in this Deed of Trust and granted hereby or pursuant hereto, and Trustee and Beneficiary are hereby authorized, subject to Nevada Gaming Laws and other applicable laws, to receive any and all such property as and for additional security for the obligations secured or intended to be secured hereby. Trustor agrees to take any action as may reasonably be necessary to evidence and perfect such liens or security interests, including, without limitation, the execution of any documents necessary to evidence and perfect such liens or security interests;

(M) TOGETHER WITH, to the extent permitted by applicable laws, any and all Accounts Receivable and all royalties, earnings, income, proceeds, products, rents, revenues, reversions, remainders, issues, profits, avails, production payments, and other benefits directly or indirectly derived or otherwise arising from any of the foregoing, all of which are hereby assigned to Beneficiary, who, except as otherwise expressly provided in this Deed of Trust (including the provisions of Section 1.13 hereof), is authorized to collect and receive the same, to give receipts and acquittances therefor and to apply the same to the Obligations secured hereunder, whether or not then due and payable;

(N) TOGETHER WITH Proceeds of the foregoing property described in Granting Clauses (A) through (M);

(O) TOGETHER WITH Trustor's rights further to assign, sell, lease, encumber or otherwise transfer or dispose of the property described in Granting Clauses (A) through (N) inclusive, above, for debt or otherwise; and

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(P) EXPRESSLY EXCLUDING, HOWEVER, any assets expressly excluded from the definition of "Collateral" in the Credit Agreement.

Trustor, for itself and its successors and assigns, covenants and agrees to and with Trustee that, at the time or times of the execution of and delivery of these presents or any instrument of further assurance with respect thereto, Trustor has good right, full power and lawful authority to assign, grant, convey, warrant, transfer, bargain or sell its interests in the Trust Estate in the manner and form as aforesaid, and that the Trust Estate is free and clear of all liens and encumbrances whatsoever, except Permitted Liens, and Trustor shall warrant and forever defend the above-bargained property in the quiet and peaceable possession of Trustee and its successors and assigns against all and every person or persons lawfully or otherwise claiming or to claim the whole or any part thereof, except for Permitted Liens. Trustor agrees that any greater title to the Trust Estate hereafter acquired by Trustor during the term hereof shall be automatically subject hereto.

ARTICLE ONE

COVENANTS OF TRUSTOR

The Beneficiary and the Banks have been induced to enter into the Commitment Letter, the Credit Agreement, the Guaranty and the other Loan Documents and to make advances of loans thereunder to Borrower on the basis of the following material covenants, all agreed to by Trustor:

1.1 Performance of Loan Documents. Trustor shall perform, observe and comply with each and every provision hereof, and with each and every provision contained in the Guaranty and the other Loan Documents and shall promptly pay to the Administrative Agent or the Disbursement Agent, as applicable, when payment shall become due, the principal with interest thereon and all other sums required to be paid by Trustor under this Deed of Trust, the Guaranty and the other Loan Documents.

1.2 General Representations, Covenants and Warranties. Trustor represents, covenants and warrants that: (a) Trustor has good and marketable title to an indefeasible fee estate in the Site, free and clear of all encumbrances except Permitted Encumbrances, and that it has the right to hold, occupy and enjoy its interest in the Trust Estate, and has good right, full power and lawful authority to subject the Trust Estate to the Lien of this Deed of Trust and pledge the same as provided herein and Beneficiary may at all times peaceably and quietly enter upon, hold, occupy and enjoy the entire Trust Estate in accordance with the terms hereof; (b) Trustor is not Insolvent and no bankruptcy or insolvency proceedings are pending or contemplated by or, to the best of Trustor's knowledge, threatened against Trustor; (c) all costs arising from construction of any Improvements, the performance of any labor and the purchase of all Tangible Collateral and Improvements have been or shall be paid when due (subject to the provisions of the Disbursement Agreement, the Credit Agreement, the Guaranty and this Deed of Trust); (d) the Land has direct access for ingress and egress to dedicated street(s); (e) Trustor shall at all times conduct and operate the Trust Estate in a manner so as not to lose, or permit its affiliate to lose, the right to conduct gaming activities at the Project; (f) no material part of the Trust Estate has been damaged, destroyed, condemned or abandoned, other than those portions of the Trust Estate that (i) have been the subject of condemnation proceedings that have resulted in the conveyance of such portion of the Trust Estate to the Trustor or (ii) have been demolished in furtherance of the development of the Project as contemplated under the Disbursement Agreement; (g) as of the date hereof, no part of the Trust Estate is the subject of condemnation proceedings and Trustor has no knowledge of any contemplated or pending condemnation proceeding with respect to any portion of the Trust Estate; and (h) Trustor acknowledges and agrees that it presently may use, and in the past may have used, one or more of the trade or fictitious names, "Le Reve", "Wynn Collection", "Wynn Resorts" and "Desert Inn" and in each case variations thereof (collectively, the "**Enumerated Names**") in connection with the operation of the business at the Trust Estate, and Trustor further represents and warrants that the Enumerated Names are the only such trade or fictitious names Trustor has so used. For all purposes under this Deed of Trust it shall be deemed that the term "Trustor" includes all trade

or fictitious names that Wynn Resorts Holdings, LLC (or any successor or assign thereof) now or hereafter uses, or has in the past used, including, without limitation, the Enumerated Names, with the same force and effect as if this Deed of Trust had been executed in all such names (in addition to "Wynn Resorts Holdings, LLC").

1.3 Compliance with Legal Requirements. Except as provided in the Guaranty, Trustor shall promptly, fully, and faithfully comply in all material respects with all Legal Requirements and shall cause all portions of the Trust Estate and its use and occupancy to fully comply in all material respects with Legal Requirements at all times, whether or not such compliance requires work or remedial measures that are ordinary or extraordinary, foreseen or unforeseen, structural or nonstructural, or that interfere with the use or enjoyment of the Trust Estate.

1.4 Taxes. Except as otherwise permitted by the Guaranty, (a) Trustor shall pay all Impositions as they become due and payable and shall deliver to Beneficiary promptly upon Beneficiary's request, evidence satisfactory to Beneficiary that the Impositions have been paid or are not delinquent; (b) Trustor shall not suffer to exist, permit or initiate the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Land as a single lien, except as may be required by law; and (c) in the event of the passage of any law deducting from the value of real property for the purposes of taxation any lien thereon, or changing in any way the taxation of deeds of trust or obligations secured thereby for state or local purposes, or the manner of collecting such taxes and imposing a tax, either directly or indirectly, on this Deed of Trust, the Guaranty or the other Loan Documents to which Trustor is a party, Trustor shall pay all such taxes.

1.5 Insurance.

(a) Hazard Insurance Requirements and Proceeds.

(1) *Hazard Insurance.* Trustor shall at its sole expense obtain for, deliver to, assign and maintain for the benefit of Beneficiary, during the term of this Deed of Trust, insurance policies insuring the Trust Estate and liability insurance policies, all in accordance with the requirements of the Guaranty. Trustor shall pay promptly when due any premiums on such insurance policies and on any renewals thereof. In the event of the foreclosure of this Deed of Trust or any other transfer of title to the Trust Estate in partial or complete extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of Beneficiary in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

(2) *Handling of Proceeds.* All Proceeds from any insurance policies shall be collected, held, handled and disbursed in accordance with the provisions of the Credit Agreement, the Guaranty and the Disbursement Agreement (while in effect). All proceeds of insurance allocable to Trustor, as owner of the Site, and attributable to business interruption insurance shall be collected, held, handled and disbursed in accordance with the provisions of the Credit Agreement, the Guaranty and the Disbursement Agreement. Any such proceeds disbursed to Beneficiary shall be applied to pay amounts then due and payable under this Deed of Trust. The balance shall be retained by Beneficiary or its designee in an interest bearing or other investment account approved by Beneficiary, which account Trustor hereby pledges to Beneficiary to secure the Obligations. Disbursements shall be permitted from such account to pay expenses reasonably incurred by Trustor in owning and operating the Trust Estate, as reasonably approved by Beneficiary.

(b) Compliance with Insurance Policies. Trustor shall not violate or permit to be violated any of the conditions or provisions of any policy of insurance required by the Guaranty or this Deed of Trust and Trustor shall so perform and satisfy the requirements of the companies writing

such policies that, at all times, companies of good standing shall be willing to write and/or continue such insurance. Trustor further covenants to promptly send to Beneficiary all notices relating to any violation of such policies or otherwise affecting Trustor's insurance coverage or ability to obtain and maintain such insurance coverage.

1.6 Condemnation. Beneficiary is hereby authorized, at its option, to commence, appear in and prosecute in its own or Trustor's name any action or proceeding relating to any condemnation and to settle or compromise any claim in connection therewith, and Trustor hereby appoints Beneficiary as its attorney-in-fact to take any action in Trustor's name pursuant to Beneficiary's rights hereunder. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Trust Estate or any portion thereof, Trustor shall notify the Trustee and Beneficiary of the pendency of such proceedings. Trustor from time to time shall execute and deliver to Beneficiary all instruments requested by it to permit such participation; provided, however, that such instruments shall be deemed as supplemental to the foregoing grant of permission to Trustee and Beneficiary, and unless otherwise required, the foregoing permission shall, without more, be deemed sufficient to permit Trustee and/or Beneficiary to participate in such proceedings on behalf of Trustor. All such compensation awards, damages, claims, rights of action and Proceeds, and any other payments or relief, and the right thereto, are, whether paid to Beneficiary or Trustor or a third party trustee, included in the Trust Estate. Beneficiary, after deducting therefrom all its expenses, including reasonable attorneys fees, shall apply all Proceeds paid directly to it in accordance with the provisions of the Credit Agreement and the Guaranty. All Proceeds paid directly to the Trustor shall be applied, if received by Trustor prior to the Final Completion Date, in accordance with the Disbursement Agreement and, if received on or after the Final Completion Date, in accordance with the Guaranty and Credit Agreement. To the extent that any condemnation proceeds are not required to be applied towards restoration of the improvements upon the Site, then Beneficiary shall have the right to apply said condemnation proceeds towards repayment of the Obligations. Trustor hereby waives any rights it may have under NRS 37.115, as amended or recodified from time to time.

1.7 Care of Trust Estate.

(a) Trustor shall preserve and maintain the Trust Estate in good condition and repair. Trustor shall not permit, commit or suffer to exist any waste, impairment or deterioration of the Trust Estate or of any part thereof that in any manner materially impairs Beneficiary's security hereunder and shall not take any action which will increase the risk of fire or other hazard to the Trust Estate or to any part thereof.

(b) Except for Permitted Dispositions, no material part of the Improvements or Tangible Collateral that are part of the Trust Estate shall be removed, demolished or materially altered, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld or delayed. Trustor shall have the right, without such consent, to remove and dispose of free from the lien of this Deed of Trust any part of the Improvements or Tangible Collateral that are part of the Trust Estate as from time to time may become worn out or obsolete or otherwise not useful in connection with the operation of the Trust Estate, provided that either (i) such removal or disposition does not materially affect the value of the Trust Estate or (ii) prior to or promptly following such removal, any such property shall be replaced with other property of substantially equal utility and of a value at least substantially equal to

that of the replaced property when first acquired and free from any security interest of any other person (subject only to Permitted Liens), and by such removal and replacement Trustor shall be deemed to have subjected such replacement property to the lien of this Deed of Trust.

(c) Notwithstanding the foregoing provisions of this Section 1.7, the Trustor may develop the Project in the manner contemplated by the Disbursement Agreement, the Credit Agreement, the Guaranty and the other Loan Documents.

1.8 *Leases.*

(a) Trustor represents, warrants and covenants that:

(i) except for the assignment effected hereby and in the other Financing Agreements, Trustor has not executed any assignment or pledge of any of the Space Leases, the Rents, or of Trustor's right, title and interest in the same; and

(ii) this Deed of Trust does not and will not constitute a violation or default under any Space Lease, and is and shall at all times constitute a valid lien on Trustor's interests in the Space Leases.

(b) Trustor shall not enter into any Space Lease or any modifications or amendments to any Space Lease, either orally or in writing, unless such Space Lease complies with the requirements of the Credit Agreement and the Guaranty.

(c) After an Event of Default, upon the request of Administrative Agent Trustor shall deliver to Beneficiary executed copies of all Space Leases.

1.9 *Further Encumbrance.*

(a) Trustor covenants that at all times prior to the discharge of the Obligations, except for Permitted Liens and Permitted Dispositions, Trustor shall neither make nor suffer to exist, nor enter into any agreement for, any sale, assignment, exchange, mortgage, transfer, Lien, hypothecation or encumbrance of all or any part of the Trust Estate, including, without limitation, the Rents. As used herein, "transfer" includes the actual transfer or other disposition, whether voluntary or involuntary, by law, or otherwise, except those transfers specifically permitted herein, provided, however, that "transfer" shall not include the granting of utility or other beneficial easements with respect to the Trust Estate which have been or are granted by Trustor and are reasonably necessary to the construction, maintenance or operation of the Project.

(b) Any Permitted Lien consisting of the lien of a deed of trust which is junior to the lien of the Loan Documents (including the Security Documents) (a "Subordinate Deed of Trust") shall be permitted hereunder so long as there shall have been delivered to Beneficiary, not less than thirty (30) days prior to the date thereof, a copy thereof which shall contain express covenants in form and substance satisfactory to Beneficiary to the effect that: (i) the Subordinate Deed of Trust is in all respects subject and subordinate to this Deed of Trust; (ii) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Trust Estate shall be named as a party defendant nor shall any action be taken with respect to the Trust Estate which would terminate any occupancy or tenancy of the Trust Estate, or any portion thereof, without the consent of Beneficiary; (iii) any Rents, if collected through a receiver or by the holder of the Subordinate Deed of Trust, shall be applied first to the obligations secured by this Deed of Trust, including principal and interest due and owing on or to become due and owing on the Notes, the Guaranty or the other Loan Documents, and then to the payment of maintenance expenses, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operation, and maintenance of the Trust Estate; and (iv) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust, prompt notice of the commencement thereof shall be given to Beneficiary.

(c) Trustor agrees that in the event the ownership of the Trust Estate or any part thereof becomes vested in a person other than Trustor, Beneficiary may, without notice to Trustor, deal in any way with such successor or successors in interest with reference to this Deed of Trust, the Notes, the Guaranty, the other Loan Documents and other Obligations hereby secured without in any way vitiating or discharging Trustor's or any guarantor's, surety's or endorser's liability

hereunder or upon the obligations hereby secured. No sale of the Trust Estate and no forbearance to any person with respect to this Deed of Trust and no extension to any person of the time for payment of the Obligations, and other sums hereby secured given by Beneficiary shall operate to release, discharge, modify, change or affect the original liability of Trustor, or such guarantor, surety or endorser either in whole or in part.

(d) If Trustor shall fail to make any payment required to be made by it under any FF&E Financing Agreement, except where Trustor is contesting such payment in good faith, then the Beneficiary shall be entitled to make such payment on Trustor's behalf and any and all sums so expended by the Beneficiary shall be secured by this Deed of Trust and shall be repaid by Trustor upon demand, together with interest thereon at the interest at the rate applicable to overdue principal set forth in the Credit Agreement from the date of advance.

1.10 *Partial Releases of Trust Estate.*

(a) Trustor may from time to time make a Permitted Disposition including, but not limited to, (i) transferring a portion of the Trust Estate (including any temporary taking) to any person legally empowered to exercise the power of eminent domain, or pursuant to dedication agreements that are now in effect or entered into in the future in connection with the development of the Project, (ii) granting utility easements reasonably necessary or desirable for the construction and/or operation of the Project, which grant or transfer is for the benefit of the Trust Estate, or (iii) transferring all or a portion of the Trust Estate as permitted pursuant to the Disbursement Agreement or the other Loan Documents. In each such case, Beneficiary shall execute and deliver any instruments necessary or appropriate to effectuate or confirm any such transfer or grant, free from the lien of this Deed of Trust, *provided, however*, that Beneficiary shall execute a lien release or subordination agreement, as appropriate, for matters described in clauses (i) and (iii) above only if:

(A) Such transfer, grant or release is not prohibited by the Credit Agreement or the Guaranty and all conditions precedent contained in the Credit Agreement and the Guaranty for such transfer, grant or release, if any, shall have been satisfied; and

(B) Beneficiary and Trustee shall have received a counterpart of the instrument pursuant to which such transfer, grant or release is to be made, and each instrument which Beneficiary or Trustee is requested to execute in order to effectuate or confirm such transfer, grant or release.

(b) Any consideration received for a transfer to any person empowered to exercise the right of eminent domain shall be subject to *Section 1.6* hereof.

1.11 **Further Assurances.**

(a) At its sole cost and without expense to Trustee or Beneficiary, and subject in all events to compliance with the Nevada Gaming Laws and other applicable Legal Requirements, Trustor shall do, execute, acknowledge and deliver any and all such further acts, deeds, conveyances, notices, requests for notices, financing statements, continuation statements, certificates, assignments, notices of assignments, agreements, instruments and further assurances, and shall mark any chattel paper, deliver any chattel paper or instruments to Beneficiary and take any other actions that are necessary, prudent, or reasonably requested by Beneficiary or Trustee to perfect or continue the perfection and first priority of Beneficiary's security interest in the Trust Estate, to protect the Trust Estate against the rights, claims, or interests of third persons other than holders of Permitted Liens or to effect the purposes of this Deed of Trust, including the security agreement and the absolute assignment of Rents contained herein, or for the filing, registering or recording thereof.

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(b) Trustor shall forthwith upon the execution and delivery of this Deed of Trust, and thereafter from time to time, cause this Deed of Trust and each instrument of further assurance to be filed, indexed, registered, recorded, given or delivered in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the title of Trustee and/or Beneficiary to, the Trust Estate.

1.12 **Security Agreement and Financing Statements.** Trustor (as debtor) hereby grants to Beneficiary (as creditor and secured party) a present and future security interest in all Tangible Collateral, Intangible Collateral, FF&E, Improvements, all other personal property now or hereafter owned or leased by Trustor or in which Trustor has or will have any interest, to the extent that such property constitutes a part of the Trust Estate (whether or not such items are stored on the premises or elsewhere), Proceeds of the foregoing comprising a portion of the Trust Estate and all products, substitutions, and accessions therefor and thereto, subject to Beneficiary's rights to treat such property as real property as herein provided (collectively, the "**Personal Property**"). Trustor shall execute and/or deliver any and all documents and writings, including without limitation financing statements pursuant to the UCC, as may be necessary or prudent to preserve and maintain the priority of the security interest granted hereby on property which may be deemed subject to the foregoing security agreement or as Beneficiary may reasonably request, and shall pay to Beneficiary on demand any reasonable expenses incurred by Beneficiary in connection with the preparation, execution and filing of any such documents. Trustor hereby authorizes and empowers Beneficiary to file, on Trustor's behalf, all financing statements and refiling and continuations thereof as advisable to create, preserve and protect said security interest. Trustor acknowledges and agrees that it is not authorized to, and will not, authenticate or file, or authorize the filing of, any financing statements or other record with respect to the Personal Property (including any amendments thereto, or continuation or termination statements thereof), except as permitted by the Guaranty. Trustor approves and ratifies any filing or recording of records made by or on behalf of Beneficiary in connection with the perfection of the security interest in favor of Beneficiary hereunder. This Deed of Trust constitutes both a real property deed of trust and a "security agreement," within the meaning of the UCC, and the Trust Estate includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Trust Estate. Trustor by executing and delivering this Deed of Trust has granted to Beneficiary, as security of the Obligations, a security interest in the Trust Estate.

(a) **Fixture Filing.** Without in any way limiting the generality of the immediately preceding paragraph or of the definition of the Trust Estate, this Deed of Trust constitutes a fixture filing under Sections 9-334 and 9-502 of the UCC (NRS 104.9334 and 104.9502). For such purposes, (i) the "debtor" is Trustor and its address is the address given for it in the initial paragraph of this Deed of Trust; (ii) the "secured party" is Beneficiary, and its address for the purpose of obtaining information is the address given for it in the initial paragraph of this Deed of Trust; (iii) the real estate to which the fixtures are or are to become attached is Trustor's interest in the Site; and (iv) the record owner of such real estate is Trustor.

(b) **Remedies.** This Deed of Trust shall be deemed a security agreement as defined in the UCC and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall include any or all of (i) those prescribed herein, and (ii) those available under applicable law, and (iii) those available under the UCC, all at Beneficiary's sole election. In addition, a photographic or other reproduction of this Deed of Trust shall be sufficient as a financing statement for filing wherever filing may be necessary to perfect or continue the security interest granted herein.

(c) **Derogation of Real Property.** It is the intention of the parties that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in anyway derogating from or impairing the express declaration and intention of the parties hereto as hereinabove stated that everything used in connection with the production of

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income from the Trust Estate and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real property encumbered by this Deed of Trust irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. It is the intention of the parties that the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Trustor's interest as lessors in any present or future Space Lease or rights to Rents, shall never be construed as in anyway altering any of the rights of Beneficiary as determined by this Deed of Trust or impugning the priority of Beneficiary's real property lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of Beneficiary in the event any court or judge shall at any time hold with respect to the matters set forth in the foregoing clauses (1), (2) and (3) that notice of Beneficiary's priority of interest to be effective against a particular class of persons, including but not limited to, the federal government and any subdivisions or entity of the federal government, must be filed in the UCC records.

(d) **Priority; Permitted Financing of Tangible Collateral.** All Personal Property of any nature whatsoever which is subject to the provisions of this security agreement shall be purchased or obtained by Trustor in its name and free and clear of any lien or encumbrance, except for Permitted Liens

and the lien hereof, for use only in connection with the business and operation of the Project, and shall be and at all times remain free and clear of any lease or similar arrangement, chattel financing, installment sale agreement, security agreement and any encumbrance of like kind, so that Beneficiary's security interest shall attach to and vest in Trustor for the benefit of Beneficiary, with the priority herein specified, immediately upon the installation or use of the Personal Property at the Site and Trustor warrants and represents that Beneficiary's security interest in the Personal Property is a validly attached and binding security interest, properly perfected and prior to all other security interests therein except as otherwise permitted in this Deed of Trust. The foregoing shall not be construed as limiting Trustor's rights to transfer Personal Property pursuant to Permitted Dispositions or to obtain releases of Personal Property from the Lien of this Deed of Trust pursuant to *Section 1.10* hereof.

(e) **Preservation of Contractual Rights of Collateral.** Trustor shall, prior to delinquency, default, or forfeiture, perform all obligations and satisfy all material conditions required on its part to be satisfied to preserve its rights and privileges under any contract, lease, license, permit, or other authorization (i) under which it holds any Tangible Collateral or (ii) which constitutes part of the Intangible Collateral, except where Trustor is contesting such obligations in good faith.

(f) **Removal of Collateral.** Except for damaged or obsolete Tangible Collateral which is either no longer usable or which is removed temporarily for repair or improvement or removed for replacement on the Trust Estate with Tangible Collateral of similar function or as otherwise permitted herein, none of the Tangible Collateral shall be removed from the Trust Estate without Beneficiary's prior written consent.

(g) **Change of Name.** Trustor shall not change its corporate (or other entity) or business name, or do business within the State of Nevada under any name other than such name, or any trade name(s) other than those as to which Trustor gives prior written notice to Beneficiary of its intent to use such trade names, or any other business names (if any) specified in the financing statements delivered to Beneficiary for filing in connection with the execution hereof, without, in each case, providing Beneficiary with the additional financing statement(s) and any other similar documents deemed reasonably necessary by Beneficiary to assure that its security interest remains

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perfected and of undiminished priority in all such Personal Property notwithstanding such name change.

1.13 **Assignment of Leases and Rents.** Subject to Nevada Gaming Laws and other applicable Legal Requirements, the assignment of Leases and Rents set out above in Granting Clause (G) shall constitute an absolute and present assignment to Beneficiary, subject to the license herein given to Trustor to collect the Rents, and shall be fully operative without any further action on the part of any party, and specifically Beneficiary shall be entitled upon the occurrence of an Event of Default hereunder to all Rents and to enter upon the Site and the Improvements to collect such Rents, provided, however, that Beneficiary shall not be obligated to take possession of the Trust Estate, or any portion thereof. The absolute assignment contained in Granting Clause (G) shall not be deemed to impose upon Beneficiary any of the obligations or duties of Trustor provided in any such Space Lease (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease in the event that any lessee shall have been joined as a party defendant in any action to foreclose this Deed of Trust and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Trust Estate or any part thereof).

1.14 **Expenses.**

(a) Trustor shall pay when due and payable all out-of-pocket costs, including without limitation, those reasonable appraisal fees, recording fees, taxes, abstract fees, title policy fees, escrow fees, attorneys' and paralegal fees, travel expenses, fees for inspecting architect(s) and engineer(s) and all other costs and expenses of every character which may hereafter be incurred by Beneficiary or any assignee of Beneficiary in connection with the preparation and execution of the Guaranty and the other Loan Documents (including the Security Documents) to which Trustor is a party or instruments, agreements or documents of further assurance, the funding of the indebtedness secured hereby, and the enforcement of the Guaranty or any other Loan Document (including any Security Document) to which Trustor is a party. Other than costs associated with the enforcement of any Loan Document, all such costs shall be itemized in reasonable detail; and

(b) Trustor shall, upon demand by Beneficiary, reimburse Beneficiary or any assignee of Beneficiary for all such reasonable expenses which have been incurred or which shall be incurred by it; and

(c) Trustor shall indemnify Beneficiary with respect to any transaction or matter in any way connected with any portion of the Trust Estate, this Deed of Trust, including any occurrence at, in, on, upon or about the Trust Estate (including any personal injury, loss of life, or property damage), or Trustor's use, occupancy, or operation of the Trust Estate, or the filing or enforcement of any mechanic's lien, or otherwise caused in whole or in part by any act, omission or negligence occurring on or at the Trust Estate, including failure to comply with any Legal Requirement or with any requirement of this Deed of Trust that applies to Trustor, except to the extent resulting from the gross negligence, fraud or willful misconduct of Trustee or Beneficiary. If Beneficiary is a party to any litigation as to which either Trustor is required to indemnify Beneficiary (or is made a defendant in any action of any kind against Trustor or relating directly or indirectly to any portion of the Trust Estate) then, at Beneficiary's option, Trustor shall undertake Beneficiary's defense, using counsel reasonably satisfactory to Beneficiary (and any settlement shall be subject to Beneficiary's consent, which consent shall not be unreasonably withheld), and in any case shall indemnify Beneficiary against such litigation. Trustor shall pay all reasonable costs and expenses, including reasonable legal costs, that Beneficiary pays or incurs in connection with any such litigation. Any amount payable under any indemnity in this Deed of Trust shall be a demand obligation, shall be added to, and become a part of, the secured obligations under this Deed of Trust, shall be secured by this Deed of Trust and, if not paid promptly following demand therefor (which demand shall, unless associated with Loan Document enforcement actions, set forth in

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reasonable detail an itemization of the amount so demanded) shall bear interest at the interest rate specified in the Credit Agreement. Such indemnity shall survive any release of this Deed of Trust and any foreclosure.

1.15 **Beneficiary's Cure of Trustor's Default.** If Trustor defaults hereunder in the payment of any tax, assessment, lien, encumbrance or other imposition, in its obligation to furnish insurance hereunder, or in the performance or observance of any other covenant, condition or term of this Deed of Trust or

any other Financing Agreement or any FF&E Financing Agreement, Beneficiary may, but is not obligated to, to preserve its interest in the Trust Estate, perform or observe the same, and all payments made (whether such payments are regular or accelerated payments) and reasonable costs and expenses incurred or paid by Beneficiary in connection therewith shall become due and payable immediately. The amounts so incurred or paid by Beneficiary, together with interest thereon at the interest rate applicable to overdue principal set forth in the Credit Agreement, from the date incurred until paid by Trustor, shall be added to the indebtedness and secured by the lien of this Deed of Trust. Beneficiary, is hereby empowered to enter and to authorize others to enter upon the Site or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Trustor or any person in possession holding under Trustor. No exercise of any rights under this Section 1.15 by Beneficiary shall cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

1.16 **Use of Land.** Trustor covenants that the Trust Estate shall be used and operated in a manner consistent with the requirements of the Loan Documents.

1.17 **Compliance with Permitted Lien Agreements.** Trustor shall comply with each and every material obligation contained in any agreement pertaining to a Permitted Lien.

1.18 **Defense of Actions.** Trustor shall appear in and defend any action or proceeding affecting or purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and shall pay all costs and expenses, including cost of title search and insurance or other evidence of title, preparation of survey, and reasonable attorneys' fees in any such action or proceeding in which Beneficiary or Trustee may appear or may be joined as a party and in any suit brought by Beneficiary based upon or in connection with this Deed of Trust, the Guaranty or any other Loan Document to which Trustor is a party. Nothing contained in this section shall, however, limit the right of Beneficiary to appear in such action or proceeding with counsel of its own choice, either on its own behalf or on behalf of Trustor.

1.19 **Affiliates.**

(a) **Subject to Trust Deed.** Subject to compliance with the requirements of applicable Nevada Gaming Laws, Trustor shall cause all of its Affiliates in any way involved with the operation of the Trust Estate or the Project to observe the covenants and conditions of this Deed of Trust to the extent necessary to give the full intended effect to such covenants and conditions and to protect and preserve the security of Beneficiary hereunder.

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(b) **Restriction on Use of Subsidiary or Affiliate.** Except as permitted under the Credit Agreement, the Notes, the Guaranty or the other Loan Documents (including any Security Document), Trustor shall not use any Affiliate in the operation of the Trust Estate or the Project if such use would in any way impair the security for the Obligations or circumvent any covenant or condition of this Deed of Trust, the Guaranty or of any other Loan Document.

1.20 **Title Insurance.** On the Closing Date, Trustor shall cause to be delivered to Trustee at Trustor's expense, one or more ALTA extended coverage Lender's Policies of Title Insurance showing fee title to the real property situated in the County of Clark, State of Nevada, more specifically described in Schedule A attached hereto, vested in Trustor and the lien of this Deed of Trust to be a perfected lien, prior to any and all encumbrances other than Permitted Encumbrances (excluding, however, any such non-Permitted Encumbrances for which the Title Insurer has agreed to provide an endorsement or affirmative coverage protecting the lien of this Deed of Trust against such non-Permitted Encumbrances).

ARTICLE TWO

GUARANTY PROVISIONS

2.1 **Interaction with Guaranty**

(a) **Incorporation by Reference.** All terms, covenants, conditions, provisions and requirements of the Guaranty are incorporated by reference in this Deed of Trust.

(b) **Conflicts.** In the event of any conflict or inconsistency between the provisions of this Deed of Trust and those of the Guaranty, Credit Agreement or the Disbursement Agreement, the provisions of the Guaranty, Credit Agreement or the Disbursement Agreement, as applicable, shall govern.

2.2 **Other Collateral.** This Deed of Trust is one of a number of security agreements delivered by or on behalf of Trustor and other Persons pursuant to the Credit Agreement and the other Loan Documents (including the Security Documents) and securing the Obligations secured hereunder. All potential junior Lien claimants are placed on notice that, under any of the Loan Documents (including the Security Documents) (including a separate future unrecorded agreement between Trustor and Beneficiary), other collateral for the Obligations secured hereunder (*i.e.*, collateral other than the Trust Estate) may, under certain circumstances, be released without a corresponding reduction in the total principal amount secured by this Deed of Trust. Such a release would decrease the amount of collateral securing the same indebtedness, thereby increasing the burden on the remaining Trust Estate created and continued by this Deed of Trust. No such release shall impair the priority of the lien of this Deed of Trust. By accepting its interest in the Trust Estate, each and every junior Lien claimant shall be deemed to have acknowledged the possibility of, and consented to, any such release. Nothing in this paragraph shall impose any obligation upon Beneficiary.

ARTICLE THREE

DEFAULTS

3.1 **Event of Default.** The term "Event of Default," wherever used in this Deed of Trust, shall mean any of (i) one or more of the events of default listed in the Credit Agreement or the Guaranty, (ii) so long as the Disbursement Agreement is in effect, one or more of the events of default listed in the Disbursement Agreement (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) or (iii) if any "borrower" (as that term is defined in NRS 106.310) who may send a notice pursuant to NRS 106.380(1), (x) delivers, sends by mail or otherwise gives, or purports to deliver, send by mail or

otherwise give, to a beneficiary under this Deeds of Trust (A) any notice of an election to terminate the operation of this Deed of Trust as security for any secured obligation, including, without limitation, any obligation to repay any "future advance" (as defined in NRS 106.320) of "principal" (as defined in NRS 106.345), or (B) any other notice pursuant to NRS 106.380(1), (y) records a statement pursuant to NRS 106.380(3), or (z) causes this Deed of Trust, any secured obligation, or any Secured Party to be subject to NRS 106.380(2), 106.380(3) or 106.400.

ARTICLE FOUR

REMEDIES

4.1 Acceleration of Maturity. If an Event of Default occurs, Beneficiary may (except that such acceleration shall be automatic if the Event of Default is caused by Borrower's or Trustor's Bankruptcy), in accordance with the Loan Documents, declare the Obligations to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become due and payable without demand, presentment, notice or other requirements of any kind (all of which Trustor waives) notwithstanding anything in this Deed of Trust or any Loan Document or applicable law to the contrary.

4.2 Protective Advances. If Borrower or Trustor fails to make any payment or perform any other obligation under the Notes, Credit Agreement, Guaranty or any other Financing Agreement, then without thereby limiting Beneficiary's other rights or remedies, waiving or releasing any of Trustor's obligations, or imposing any obligation on Beneficiary, Beneficiary may either advance any amount owing or perform any or all actions that Beneficiary considers necessary or appropriate to cure such default. All such advances shall constitute "Protective Advances" and shall bear interest thereon at the interest rate applicable to overdue principal set forth in the Credit Agreement from the date incurred until paid by Trustor. No sums advanced or performance rendered by Beneficiary shall cure, or be deemed a waiver of any Event of Default.

4.3 Institution of Equity Proceedings. If an Event of Default occurs, Beneficiary may institute an action, suit or proceeding in equity for specific performance of this Deed of Trust, the Notes, the Guaranty or any other Loan Document (including any Security Document), all of which shall be specifically enforceable by injunction or other equitable remedy. Trustor waives any defense based on laches or any applicable statute of limitations.

4.4 Beneficiary's Power of Enforcement.

(a) If an Event of Default occurs, Beneficiary shall be entitled, at its option and in its sole and absolute discretion, to prepare and record on its own behalf, or to deliver to Trustee for recording, if appropriate, written declaration of default and demand for sale and written Notice of Breach and Election to Sell (NRS 107.080(3)) (or other statutory notice) to cause the Trust Estate to be sold to satisfy the obligations hereof, and in the case of delivery to Trustee, Trustee shall cause said notice to be filed for record.

(b) After the lapse of such time as may then be required by law following the recordation of said Notice of Breach and Election to Sell, and notice of sale having been given as then required by law, including compliance with any applicable Nevada Gaming Laws, Trustee without demand on Trustor, shall sell the Trust Estate or any portion thereof at the time and place fixed by it in said notice, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder, of cash in lawful money of the United States payable at the time of sale. Trustee may, for any cause it deems expedient, postpone the sale of all or any portion of said property until it shall be completed and, in every case, notice of postponement shall be given by public announcement thereof at the time and place last appointed for the sale and from time to time thereafter Trustee may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall execute and deliver to the purchaser its Deed, Bill of

Sale, or other instrument conveying said property so sold, but without any covenant or warranty, express or implied. The recitals in such instrument of conveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale.

(c) After deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including, without limitation, costs of evidence of title and reasonable attorneys' fees and other legal expenses of Trustee or Beneficiary in connection with a sale, Trustee shall apply the proceeds of such sale to payment of all sums expended under the terms hereof not then repaid, with accrued interest at the rate applicable to overdue principal set forth in the Credit Agreement to the payment of all other sums then secured hereby and the remainder, if any, to the person or persons legally entitled thereto as provided in NRS 40.462.

(d) Subject to compliance with applicable Nevada Gaming Laws, if any Event of Default occurs, Beneficiary may, either with or without entry or taking possession of the Trust Estate, and without regard to whether or not the indebtedness and other sums secured hereby shall be due and without prejudice to the right of Beneficiary thereafter to bring an action or proceeding to foreclose or any other action for any default existing at the time such earlier action was commenced, proceed by any appropriate action or proceeding: (1) to enforce payment of the Obligations, to the extent permitted by law, or the performance of any term hereof or any other right; (2) to foreclose this Deed of Trust in any manner provided by law for the foreclosure of mortgages or deeds of trust on real property and to sell, as an entirety or in separate lots or parcels, the Trust Estate or any portion thereof pursuant to the laws of the State of Nevada or under the judgment or decree of a court or courts of competent jurisdiction, and Beneficiary shall be entitled to recover in any such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees in such amount as shall be awarded by the court; (3) to exercise any or all of the rights and remedies available to it under the Loan Documents; and (4) to pursue any other remedy available to it. Beneficiary shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Beneficiary may determine.

(e) The remedies described in this Section 4.4 may be exercised with respect to all or any portion of the Personal Property, either simultaneously with the sale of any real property encumbered hereby or independent thereof. Beneficiary shall at any time be permitted to proceed with respect to all or any portion of the Personal Property in any manner permitted by the UCC. Trustor agrees that Beneficiary's inclusion of all or any portion of the Personal Property (and all personal property that is subject to a security interest in favor, or for the benefit, of Beneficiary) in a sale or other remedy exercised with respect to the real property encumbered hereby, as permitted by the UCC, is a commercially reasonable disposition of such property.

4.5 Beneficiary's Right to Enter and Take Possession, Operate and Apply Income.

(a) Subject to compliance with applicable Nevada Gaming Laws, if an Event of Default occurs, (i) Trustor, upon demand of Beneficiary, shall forthwith surrender to Beneficiary the actual possession and, if and to the extent permitted by law, Beneficiary itself, or by such officers or agents as it may appoint, may enter and take possession of all the Trust Estate including the Personal Property, without liability for trespass, damages or otherwise, and may exclude Trustor and its agents and employees wholly therefrom and may have joint access with Trustor to the books, papers and accounts of Trustor; and (ii) Trustor shall pay monthly in advance to Beneficiary on Beneficiary's entry into possession, or to any receiver appointed to collect the Rents, all Rents then due and payable.

(b) If Trustor shall for any reason fail to surrender or deliver the Trust Estate, the Personal Property or any part thereof after Beneficiary's demand, Beneficiary may obtain a judgment or decree conferring on Beneficiary or Trustee the right to immediate possession or requiring Trustor

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to deliver immediate possession of all or part of such property to Beneficiary or Trustee and Trustor hereby specifically consents to the entry of such judgment or decree. Trustor shall pay to Beneficiary or Trustee, upon demand, all reasonable costs and expenses of obtaining such judgment or decree and reasonable compensation to Beneficiary or Trustee, their attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Deed of Trust.

(c) Subject to compliance with applicable Nevada Gaming Laws, upon every such entering upon or taking of possession, Beneficiary or Trustee may hold, store, use, operate, manage and control the Trust Estate and conduct the business thereof, and, from time to time in its sole and absolute discretion and without being under any duty to so act:

(1) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;

(2) insure or keep the Trust Estate insured;

(3) manage and operate the Trust Estate and exercise all the rights and powers of Trustor in their name or otherwise with respect to the same;

(4) enter into agreements with others to exercise the powers herein granted Beneficiary or Trustee, all as Beneficiary or Trustee from time to time may determine; and, subject to the absolute assignment of the Leases and Rents to Beneficiary, Beneficiary or Trustee may collect and receive all the Rents, including those past due as well as those accruing thereafter; and shall apply the monies so received by Beneficiary or Trustee in such priority as Beneficiary may determine to (1) the payment of interest and principal due and payable on the Notes or the other Loan Documents, (2) the deposits for taxes and assessments and insurance premiums due, (3) the cost of insurance, taxes, assessments and other proper charges upon the Trust Estate or any part thereof; (4) the compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary or Trustee; and (5) any other charges or costs required to be paid by Trustor under the terms hereof; and

(5) rent or sublet the Trust Estate or any portion thereof for any purpose permitted by this Deed of Trust.

Beneficiary or Trustee shall surrender possession of the Trust Estate and the Personal Property to Trustor only when all that is due upon such interest and principal, tax and insurance deposits, and all amounts under any of the terms of the Credit Agreement or this Deed of Trust, shall have been paid and all defaults made good. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.6 Leases. Beneficiary is authorized to foreclose this Deed of Trust subject to the rights of any tenants of the Trust Estate, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights shall not be, nor be asserted by Trustor to be, a defense to any proceedings instituted by Beneficiary to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Trust Estate, or any portion thereof. Unless otherwise agreed by Beneficiary in writing, all Space Leases executed subsequent to the date hereof, or any part thereof, shall be subordinate and inferior to the lien of this Deed of Trust; provided, however that (i) in accordance with the terms of the Loan Documents, Beneficiary may be required to execute a non-disturbance and attornment agreement in connection with certain Space Leases; and (ii) from time to time Beneficiary may execute and record among the land records of the jurisdiction where this Deed of Trust is recorded, subordination statements with respect to such of said Space Leases as Beneficiary may designate in its sole discretion, whereby the Space Leases so designated by Beneficiary shall be made superior to the lien of this Deed of Trust for the term set forth

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in such subordination statement. From and after the recordation of such subordination statements, and for the respective periods as may be set forth therein, the Space Leases therein referred to shall be superior to the lien of this Deed of Trust and shall not be affected by any foreclosure hereof. All such Space Leases shall contain a provision to the effect that the Trustor and Space Lessee recognize the right of Beneficiary to elect and to effect such subordination of this Deed of Trust and consents thereto.

4.7 Purchase by Beneficiary. Upon any foreclosure sale (whether judicial or nonjudicial), Beneficiary may bid for and purchase the property subject to such sale and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

4.8 Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws. Trustor agrees to the full extent permitted by law that if an Event of Default occurs, neither Trustor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust or the absolute sale of the Trust Estate or any portion thereof or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof, and Trustor for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Trust Estate marshalled upon any foreclosure of the lien hereof and agrees that Trustee or any court having jurisdiction to foreclose such lien may sell the Trust Estate in part or as an entirety.

4.9 Receiver. If an Event of Default occurs, Beneficiary, to the extent permitted by law and subject to compliance with all applicable Nevada Gaming Laws, and without regard to the value, adequacy or occupancy of the security for the indebtedness and other sums secured hereby, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Trust Estate and to collect all Rents and apply the same as the court may direct, and such receiver may be appointed by any court of competent jurisdiction upon application by Beneficiary. Beneficiary may have a receiver appointed without notice to Trustor or any third party, and Beneficiary may waive any requirement that the receiver post a bond. Beneficiary shall have the power to designate and select the Person who shall serve as the receiver and to negotiate all terms and conditions under which such receiver shall serve. Any receiver appointed on Beneficiary's behalf may be an Affiliate of Beneficiary. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Deed of Trust. The right to enter and take possession of and to manage and operate the Trust Estate and to collect all Rents, whether by a receiver or otherwise, shall be cumulative to any other right or remedy available to Beneficiary under this Deed of Trust, the Guaranty or the other Loan Documents or otherwise available to Beneficiary and may be exercised concurrently therewith or independently thereof. Beneficiary shall be liable to account only for such Rents (including, without limitation, security deposits) actually received by Beneficiary, whether received pursuant to this section or any other provision hereof. Notwithstanding the appointment of any receiver or other custodian, Beneficiary shall be entitled as pledgee to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Deed of Trust to, Beneficiary.

4.10 Suits to Protect the Trust Estate. Beneficiary shall have the power and authority to institute and maintain any suits and proceedings as Beneficiary, in its sole and absolute discretion, may deem advisable (a) to prevent any impairment of the Trust Estate by any acts which may be unlawful or in violation of this Deed of Trust, (b) to preserve or protect its interest in the Trust Estate, or (c) to restrain the enforcement of or compliance with any legislation or other Legal Requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Beneficiary's interest.

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4.11 Proofs of Claim. In the case of any receivership, Insolvency, Bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Trustor, or, to the extent the same would result in an Event of Default hereunder, any Subsidiary, or any guarantor, co-maker or endorser of any of Trustor's obligations, its creditors or its property, Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim or other documents as it may deem to be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Trustor under the Loan Documents, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Trustor after such date.

4.12 Trustor to Pay the Obligations on Any Default in Payment; Application of Monies by Beneficiary.

(a) In case of a foreclosure sale of all or any part of the Trust Estate and of the application of the proceeds of sale to the payment of the sums secured hereby, Beneficiary shall be entitled to enforce payment from Trustor of any additional amounts then remaining due and unpaid with respect to the Obligations and to recover judgment against Trustor for any portion thereof remaining unpaid, with interest at the rate applicable to overdue principal as set forth in the Credit Agreement.

(b) Trustor hereby agrees to the extent permitted by law, that no recovery of any judgment by Beneficiary or other action by Beneficiary and no attachment or levy of any execution upon any Property of Trustor by Beneficiary (other than a foreclosure of the entire Trust Estate hereunder) shall in any way affect the Lien and security interest of this Deed of Trust upon the Trust Estate or any part thereof or any Lien, rights, powers or remedies of Beneficiary hereunder, but such Lien, rights, powers and remedies shall continue unimpaired as before.

(c) Any monies collected or received by Beneficiary under this *Section 4.12* shall be first applied to the payment of reasonable compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary, and the balance remaining shall be applied to the Obligations.

(d) The provisions of this section shall not be deemed to limit or otherwise modify the provisions of any guaranty of the indebtedness evidenced by the Notes or the other Loan Documents.

4.13 Delay or Omission; No Waiver. No delay or omission of Beneficiary or any Bank to exercise any right, power or remedy upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Beneficiary whether contained herein or in the other Loan Documents or otherwise available to Beneficiary may be exercised from time to time and as often as may be deemed expedient by Beneficiary.

4.14 No Waiver of One Default to Affect Another. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If Beneficiary or the required percentage of the Banks (as determined pursuant to the Credit Agreement), to the extent applicable under the Credit Agreement, (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Notes, the Credit Agreement, this Deed of Trust, the Guaranty, the Disbursement Agreement or any other Loan Document (including any Security Document); (d) releases any part of the Trust Estate from the lien or security interest of this Deed of Trust or any other instrument securing the Obligations; (e) consents to the filing of any map, plat or replat of the Site (to the extent such consent is required); (f) consents to the granting of any easement on the Site (to the extent such consent is required); or (g) makes or consents to any agreement changing the terms

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of this Deed of Trust or any other Loan Document subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability of Trustor under the Guaranty or any other Loan Document (including any Security Document) or otherwise, or any subsequent purchaser of the Trust Estate or any part thereof or any maker, co-signer, surety or guarantor. No such act or omission shall preclude Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by Beneficiary, shall the lien or security interest of this Deed of Trust be altered thereby, except to the extent expressly provided in any releases, maps, easements or subordinations described in clause (d), (e), (f) or (g) above of this

Section 4.14. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Trust Estate, Beneficiary, without notice to any person, firm or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Trust Estate or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder, or waiving its right to declare such sale or transfer an Event of Default as provided herein. Notwithstanding anything to the contrary contained in this Deed of Trust or any other Loan Document (including any Security Document), (i) in the case of any non-monetary Event of Default, Beneficiary may continue to accept payments secured hereunder without thereby waiving the existence of such or any other Event of Default and (ii) in the case of any monetary Event of Default, Beneficiary may accept partial payments of any sums secured hereunder without thereby waiving the existence of such Event of Default if the partial payment is not sufficient to completely cure such Event of Default.

4.15 **Discontinuance of Proceedings; Position of Parties Restored.** If Beneficiary shall have proceeded to enforce any right or remedy under this Deed of Trust by foreclosure, entry of judgment or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Beneficiary, then and in every such case Trustor and Beneficiary shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Beneficiary shall continue as if no such proceedings had occurred or had been taken.

4.16 **Remedies Cumulative.** No right, power or remedy, including without limitation remedies with respect to any security for Obligations, conferred upon or reserved to Beneficiary by this Deed of Trust or any other Loan Document (including any Security Document) is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or any other Loan Document (including any Security Document), now or hereafter existing at law, in equity or by statute, and Beneficiary shall be entitled to resort to such rights, powers, remedies or security as Beneficiary shall in its sole and absolute discretion deem advisable.

4.17 **Interest After Event of Default.** If an Event of Default shall have occurred and is continuing, all sums outstanding and unpaid under the Obligations shall, at Beneficiary's option, bear interest at the rate applicable to overdue principal set forth in the Credit Agreement until such Event of Default has been cured. Trustor's obligation to pay such interest shall be secured by this Deed of Trust.

4.18 **Foreclosure; Expenses of Litigation.** If Trustee forecloses, reasonable attorneys' fees for services in the supervision of said foreclosure proceeding shall be allowed to the Trustee and Beneficiary as part of the foreclosure costs. In the event of foreclosure of the lien hereof, there shall be allowed and included as additional indebtedness all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after foreclosure sale or entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and guarantees, and similar

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data and assurances with respect to title as Beneficiary may deem reasonably advisable either to prosecute such suit or to evidence to a bidder at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Trust Estate or any portion thereof. All expenditures and expenses of the nature in this section mentioned, and such expenses and fees as may be incurred in the protection of the Trust Estate and the maintenance of the lien and security interest of this Deed of Trust, including the fees of any attorney employed by Beneficiary in any litigation or proceeding affecting this Deed of Trust, the Guaranty or any other Loan Document (including any Security Document), the Trust Estate or any portion thereof, including, without limitation, civil, probate, appellate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Trustor, with interest thereon at the rate applicable to overdue principal set forth in the Credit Agreement, and shall be secured by this Deed of Trust. Trustee waives its right to any statutory fee in connection with any judicial or nonjudicial foreclosure of the lien hereof and agrees to accept a reasonable fee for such services.

4.19 **Deficiency Judgments.** If after foreclosure of this Deed of Trust or Trustee's sale hereunder, there shall remain any deficiency with respect to any Obligations, and Beneficiary shall institute any proceedings to recover such deficiency or deficiencies, all such amounts shall continue to bear interest at the rate applicable to overdue principal set forth in the Credit Agreement. Trustor waives any defense to Beneficiary's recovery against Trustor of any deficiency after any foreclosure sale of the Trust Estate. Trustor expressly waives any defense or benefits that may be derived from any statute granting Trustor any defense to any such recovery by Beneficiary. In addition, Beneficiary and Trustee shall be entitled to recovery of all of their reasonable costs and expenditures (including without limitation any court imposed costs) in connection with such proceedings, including their reasonable attorneys' fees, appraisal fees and the other costs, fees and expenditures referred to in Section 4.18 above. This provision shall survive any foreclosure or sale of the Trust Estate, any portion thereof and/or the extinguishment of the lien hereof.

4.20 **Waiver of Jury Trial.** Beneficiary and Trustor each waive any right to have a jury participate in resolving any dispute whether sounding in contract, tort or otherwise arising out of, connected with, related to or incidental to the relationship established between them in connection with the Obligations. Any such disputes shall be resolved in a bench trial without a jury.

4.21 **Exculpation of Beneficiary.** The acceptance by Beneficiary of the assignment contained herein with all of the rights, powers, privileges and authority created hereby shall not, prior to entry upon and taking possession of the Trust Estate by Beneficiary, be deemed or construed to make Beneficiary a "mortgagee in possession"; nor thereafter or at any time or in any event obligate Beneficiary to appear in or defend any action or proceeding relating to the Space Leases, the Rents or the Trust Estate, or to take any action hereunder or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under any Space Lease or to assume any obligation or responsibility for any security deposits or other deposits except to the extent such deposits are actually received by Beneficiary, nor shall Beneficiary, prior to such entry and taking, be liable in any way for any injury or damage to person or property sustained by any Person in or about the Trust Estate.

ARTICLE FIVE

RIGHTS AND RESPONSIBILITIES OF TRUSTEE;

OTHER PROVISIONS RELATING TO TRUSTEE

Notwithstanding anything to the contrary in this Deed of Trust, Trustor and Beneficiary agree as follows.

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5.1 **Exercise of Remedies by Trustee.** To the extent that this Deed of Trust or applicable law, including all applicable Nevada Gaming Laws, authorizes or empowers, or does not require approval for, Beneficiary to exercise any remedies set forth in Article Four hereof or otherwise, or perform any acts in connection therewith, Trustee (but not to the exclusion of Beneficiary unless so required under the law of the State of Nevada) shall have the power to exercise any or all such remedies, and to perform any acts provided for in this Deed of Trust in connection therewith, all for the benefit of Beneficiary and on Beneficiary's behalf in accordance with applicable law of the State of Nevada. In connection therewith, Trustee: (a) shall not exercise, or waive the exercise of, any of Beneficiary's remedies (other than any rights of Trustee to any indemnity or reimbursement), except at Beneficiary's request, and (b) shall exercise, or waive the exercise of, any or all of Beneficiary's remedies at Beneficiary's request, and in accordance with Beneficiary's directions as to the manner of such exercise or waiver. Trustee may, however, decline to follow Beneficiary's request or direction if Trustee shall be advised by counsel that the action or proceeding, or manner thereof, so directed may not lawfully be taken or waived.

5.2 **Rights and Privileges of Trustee.** To the extent that this Deed of Trust requires Trustor to indemnify Beneficiary or reimburse Beneficiary for any expenditures Beneficiary may incur, Trustee shall be entitled to the same indemnity and the same rights to reimbursement of expenses as Beneficiary, subject to such limitations and conditions as would apply in the case of Beneficiary. To the extent that this Deed of Trust negates or limits Beneficiary's liability as to any matter, Trustee shall be entitled to the same negation or limitation of liability. To the extent that Trustor, pursuant to this Deed of Trust, appoints Beneficiary as Trustor's attorney in fact for any purpose, Beneficiary or (when so instructed by Beneficiary) Trustee shall be entitled to act on Trustor's behalf without joinder or confirmation by the other.

5.3 **Resignation or Replacement of Trustee.** Trustee may resign by an instrument in writing addressed to Beneficiary, and Trustee may be removed at any time with or without cause (i.e., in Beneficiary's sole and absolute discretion) by an instrument in writing executed by Beneficiary. In case of the death, resignation, removal or disqualification of Trustee or if for any reason Beneficiary shall deem it desirable to appoint a substitute, successor or replacement Trustee to act instead of Trustee originally named (or in place of any substitute, successor or replacement Trustee), then Beneficiary shall have the right and is hereby authorized and empowered to appoint a successor, substitute or replacement Trustee, without any formality other than appointment and designation in writing executed by Beneficiary, which instrument shall be recorded in the Office of the Recorder of Clark County, Nevada. The law of the State of Nevada (including, without limitation, the Nevada Gaming Laws) shall govern the qualifications of any Trustee. The authority conferred upon Trustee by this Deed of Trust shall automatically extend to any and all other successor, substitute and replacement Trustee(s) successively until the obligations secured hereunder have been paid in full or the Trust Estate has been sold hereunder or released in accordance with the provisions of the Guaranty and the other Loan Documents (including the Security Documents). Beneficiary's written appointment and designation of any Trustee shall be full evidence of Beneficiary's right and authority to make the same and of all facts therein recited. No confirmation, authorization, approval or other action by Trustor shall be required in connection with any resignation or other replacement of Trustee.

5.4 **Authority of Beneficiary.** If Beneficiary is a banking corporation, state banking corporation or a national banking association and the instrument of appointment of any successor or replacement Trustee is executed on Beneficiary's behalf by an officer of such corporation, state banking corporation or national banking association, then such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of Beneficiary.

5.5 **Effect of Appointment of Successor Trustee.** Upon the appointment and designation of any successor, substitute or replacement Trustee, and subject to compliance with applicable Nevada Gaming

Laws and other applicable laws, Trustee's entire estate and title in the Trust Estate shall vest in the designated successor, substitute or replacement Trustee. Such successor, substitute or replacement Trustee shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon Trustee. All references herein to Trustee shall be deemed to refer to Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder.

5.6 **Confirmation of Transfer and Succession.** Upon the written request of Beneficiary or of any successor, substitute or replacement Trustee, any former Trustee ceasing to act shall execute and deliver an instrument transferring to such successor, substitute or replacement Trustee all of the right, title, estate and interest in the Trust Estate of Trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon Trustee, and shall duly assign, transfer and deliver all properties and moneys held by said Trustee hereunder to said successor, substitute or replacement Trustee.

5.7 **Exculpation.** Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or otherwise be responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence, willful misconduct or knowing violation of law. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law). Trustee shall be under no liability for interest on any moneys received by it hereunder.

5.8 **Endorsement and Execution of Documents.** Upon Beneficiary's written request, Trustee shall, without liability or notice to Trustor, execute, consent to, or join in any instrument or agreement in connection with or necessary to effectuate the purposes of the Guaranty and the other Loan Documents (including the Security Documents). Trustor hereby irrevocably designates Trustee as its attorney in fact to execute, acknowledge and deliver, on Trustor's behalf and in Trustor's name, all instruments or agreements necessary to implement any provision(s) of this Deed of Trust or to further perfect the lien created by this Deed of Trust on the Trust Estate. This power of attorney shall be deemed to be coupled with an interest and shall survive any disability of Trustor.

5.9 **Multiple Trustees.** If Beneficiary appoints multiple trustees, then any Trustee, individually, may exercise all powers granted to Trustee under this instrument, without the need for action by any other Trustee(s).

5.10 **Terms of Trustee's Acceptance.** Trustee accepts the trust created by this Deed of Trust upon the following terms and conditions:

(a) **Delegation.** Trustee may exercise any of its powers through appointment of attorney(s) in fact or agents.

(b) **Counsel.** Trustee may select and employ legal counsel (including any law firm representing Beneficiary). Trustor shall reimburse all reasonable legal fees and expenses that Trustee may thereby incur.

(c) **Security.** Trustee shall be under no obligation to take any action upon any Event of Default unless furnished security or indemnity, in form satisfactory to Trustee, against costs, expenses, and liabilities that Trustee may incur.

(d) **Costs and Expenses.** Trustor shall reimburse Trustee, as part of the Obligations secured hereunder, for all reasonable disbursements and expenses (including reasonable legal fees and expenses) incurred by reason of and as provided for in this Deed of Trust, including any of the

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foregoing incurred in Trustee's administering and executing the trust created by this Deed of Trust, in complying with all applicable Nevada Gaming Laws and performing Trustee's duties and exercising Trustee's powers under this Deed of Trust.

(e) **Release.** Upon full and indefeasible payment and performance of the Obligations secured hereunder, Beneficiary shall request that Trustee release this Deed of Trust. Upon receipt of such request Trustee shall release this Deed of Trust to Trustor. Trustor shall pay all costs of recordation, if any.

ARTICLE SIX

MISCELLANEOUS PROVISIONS

6.1 **Heirs, Successors and Assigns Included in Parties.** Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included, and subject to the limitations set forth in Section 1.9, all covenants and agreements contained in this Deed of Trust, by or on behalf of Trustor or Beneficiary shall bind and inure to the benefit of its heirs, successors and assigns, whether so expressed or not.

6.2 **Addresses for Notices, Etc.** Any notice, report, demand or other instrument authorized or required to be given or furnished under this Deed of Trust to Trustor or Beneficiary shall be deemed given or furnished (i) when addressed to the party intended to receive the same, at the address of such party set forth below, and delivered by hand at such address or (ii) three (3) days after the same is deposited in the United States mail as first class certified mail, return receipt requested, postage paid, whether or not the same is actually received by such party:

| | |
|-----------------|--|
| Beneficiary: | Deutsche Bank Trust Company Americas 31 West 52 nd Street, 7 th Floor New York, New York 10019 Attn: Jeff Baevsky |
| With a copy to: | Latham & Watkins 701 B. Street, Suite 2100 San Diego, California 92101 Attn: Sony Ben-Moshe, Esq. |
| Trustor: | Wynn Resorts Holdings, LLC 3145 Las Vegas Boulevard South Las Vegas, Nevada 89109 Attn: Legal Department |
| With a copy to: | Irell & Manella LLP 1800 Avenue of the Stars, Suite 900 Los Angeles, California 90067 Attn: C. Kevin McGeehan |
| Trustee: | Nevada Title Company 2500 North Buffalo, Suite 150 Las Vegas, Nevada 89128 Attn: Robbie Graham |

6.3 **Change of Notice Address.** Any Person may change the address to which any such notice, report, demand or other instrument is to be delivered or mailed to that person, by furnishing written notice of such change to the other parties, but no such notice of change shall be effective unless and until received by such other parties.

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6.4 **Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Deed of Trust are for convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

6.5 **Invalid Provisions to Affect No Others.** In the event that any of the covenants, agreements, terms or provisions contained herein or in the Notes, the Credit Agreement, the Guaranty or any other Loan Document (including the Security Documents) shall be invalid, illegal or unenforceable in any respect, the validity of the lien hereof and the remaining covenants, agreements, terms or provisions contained herein or in the Notes, the Credit Agreement, the Guaranty or any other Loan Document (including the Security Documents) shall be in no way affected, prejudiced or disturbed thereby. To the extent permitted by law, Trustor waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

6.6 **Changes and Priority Over Intervening Liens.** Neither this Deed of Trust nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Trustor and Beneficiary relating to this Deed of Trust shall be superior to the rights of the holder of any intervening lien or encumbrance.

6.7 **Estoppel Certificates.** Within ten (10) Business Days after Beneficiary's written request, Trustor shall from time to time execute a certificate, in recordable form (an "Estoppel Certificate"), stating, except to the extent it would be inaccurate to so state: (a) the current amount of the Obligations secured hereunder and all elements thereof, including principal, interest, and all other elements; (b) that Trustor has no defense, offset, claim, counterclaim, right of recoupment, deduction, or reduction against any of the Obligations secured hereunder; (c) that neither the Guaranty, this Deed of Trust nor any other Loan Documents (including the Security Documents) to which it is a party have been amended, whether orally or in writing; (d) that Trustor has no claims against Beneficiary of any kind; (e) that any power of attorney granted to Beneficiary is in full force and effect; and (f) such other matters relating to this Deed of Trust, the Guaranty or any other Loan Document (including any Security Document) to which it is a party and the relationship of Trustor and Beneficiary as Beneficiary shall request. In addition, the Estoppel Certificate shall set forth the reasons why it would be inaccurate to make any of the foregoing assurances.

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6.8 **Waiver of Setoff and Counterclaim.** All Obligations shall be payable without setoff, counterclaim or any deduction whatsoever. Trustor hereby waives the right to assert a counterclaim (other than a compulsory counterclaim) in any action or proceeding brought against it by Beneficiary and/or any Bank under the Loan Documents, or arising out of or in any way connected with this Deed of Trust or the other Loan Documents (including the Security Documents) or the Obligations.

6.9 **Governing Law.** The Credit Agreement, the Notes and the Guaranty provide that they are governed by, and construed and enforced in accordance with, the laws of the State of New York. This Deed of Trust shall also be construed under and governed by the laws of the State of New York; provided, however, that (i) the terms and provisions of this Deed of Trust pertaining to the priority, perfection, enforcement or realization by Beneficiary of its respective rights and remedies under this Deed of Trust with respect to the Trust Estate shall be governed and construed and enforced in accordance with the internal laws of the State of Nevada (the "State") without giving effect to the conflicts-of-law rules and principles of the State; (ii) Trustor agrees that to the extent deficiency judgments are available under the laws of the State after a foreclosure (judicial or nonjudicial) of the Trust Estate, or any portion thereof, or any other realization thereon by Beneficiary or any Bank under the Loan Documents, Beneficiary or such Bank, as the case may be, shall have the right to seek such a deficiency judgment against Trustor in the State; and (iii) Trustor agrees that if Beneficiary or any Bank under the Loan Documents obtains a deficiency judgment in another state against Trustor, then Beneficiary or such Bank, as the case may be, shall have the right to enforce such judgment in the State to the extent permitted under the laws of the State, as well as in other states.

6.10 **Required Notices.** Trustor shall notify Beneficiary promptly of the occurrence of any of the following and shall immediately provide Beneficiary a copy of the notice or documents referred to: (i) receipt of notice from any Governmental Authority relating to all or any material part of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (ii) receipt of any notice from any tenant leasing all or any material portion of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iii) receipt of notice from the holder of any Permitted Lien relating to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iv) the commencement of any proceedings or the entry of any judgment, decree or order materially affecting all or any portion of the Trust Estate or which involve the potential liability of Trustor or its Affiliates in an amount in excess of \$25,000,000 (other than for personal injury actions and related property damage suits which are covered by such insurance); or (v) commencement of any judicial or administrative proceedings or the entry of any judgment, decree or order by or against or otherwise affecting Trustor or any Affiliate of Trustor, a material portion of the Trust Estate, or a material portion of the Personal Property, or any other action by any creditor or lessor thereof as a result of any default under the terms of any lease.

6.11 **Reconveyance.** Upon written request of Trustor when the Obligations secured hereby have been satisfied in full, Beneficiary shall cause Trustee to reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

6.12 **Attorneys' Fees.** Without limiting any other provision contained herein, Trustor agrees to pay all costs of Beneficiary or Trustee incurred in connection with the enforcement of this Deed of Trust, the Guaranty or the other Loan Documents to which it is a party, including without limitation all reasonable attorneys' fees whether or not suit is commenced, and including, without limitation, fees incurred in connection with any probate, appellate, bankruptcy, deficiency or any other litigation proceedings, all of which sums shall be secured hereby.

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6.13 **Late Charges.** By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to collect any late charge thereon or interest thereon at the interest rate on the Notes or as otherwise specified in the Credit Agreement, if so provided, not then paid or its right either to require prompt payment when due of all other sums so secured or to declare default for failure to pay any amounts not so paid.

6.14 **Cost of Accounting.** Trustor shall pay to Beneficiary, for and on account of the preparation and rendition of any accounting, which Trustor may be entitled to require under any law or statute now or hereafter providing therefor, the reasonable costs thereof.

6.15 **Right of Entry.** Subject to compliance with applicable Nevada Gaming Laws, Beneficiary may at any reasonable time or times and on reasonable prior written notice to Trustor make or cause to be made entry upon and inspections of the Trust Estate or any part thereof in person or by agent.

6.16 **Corrections.** Trustor shall, upon request of Beneficiary or Trustee, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust (including, but not limited to, in the exhibits and schedules attached hereto) or in the execution or acknowledgement hereof, and shall execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Trustee to carry out more effectively the purposes of this Deed of Trust, to subject to the lien and security interest hereby created any of Trustor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.

6.17 **Statute of Limitations.** To the fullest extent allowed by the law, the right to plead, use or assert any statute of limitations as a plea or defense or bar of any kind, or for any purpose, to any debt, demand or obligation secured or to be secured hereby, or to any complaint or other pleading or proceeding filed, instituted or maintained for the purpose of enforcing this Deed of Trust or any rights hereunder, is hereby waived by Trustor.

6.18 **Subrogation.** Should the proceeds of any loan or advance made by Beneficiary or any Bank under the Credit Agreement, repayment of which is hereby secured, or any part thereof, or any amount paid out or advanced by Beneficiary or any Bank under the Credit Agreement, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior or superior lien or encumbrance upon the Trust Estate, or any part thereof, then, as additional security hereunder, Trustee, on behalf of Beneficiary, shall be subrogated to any and all rights, superior titles, liens, and equities owned or claimed by any owner or holder of said outstanding liens, charges, and indebtedness, however remote, regardless of whether said liens, charges, and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

6.19 **Joint and Several Liability.** All obligations of Trustor hereunder, if more than one, are joint and several. Recourse for deficiency after sale hereunder may be had against the property of Trustor, without, however, creating a present or other lien or charge thereon.

6.20 **Homestead.** Trustor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Trust Estate as against the collection of the Obligations, or any part hereof.

6.21 **Context.** In this Deed of Trust, whenever the context so requires, the neuter includes the masculine and feminine, and the singular including the plural, and vice versa.

6.22 **Time.** Time is of the essence of each and every term, covenant and condition hereof. Unless otherwise specified herein, any reference to "days" in this Deed of Trust shall be deemed to mean "calendar days."

6.23 **Interpretation.** As used in this Deed of Trust unless the context clearly requires otherwise: The terms "herein" or "hereunder" and similar terms without reference to a particular section shall

refer to the entire Deed of Trust and not just to the section in which such terms appear; the term "lien" shall also mean a security interest, and the term "security interest" shall also mean a lien.

6.24 **Effect of NRS 107.030.** To the extent not inconsistent herewith, the provisions of NRS 107.030 (1), (2) (in amounts hereinabove provided for), (3), (4) (with interest at the default rate provided for under the Credit Agreement), (5), (6), (7) (reasonable), (8) and (9) are included herein by reference and made part of this Deed of Trust.

6.25 **Amendments.** This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought and only as permitted by the provisions of the Guaranty.

6.26 **No Conflicts.** In the event that any of the provisions contained here conflict with the Guaranty, the provisions contained in the Guaranty shall prevail.

6.27 **Amendment and Restatement.** This Deed of Trust amends and restates that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing by Trustor to Trustee for the benefit of Beneficiary recorded on July 2, 2002 in Book No. 20020702 as Instrument No. 00146 of Official Records in the office of the County Recorder of Clark County, Nevada (the "**Original Deed of Trust**") in its entirety. This Deed of Trust is not intended and shall not be construed or interpreted as to affect the effectiveness or priority of the Original Deed of Trust.

ARTICLE SEVEN

POWER OF ATTORNEY

7.1 **Grant of Power.** Subject to compliance with applicable Nevada Gaming Laws, Trustor irrevocably appoints Beneficiary and any successor thereto as its attorney-in-fact, with full power and authority, including the power of substitution, exercisable only during the continuance of an Event of Default to act for Trustor in its name, place and stead as hereinafter provided:

7.1.1 **Possession and Completion.** To take possession of the Site and the Project, remove all employees, contractors and agents of Trustor therefrom, complete or attempt to complete the work of construction, and market, sell or lease the Site and the Project.

7.1.2 **Plans.** To make such additions, changes and corrections in the current Plans and Specifications as may be necessary or desirable, in Beneficiary's reasonable discretion, or as it deems proper to complete the Project.

7.1.3 **Employment of Others.** To employ such contractors, subcontractors, suppliers, architects, inspectors, consultants, property managers and other agents as Beneficiary, in its discretion, deems proper for the completion of the Project, for the protection or clearance of title to the Site or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.4 **Security Guards.** To employ watchmen to protect the Site and the Project from injury.

7.1.5 **Compromise Claims.** To pay, settle or compromise all bills and claims then existing or thereafter arising against Trustor, which Beneficiary, in its discretion, deems proper for the protection or clearance of title to the Site or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.6 **Legal Proceedings.** To prosecute and defend all actions and proceedings in connection with the Site or the Project.

7.2 **Other Acts.** To execute, acknowledge and deliver all other instruments and documents in the name of Trustor that are necessary or desirable, to exercise Trustor's rights under all contracts

concerning the Site or the Project, including, without limitation, under any Space Leases, and to do all other acts with respect to the Site or the Project that Trustor might do on its own behalf, as Beneficiary, in its reasonable discretion, deems proper.

ARTICLE EIGHT

GUARANTOR PROVISIONS

8.1 **Absolute and Unconditional Obligations.** All rights of Administrative Agent and all obligations of Trustor hereunder shall be absolute and unconditional irrespective of (i) any lack of validity, legality or enforceability of the Credit Agreement, any Note, or any other Loan Document, (ii) the failure of any Bank or any holder of any of the Obligations to assert any claim or demand or to enforce any right or remedy against Borrower, Trustor or any other Person (including any other guarantor of the Obligations) under the provisions of the Credit Agreement, any Note, any other Loan Document or otherwise or to exercise any right or remedy against any other guarantor of, or collateral securing, any of the Obligations, (iii) any change in the time, manner or place of payment of, or in any other term of, all of the Obligations, or any other extension or renewal of any Obligation, (iv) any reduction, limitation, impairment or termination of any of the Obligations for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to, and Trustor hereby waives any right to or claim of, any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, nongenuineness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, any Obligation, (v) any amendment to, rescission, waiver, or other modification of, or any consent to departure from, any of the terms of the Credit Agreement, any Note or any other Loan Document, (vi) any sale, exchange, release or surrender of, realization upon or other manner or order of dealing with any property by whomsoever pledged or mortgaged to secure or howsoever securing the Obligations or any liabilities or obligations (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof and/or any offset there against, (vii) the application of any sums by whomsoever paid or howsoever realized to any obligations and liabilities of Borrower or any other Person to the Banks under the Loan Documents in the manner provided therein regardless of what obligations and liabilities remain unpaid, (viii) any action or failure to act in any manner referred to in this Deed of Trust which may deprive Trustor of its right to subrogation against Borrower or any other Person to recover full indemnity for any payments or performances made pursuant to this Deed of Trust or of its right of contribution against any other party and (ix) any other circumstance which might otherwise constitute a defense available to, or a legal or equitable discharge of, Borrower, any other Person, Trustor, any surety or any guarantor.

8.2 **Waiver.** Trustor hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including (i) any right to require Administrative Agent or any other Bank to proceed against Borrower or any other Person or to proceed against or exhaust any security held by Administrative Agent or any other Bank at any time or to pursue any other remedy in Administrative Agent's or any other Bank's power before proceeding against Trustor, (ii) any defense that may arise by reason of the incapacity, lack of power or authority, death, dissolution, merger, termination or disability of Borrower or any other Person or the failure of Administrative Agent or any other Bank to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of Borrower or any other Person, (iii) demand, presentment, protest and notice of any kind except as provided herein, including notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Borrower, Administrative Agent, any other Bank, any endorser or creditor of Borrower, Trustor or on the part of any other Person under this or any other instrument in connection with any obligation or evidence of indebtedness held by Administrative Agent or any other Bank as collateral or in connection with any Obligation, (iv) any defense based upon an election of remedies by Administrative Agent or any other Bank, including an election to proceed by non-judicial rather than judicial foreclosure, which destroys or otherwise impairs the subrogation rights

of Trustor, the right of Trustor to proceed against Borrower or any other Person for reimbursement, or both, (v) any defense based on any offset against any amounts which may be owed by any Person to Trustor for any reason whatsoever, (vi) any defense based on any act, failure to act, delay or omission whatsoever on the part of Borrower or any other Person of the failure by Borrower or any other Person to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the Loan Documents, (vii) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal, provided, that, upon payment or performance in full of the Obligations, this Deed of Trust shall no longer be of any force or effect, (viii) any defense, setoff or counterclaim which may at any time be available to or asserted by Borrower or any other Person against Administrative Agent, any other Bank or any other Person under the Loan Documents, (ix) any duty on the part of Administrative Agent or any other Bank to disclose to Trustor any facts Administrative Agent or any other Bank may now or hereafter know about Borrower or any other Person, regardless of whether Administrative Agent or such Bank have reason to believe that any such facts materially increase the risk beyond that which Trustor intends to assume, or have reason to believe that such facts are unknown to Trustor, or have a reasonable opportunity to communicate such facts to Trustor, since Trustor acknowledges that Trustor is fully responsible for being and keeping informed of the financial condition of Borrower and any other Person liable for the Obligations and of all circumstances bearing on the risk of non-payment or non-performance of any obligations and liabilities hereby guaranteed, (x) the fact that Trustor may at any time in the future dispose of all or part of its direct or indirect interest in Borrower or any other Person or otherwise cease to be an Affiliate of Borrower or any other Person, as the case may be, (xi) any defense based on any change in the time, manner or place of any payment or performance under, or in any other term of, the Loan Documents or any other amendment, renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of the Loan Documents, (xii) any defense arising because of Administrative Agent's or any other Bank's election, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code, and (xiii) any defense based upon any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code. To the fullest extent permitted by NRS 40.485 (1) and (2), the provisions of NRS 40.430 are waived.

8.3 **Net Worth Limitation.** If, notwithstanding the representation and warranty set forth in Section 1.2(b) hereof or anything to the contrary herein, enforcement of the liability of Trustor under this Deed of Trust for the full amount of the Obligations would be an unlawful or voidable transfer under any applicable fraudulent conveyance or fraudulent transfer law or any comparable law, then the liability of Trustor hereunder shall be reduced to the highest amount for which such liability may then be enforced without giving rise to an unlawful or voidable transfer under any such law.

IN WITNESS WHEREOF, Trustor has executed this Amended and Restated Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing as of the day and year first above written.

TRUSTOR:

WYNN RESORTS HOLDINGS, LLC,
a Nevada limited liability company,

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: Wynn Resorts, Limited,
a Nevada corporation,
its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein

Title: *Senior Vice President, General Counsel and
Secretary*

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QuickLinks

[Exhibit 10.39](#)

[AMENDED AND RESTATED DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING](#)
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[ARTICLE THREE DEFAULTS](#)
[ARTICLE FOUR REMEDIES](#)
[ARTICLE FIVE RIGHTS AND RESPONSIBILITIES OF TRUSTEE; OTHER PROVISIONS RELATING TO TRUSTEE](#)
[ARTICLE SIX MISCELLANEOUS PROVISIONS](#)
[ARTICLE SEVEN POWER OF ATTORNEY](#)
[ARTICLE EIGHT GUARANTOR PROVISIONS](#)

APNs: 162-16-511-008 and 162-16-510-001
through 006, inclusive

Recording requested by and recorded
counterparts should be returned to:

Sony Ben-Moshe, Esq.
Latham & Watkins
701 B Street, Suite 2100
San Diego, California 92101

Mail Property Tax Statements to:

Valvino Lamore, LLC
Legal Department
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109

**AMENDED AND RESTATED DEED OF TRUST, ASSIGNMENT OF RENTS AND
LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

MADE BY

**VALVINO LAMORE, LLC,
a Nevada limited liability company,
as Trustor,**

to

**Nevada Title Company,
a Nevada corporation,
as Trustee,
for the benefit of**

**DEUTSCHE BANK TRUST COMPANY AMERICAS,
in its capacity as Administrative Agent for the benefit of the Banks,
as Beneficiary**

THIS INSTRUMENT IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS OF CLARK COUNTY, NEVADA UNDER THE NAMES OF VALVINO LAMORE, LLC AS "DEBTOR" AND DEUTSCHE BANK TRUST COMPANY AMERICAS AS "SECURED PARTY." TRUSTOR'S ORGANIZATIONAL NUMBER IS NEVADA FILE NUMBER LLC3830-2000.

THIS INSTRUMENT IS A "CONSTRUCTION MORTGAGE" AS THAT TERM IS DEFINED IN SECTION 104.9334(8) OF THE NEVADA REVISED STATUTES AND SECURES AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT UPON LAND.

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SCHEDULE A DESCRIPTION OF THE LAND

**AMENDED AND RESTATED DEED OF TRUST, ASSIGNMENT OF RENTS AND
LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS AMENDED AND RESTATED DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (hereinafter called "**Deed of Trust**") is made and effective as of October 30, 2002, by VALVINO LAMORE, LLC, a Nevada limited liability company (together with all successors and assigns of the Trust Estate (as hereinafter defined), "**Trustor**"), whose address is 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109, to Nevada Title Company, a Nevada corporation, whose address is 2500 North Buffalo, Suite 150, Las Vegas, Nevada 89128, as Trustee ("**Trustee**"), for the benefit of DEUTSCHE BANK TRUST COMPANY AMERICAS ("**Beneficiary**"), in its capacity as Administrative Agent under (i) that certain Amended and Restated Commitment Letter (as the same may be amended or modified from time to time, the "**Commitment Letter**") dated as of June 14, 2002, among Trustor, Beneficiary, Deutsche Bank Securities Inc., Bank of America, N.A., Banc of America Securities LLC, Bear Stearns Corporate Lending, Inc., Bear, Stearns & Co. Inc., Wynn Resorts Holdings, LLC, a Nevada limited liability company (formerly known as Wynn Resorts, LLC), and Wynn Las Vegas, LLC, a Nevada limited liability company (Wynn Las Vegas, LLC being hereinafter referred to as "**Borrower**"), and that certain Credit Agreement (as the same may be amended or modified from time to time, the "**Credit Agreement**") dated as of even date herewith (and entered into in connection with and in furtherance of the Commitment Letter) among Borrower, Beneficiary and the other parties signatory thereto (such other parties, together with Beneficiary, the "**Banks**") pursuant to which the Banks have agreed to lend to Borrower an aggregate principal amount of \$1,000,000,000 and (ii) that certain Guarantee and Collateral Agreement (as the same may be amended or modified from time to time, the "**Guaranty**") dated as of even date herewith (and entered into in connection with and in furtherance of the Commitment Letter and the Credit Agreement) by Trustor and the other parties thereto for the benefit of Beneficiary on behalf of the Banks pursuant to which Trustor will guaranty the payment and performance of all obligations of Borrower under the Credit Agreement and the other Loan Documents.

THIS INSTRUMENT SECURES FUTURE ADVANCES. THE MAXIMUM AMOUNT OF PRINCIPAL TO BE SECURED HEREBY IS \$1,000,000,000. THIS INSTRUMENT IS TO BE GOVERNED BY THE PROVISIONS OF NRS 106.300 THROUGH NRS 106.400 INCLUSIVE.

THE OBLIGATIONS SECURED HEREBY INCLUDE REVOLVING CREDIT OBLIGATIONS WHICH PERMIT BORROWING, REPAYMENT AND REBORROWING. INTEREST ON OBLIGATIONS SECURED HEREBY ACCRUES AT A RATE WHICH MAY FLUCTUATE FROM TIME TO TIME.

DEFINITIONS—As used in this Deed of Trust, the following terms have the meanings hereinafter set forth:

"**Accounts Receivable**" shall have the meaning set forth in Section 9-102 (NRS 104.9102) of the UCC for the term "account."

"**Appurtenant Rights**" means all and singular tenements, hereditaments, rights, reversions, remainders, development rights, privileges, benefits, easements (in gross or appurtenant), rights-of-way, licenses, gores or strips of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, and all appurtenances whatsoever and claims or demands of Trustor at law or in equity in any way belonging, benefiting, relating or appertaining to the Land, the Trustor, the Project, the airspace over the Land, the Improvements or any of the Trust Estate encumbered by this Deed of Trust, or which hereinafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Trustor.

"Bankruptcy" means, with respect to any Person, that (i) a court having jurisdiction in the Trust Estate shall have entered a decree or order for relief in respect of such Person in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order has not been stayed; or any other similar relief shall have been granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against such Person, under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the Trust Estate for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over such Person, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of such Person, for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of such Person, and any such event described in this clause (ii) shall continue for 60 days unless dismissed, bonded or discharged; or (iii) such Person shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or such Person shall make any assignment for the benefit of creditors, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable or if the fair market value of its assets does not exceed its aggregate liabilities; or (iv) such Person shall, or the Board of Directors of such Person (or any committee thereof) shall, adopt any resolution or otherwise authorize any action to approve any of the actions referred to in clause (iii) above.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute thereto.

"Business Day" means any day that is not a Saturday, a Sunday or a day on which banking institutions in the State of Nevada or the City of New York are not required to be open.

"Deed of Trust" means this Deed of Trust as it may be amended, increased or modified from time to time.

"Disbursement Agreement" means that certain Master Disbursement Agreement dated as of even date herewith, among Borrower, Beneficiary, Wells Fargo Bank, National Association, as the trustee for holders of mortgage notes issued in connection with the financing of the Project, Deutsche Bank Trust Company Americas, as disbursement agent, and the other parties signatory thereto, as the same may hereafter be amended or modified in accordance with its terms and the terms of the Credit Agreement.

"Event of Default" has the meaning set forth in Section 3.1 hereof.

"FF&E" means all furniture, fixtures, equipment, appurtenances and personal property now or in the future contained in, used in connection with, attached to, or otherwise useful or convenient to the use, operation, or occupancy of, or placed on, but unattached to, any part of the Site or Improvements whether or not the same constitutes real property or fixtures in the State of Nevada, including all removable window and floor coverings, all furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator and escalator plants, cooking facilities, vacuum cleaning systems, public address and communications systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings, fixtures, and building materials, all gaming and financial equipment, computer equipment, calculators, adding machines, gaming tables, video game and slot machines, and any other electronic equipment of every nature used or located on any part of the Site or Improvements, together with all Venetian blinds, shades, draperies, drapery and curtain rods, brackets, bulbs, cleaning

apparatus, mirrors, lamps, ornaments, cooling apparatus and equipment, ranges and ovens, garbage disposals, dishwashers, mantels, and any and all such property which is at any time installed in, affixed to or placed upon the Site or Improvements.

"FF&E Financing Agreement" means any financing agreement entered into by Trustor (i) the proceeds of which are used by Trustor for the acquisition or lease of FF&E, (ii) pursuant to which Trustor grants to the lender or lessor thereunder a security interest in the FF&E so acquired or leased and (iii) which is permitted by the Credit Agreement and the Guaranty.

"Governmental Authority" means any agency, authority, board, bureau, commission, department, office, public entity, or instrumentality of any nature whatsoever of the United States federal or foreign government, any state, province or any city or other political subdivision or otherwise, whether now or hereafter in existence, or any officer or official thereof, including, without limitation, any Nevada Gaming Authority.

"Imposition" means any taxes, assessments, water rates, sewer rates, maintenance charges, other governmental impositions and other charges now or hereafter levied or assessed or imposed against the Trust Estate or any part thereof.

"Improvements" means (1) all the buildings, structures, facilities and improvements of every nature whatsoever now or hereafter situated on the Site or any real property encumbered hereby, and (2) all fixtures, machinery, appliances, goods, building or other materials, equipment, including without limitation all gaming equipment and devices, and all machinery, equipment, engines, appliances and fixtures for generating or distributing air, water, heat, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse or garbage; all wall-beds, wall-safes, built-in furniture and installations, shelving, lockers, partitions, doorstops, vaults, motors, elevators, dumb-waiters, awnings, window shades, Venetian blinds, light fixtures, fire hoses and brackets and boxes for the same, fire sprinklers, alarm, surveillance and security systems, computers, drapes, drapery rods and brackets, mirrors, mantels, screens, linoleum, carpets and carpeting, plumbing, bathtubs, sinks, basins, pipes, faucets, water closets, laundry equipment, washers, dryers, ice-boxes and heating units; all kitchen and restaurant equipment, including but not limited to silverware, dishes, menus, cooking utensils, stoves, refrigerators, ovens, ranges, dishwashers, disposals, water heaters, incinerators, furniture, fixtures and furnishings, communication systems, and equipment; all cocktail lounge supplies, including but not limited to bars, glassware, bottles and tables used in connection with the Site; all chaise lounges, hot tubs, swimming pool heaters and equipment and all other recreational equipment (computerized and otherwise), beauty and barber equipment, and maintenance supplies used in connection with the Site; all amusement rides and attractions attached to the Site, all specifically designed installations and furnishings, and all furniture, furnishings and personal property of every nature whatsoever now or hereafter owned or leased by Trustor or in which Trustor has any rights or interest and located in or on, or attached to, or used or intended to be used or which are now or may hereafter be appropriated for use on or in connection with the operation of the Site or any real or personal property encumbered hereby or any other Improvements, or in connection with any construction being conducted or which may be conducted thereon, and all extensions, additions, accessions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing, and all of the right, title and interest of Trustor in and to any such property, which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and improvements and a part of the real property hereby encumbered.

"Indemnity Agreement" means that certain Indemnity Agreement dated as of even date herewith by Trustor for the benefit of Beneficiary and certain other indemnified parties named therein.

"Insolvent" means with respect to any person or entity, that such person or entity shall be deemed to be insolvent if it shall fail generally, or shall admit in writing its inability, to pay its debts as such

debts become due and payable and/or if the fair market value of its assets does not exceed its aggregate liabilities.

"Intangible Collateral" means (a) the rights to use all names and all derivations thereof now or hereafter used by Trustor in connection with the Site or Improvements, including, without limitation, the name "Le Reve", including any variations thereon, together with the goodwill associated therewith, and all names, logos, and designs used by Trustor, or in connection with the Site or in which Trustor has rights, with the exclusive right to use such names, logos and designs wherever they are now or hereafter used in connection with the Project (or in connection with the marketing of the Project), and any and all other trade names, trademarks or service marks, whether or not registered, now or hereafter used in the operation of the Project, including, without limitation, any interest as a lessee, licensee or franchisee, and, in each case, together with the goodwill associated therewith; (b) subject to the absolute assignment contained herein, the Rents; (c) any and all books, records, customer lists, concession agreements, supply or service contracts, licenses, permits, governmental approvals (to the extent such licenses, permits and approvals may be pledged under applicable law), signs, goodwill, casino and hotel credit and charge records, supplier lists, checking accounts, safe deposit boxes (excluding the contents of such deposit boxes owned by persons other than Trustor and its subsidiaries), cash, instruments, chattel papers, including inter-company notes and pledges, documents, unearned premiums, deposits, refunds, including but not limited to income tax refunds, prepaid expenses, rebates, tax and insurance escrow and impound accounts, if any, actions and rights in action, and all other claims, including without limitation condemnation awards and insurance proceeds, and all other contract rights and general intangibles resulting from or used in connection with the operation and occupancy of the Trust Estate and the Improvements and in which Trustor now or hereafter has rights; and (d) general intangibles, vacation license resort agreements or other time share license or right to use agreements, including without limitation all rents, issues, profits, income and maintenance fees resulting therefrom, whether any of the foregoing is now owned or hereafter acquired.

"Land" means the real property situated in the County of Clark, State of Nevada, more specifically described in *Schedule A* attached hereto and incorporated herein by reference, including any after acquired title thereto.

"Legal Requirements" means all applicable restrictive covenants, applicable zoning and subdivision ordinances and building codes, all applicable health and Environmental Laws and regulations, all applicable gaming laws and regulations, and all other applicable laws, ordinances, rules, regulations, judicial decisions, administrative orders, and other requirements of any Governmental Authority having jurisdiction over Trustor, the Trust Estate and/or any Affiliate of Trustor, in effect either at the time of execution of this Deed of Trust or at any time during the term hereof, including, without limitation, all Environmental Laws and Nevada Gaming Laws.

"Nevada Gaming License" means any gaming license necessary for the ownership, construction, maintenance, financing or operation of the Project, whether issued and/or required by Nevada Gaming Authorities, Nevada Gaming Laws or otherwise.

"Notes" means, collectively, those certain promissory note(s) to be issued pursuant to the Credit Agreement, as the same may be amended or replaced from time to time in accordance with its terms.

"NRS" means the Nevada Revised Statutes as in effect from time to time.

"Obligations" means (i) the payment and performance by Borrower of each covenant and agreement of Borrower contained in the Commitment Letter, the Credit Agreement, the Notes and the other Loan Documents (including the Security Documents) and (ii) the payment and performance by Trustor of each covenant and agreement of Trustor contained in the Guaranty, this Deed of Trust, the Indemnity Agreement and the other Loan Documents.

"Permitted Dispositions" means (a) the sale, transfer, lease or other disposition of assets in the Trust Estate, in the ordinary course of business, of inventory held in the ordinary course of business (b) the dispositions set forth in *Section 1.10* hereof and (c) other sales, transfers, leases or other dispositions of assets in the Trust Estate, including entering into Space Leases; *provided* that, in each case, all applicable provisions of the Loan Documents, including the Guaranty, are complied with.

"Personal Property" has the meaning set forth in *Section 1.12* hereof.

"Proceeds" has the meaning assigned to it under the UCC and, in any event, shall include but not be limited to (i) any and all proceeds of any insurance (including without limitation property casualty and title insurance), indemnity, warranty or guaranty payable from time to time with respect to any of the Trust Estate; (ii) any and all proceeds in the form of accounts, security deposits, tax escrows (if any), down payments (to the extent the same may be pledged under applicable law), collections, contract rights, documents, instruments, chattel paper, liens and security instruments, guarantees or general intangibles relating in whole or in part to the Project and all rights and remedies of whatever kind or nature Trustor may hold or acquire for the purpose of securing or enforcing any obligation due Trustor thereunder; (iii) any and all payments in any form whatsoever made or due and payable from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Trust Estate by any Governmental Authority; (iv) subject to the absolute assignment contained herein, the Rents or other benefits arising out of, in connection with or pursuant to any Space Lease of the Trust Estate; and (v) any and all other amounts from time to time paid or payable in connection with any of the Trust Estate; *provided, however*, that the Trustor is not authorized to dispose of any of the Trust Estate unless such disposition is a Permitted Disposition.

"Project" means the resort-hotel-casino-mall complex proposed to be constructed in Clark County, Nevada as described in the Plans and Specifications and as applicable to the Land and the Improvements, as such Plans and Specifications may be amended pursuant to the Disbursement Agreement.

"**Rents**" means all rents, room revenues, income, receipts, issues, profits, revenues and maintenance fees, room, food and beverage revenues, license and concession fees, income, proceeds and other benefits to which Trustor may now or hereafter be entitled from the Site, the Improvements, the Space Leases or any property encumbered hereby or any business or other activity conducted by Trustor at the Site or the Improvements.

"**Site**" means the Land and the Appurtenant Rights.

"**Space Leases**" means any and all leases, subleases, lettings, licenses, concessions, operating agreements, management agreements, and all other agreements affecting the Trust Estate that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, that give any person the right to conduct its business on, or otherwise use, operate or occupy, all or any portion of the Site or Improvements and any leases, agreements or arrangements permitting anyone to enter upon or use any of the Trust Estate to extract or remove natural resources of any kind, together with all amendments, extensions, and renewals of the foregoing entered into in compliance with this Deed of Trust, together with all rental, occupancy, service, maintenance or any other similar agreements pertaining to use or occupation of, or the rendering of services at the Site, the Improvements or any part thereof.

"**Space Lessee(s)**" means any and all tenants, licensees, or other grantees of the Space Leases and any and all guarantors, sureties, endorsers or others having primary or secondary liability with respect to such Space Leases.

"**Tangible Collateral**" means all personal property, goods, equipment, supplies, building and other materials of every nature whatsoever and all other tangible personal property constituting a part or portion of the Project and/or used in the operation of the hotel, casino, restaurants, stores, parking

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facilities, observation tower and all other commercial operations on the Site or Improvements, including but not limited to communication systems, visual and electronic surveillance systems and transportation systems and not constituting a part of the real property subject to the real property lien of this Deed of Trust and including all property and materials stored therein in which Trustor has an interest and all tools, utensils, food and beverage, liquor, uniforms, linens, housekeeping and maintenance supplies, vehicles, fuel, advertising and promotional material, blueprints, surveys, plans and other documents relating to the Site or Improvements, and all construction materials and all furnishings, fixtures and equipment, including, but not limited to, all FF&E and all equipment and devices which are or are to be installed and used in connection with the operation of the Project, those items of furniture, fixtures and equipment which are to be purchased or leased by Trustor, machinery and any other item of personal property in which Trustor now or hereafter own or acquire an interest or right, and which are used or useful in the construction, operation, use and occupancy of the Project and all present and future right and interest of Trustor in and to any casino operator's agreement, license agreement or sublease agreement used in connection with the Site or the Improvements.

"**Title Insurer**" means Chicago Title Insurance Company.

"**Trust Estate**" means all of the property described in Granting Clauses (A) through (O) below, inclusive, and each item of property therein described, provided, however, that such term shall not include the property described in Granting Clause (P) below.

"**UCC**" means the Uniform Commercial Code in effect in the State of Nevada from time to time, NRS chapters 104 and 104A.

The following terms shall have the meaning assigned to such terms in the Disbursement Agreement:

Disbursement Agent
Plans and Specifications

The following terms shall have the meaning assigned to such terms in the Credit Agreement:

Affiliate
Closing Date
Environmental Laws
Financing Agreements
Lien
Loan Documents
Nevada Gaming Authorities
Nevada Gaming Laws
Permitted Encumbrance
Permitted Liens
Person
Security Documents

In addition, any capitalized terms used in this Deed of Trust which are not otherwise defined herein shall have the meaning ascribed to such terms in the Disbursement Agreement and, if not defined therein, the meaning ascribed to such terms in the Credit Agreement and, if not defined therein, the meaning ascribed to such terms in the Guaranty; *provided*, that upon termination of the Disbursement Agreement, any defined terms used herein having meanings given to such terms in the Disbursement Agreement shall continue to have the meanings given to such terms in the Disbursement Agreement immediately prior to such termination.

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WITNESSETH:

IN CONSIDERATION OF TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION; THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, AND FOR THE PURPOSE OF SECURING in favor of Beneficiary (1) the Obligations; (2) the payment of such additional loans or advances as hereafter may be made to Trustor (individually or jointly and severally with any other Person) or its successors or assigns, when

evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; *provided, however*, that any and all future advances by Beneficiary to Trustor made for the improvement, protection or preservation of the Trust Estate, together with interest at the rate applicable to overdue principal set forth in the Credit Agreement, shall be automatically secured hereby unless such a note or instrument evidencing such advances specifically recites that it is not intended to be secured hereby and (3) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof or to protect the security hereof (including Protective Advances as such term is defined in *Section 4.2* hereof), together with interest thereon as herein provided (without limiting the generality of the protections afforded by NRS Chapter 106, funds disbursed that, in the reasonable exercise of Beneficiary's judgment, are needed to complete Improvements to the Land or to protect Beneficiary's security interest in the Trust Estate are to be deemed obligatory advances hereunder and will be added to the total indebtedness secured by this Deed of Trust and such indebtedness shall be increased accordingly), Trustor, in consideration of the premises, and for the purposes aforesaid, does hereby ASSIGN, BARGAIN, CONVEY, PLEDGE, RELEASE, HYPOTHECATE, WARRANT, AND TRANSFER WITH POWER OF SALE UNTO TRUSTEE IN TRUST FOR THE BENEFIT OF BENEFICIARY AND THE BANKS each of the following:

(A) The Land;

(B) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Improvements;

(C) TOGETHER WITH all Appurtenant Rights;

(D) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Tangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(E) TOGETHER WITH the Intangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;

(F) TOGETHER WITH (i) all the estate, right, title and interest of Trustor of, in and to all judgments and decrees, insurance proceeds, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of any of the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof, or to any Appurtenant Rights thereto, and Beneficiary is (subject to the terms hereof) hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittance therefor, and (subject to the terms hereof) to apply the same toward the payment of the indebtedness and other sums secured hereby, notwithstanding the fact that the amount owing thereon may not then be due and payable; (ii) all proceeds of any sales or other dispositions of the property or rights described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof whether voluntary or involuntary, provided, however, that the foregoing shall not be deemed to permit such sales, transfers, or other dispositions except as specifically permitted herein; and (iii) whether arising from any voluntary or involuntary disposition of the property described in Granting Clauses

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(A), (B), (C), (D) and (E), all Proceeds, products, replacements, additions, substitutions, renewals and accessions, remainders, reversions and after-acquired interest in, of and to such property;

(G) TOGETHER WITH the absolute assignment of any Space Leases or any part thereof that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, together with all of the following (including all "Cash Collateral" within the meaning of the Bankruptcy Law) arising from the Space Leases: (a) Rents (subject, however, to the aforesaid absolute assignment to Trustee for the benefit of Beneficiary and the conditional permission hereinbelow given to Trustor to collect the Rents), (b) all guarantees, letters of credit, security deposits, collateral, cash deposits, and other credit enhancement documents, arrangements and other measures with respect to the Space Leases, (c) all of Trustor's right, title, and interest under the Space Leases, including the following: (i) the right to receive and collect the Rents from the lessee, sublessee or licensee, or their successor(s), under any Space Lease(s) and (ii) the right to enforce against any tenants thereunder and otherwise any and all remedies under the Space Leases, including Trustor's right to evict from possession any tenant thereunder or to retain, apply, use, draw upon, pursue, enforce or realize upon any guaranty of any Space Lease; to terminate, modify, or amend the Space Leases; to obtain possession of, use, or occupy, any of the real or personal property subject to the Space Leases; and to enforce or exercise, whether at law or in equity or by any other means, all provisions of the Space Leases and all obligations of the tenants thereunder based upon (A) any breach by such tenant under the applicable Space Lease (including any claim that Trustor may have by reason of a termination, rejection, or disaffirmance of such Space Lease pursuant to any Bankruptcy Law) and (B) the use and occupancy of the premises demised, whether or not pursuant to the applicable Space Lease (including any claim for use and occupancy arising under landlord-tenant law of the State of Nevada or any Bankruptcy Law). Permission is hereby given to Trustor, so long as no Event of Default has occurred and is continuing hereunder, to collect and use the Rents, as they become due and payable, but not more than one (1) month in advance thereof. Upon the occurrence of an Event of Default, the permission hereby given to Trustor to collect the Rents shall automatically terminate, but such permission shall be reinstated upon a cure or waiver of such Event of Default. Beneficiary shall have the right, at any time and from time to time, to notify any Space Lessee of the rights of Beneficiary as provided by this section;

Notwithstanding anything to the contrary contained herein, the foregoing provisions of this Paragraph (G) shall not constitute an assignment for purposes of security but shall constitute an absolute and present assignment of the Rents to Beneficiary, subject, however, to the conditional license given to Trustor to collect and use the Rents as hereinabove provided; and the existence or exercise of such right of Trustor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Trustor;

(H) TOGETHER WITH all of Trustor's right, title and interest in and to any and all Plans and Specifications and all maps, plans, specifications, surveys, studies, tests, reports, data and drawings relating to the development of the Site or the Project and the construction of the Improvements, including, without limitation, all marketing plans, feasibility studies, soils tests, design contracts and all contracts and agreements of Trustor relating thereto including, without limitation, architectural, structural, mechanical and engineering plans and specifications, studies, data and drawings prepared for or relating to the development of the Site or the Project or the construction, renovation or restoration of any of the Improvements or the extraction of minerals, sand, gravel or other valuable substances from the Site and purchase contracts or any agreement granting Trustor a right to acquire any land situated within Clark County, Nevada;

(I) TOGETHER WITH, to the extent permitted by applicable law, all of Trustor's right, title, and interest in and to any and all licenses, permits, variances, special permits, franchises, certificates, rulings, certifications, validations, exemptions, filings, registrations, authorizations,

consents, approvals, waivers, orders, rights and agreements (including, without limitation, options, option rights, contract rights now or hereafter obtained by Trustor from any Governmental Authority having or claiming jurisdiction over the Land, the FF&E, the Project, or any other element of the Trust Estate or providing access thereto, or the operation of any business on, at, or from the Site including, without limitation, any liquor or Nevada Gaming Licenses (except for any registrations, licenses, findings of suitability or approvals issued by the Nevada Gaming Authorities or any other liquor or gaming licenses which are non-assignable); *provided*, that upon an Event of Default hereunder or under the Credit Agreement or under the Guaranty, if Beneficiary is not qualified under the Nevada Gaming Laws to hold such Nevada Gaming Licenses, then Beneficiary may designate an appropriately qualified third party to which an assignment of such Nevada Gaming Licenses can be made in compliance with the Nevada Gaming Laws;

(J) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to all water stock, water permits and other water rights relating to the Site including, without limitation, those evidenced by Permit No. 60164 (Cert. 15447) and Permit No. 60165 (Cert. 15448), in each case as shown in the records of the State of Nevada, Division of Water Resources in Carson City Nevada;

(K) TOGETHER WITH all oil and gas and other mineral rights, if any, in or pertaining to the Site and all royalty, leasehold and other rights of Trustor pertaining thereto;

(L) TOGETHER WITH any and all monies and other property, real or personal, which may from time to time be subjected to the lien hereof by Trustor or by anyone on its behalf or with its consent, or which may come into the possession or be subject to the control of Trustee or Beneficiary pursuant to this Deed of Trust, the Commitment Letter, the Credit Agreement, the Guaranty or any other Loan Document (including any Security Document), including, without limitation, any Protective Advances (as defined in *Section 4.2* hereof) under this Deed of Trust; and all of Trustor's right, title, and interest in and to all extensions, improvements, betterments, renewals, substitutes for and replacements of, and all additions, accessions, and appurtenances to, any of the foregoing that Trustor may subsequently acquire or obtain by any means, or construct, assemble, or otherwise place on any of the Trust Estate, and all conversions of any of the foregoing; it being the intention of Trustor that all property hereafter acquired by Trustor and required by the Commitment Letter, the Credit Agreement, the Guaranty, any other Loan Document (including any Security Document) or this Deed of Trust to be subject to the lien of this Deed of Trust or intended so to be shall forthwith upon the acquisition thereof by Trustor be subject to the lien of this Deed of Trust as if such property were now owned by Trustor and were specifically described in this Deed of Trust and granted hereby or pursuant hereto, and Trustee and Beneficiary are hereby authorized, subject to Nevada Gaming Laws and other applicable laws, to receive any and all such property as and for additional security for the obligations secured or intended to be secured hereby. Trustor agrees to take any action as may reasonably be necessary to evidence and perfect such liens or security interests, including, without limitation, the execution of any documents necessary to evidence and perfect such liens or security interests;

(M) TOGETHER WITH, to the extent permitted by applicable laws, any and all Accounts Receivable and all royalties, earnings, income, proceeds, products, rents, revenues, reversions, remainders, issues, profits, avails, production payments, and other benefits directly or indirectly derived or otherwise arising from any of the foregoing, all of which are hereby assigned to Beneficiary, who, except as otherwise expressly provided in this Deed of Trust (including the provisions of *Section 1.13* hereof), is authorized to collect and receive the same, to give receipts and acquittances therefor and to apply the same to the Obligations secured hereunder, whether or not then due and payable;

(N) TOGETHER WITH Proceeds of the foregoing property described in Granting Clauses (A) through (M);

(O) TOGETHER WITH Trustor's rights further to assign, sell, lease, encumber or otherwise transfer or dispose of the property described in Granting Clauses (A) through (N) inclusive, above, for debt or otherwise; and

(P) EXPRESSLY EXCLUDING, HOWEVER, any assets expressly excluded from the definition of "Collateral" in the Credit Agreement.

Trustor, for itself and its successors and assigns, covenants and agrees to and with Trustee that, at the time or times of the execution of and delivery of these presents or any instrument of further assurance with respect thereto, Trustor has good right, full power and lawful authority to assign, grant, convey, warrant, transfer, bargain or sell its interests in the Trust Estate in the manner and form as aforesaid, and that the Trust Estate is free and clear of all liens and encumbrances whatsoever, except Permitted Liens, and Trustor shall warrant and forever defend the above-bargained property in the quiet and peaceable possession of Trustee and its successors and assigns against all and every person or persons lawfully or otherwise claiming or to claim the whole or any part thereof, except for Permitted Liens. Trustor agrees that any greater title to the Trust Estate hereafter acquired by Trustor during the term hereof shall be automatically subject hereto.

ARTICLE ONE

COVENANTS OF TRUSTOR

The Beneficiary and the Banks have been induced to enter into the Commitment Letter, the Credit Agreement, the Guaranty and the other Loan Documents and to make advances of loans thereunder to Borrower on the basis of the following material covenants, all agreed to by Trustor:

1.1 Performance of Loan Documents. Trustor shall perform, observe and comply with each and every provision hereof, and with each and every provision contained in the Guaranty and the other Loan Documents and shall promptly pay to the Administrative Agent or the Disbursement Agent, as applicable, when payment shall become due, the principal with interest thereon and all other sums required to be paid by Trustor under this Deed of Trust, the Guaranty and the other Loan Documents.

1.2 General Representations, Covenants and Warranties. Trustor represents, covenants and warrants that: (a) Trustor has good and marketable title to an indefeasible fee estate in the Site, free and clear of all encumbrances except Permitted Encumbrances, and that it has the right to hold, occupy and enjoy its

interest in the Trust Estate, and has good right, full power and lawful authority to subject the Trust Estate to the Lien of this Deed of Trust and pledge the same as provided herein and Beneficiary may at all times peaceably and quietly enter upon, hold, occupy and enjoy the entire Trust Estate in accordance with the terms hereof; (b) Trustor is not Insolvent and no bankruptcy or insolvency proceedings are pending or contemplated by or, to the best of Trustor's knowledge, threatened against Trustor; (c) all costs arising from construction of any Improvements, the performance of any labor and the purchase of all Tangible Collateral and Improvements have been or shall be paid when due (subject to the provisions of the Disbursement Agreement, the Credit Agreement, the Guaranty and this Deed of Trust); (d) the Land has direct access for ingress and egress to dedicated street(s); (e) Trustor shall at all times conduct and operate the Trust Estate in a manner so as not to lose, or permit its affiliate to lose, the right to conduct gaming activities at the Project; (f) no material part of the Trust Estate has been damaged, destroyed, condemned or abandoned, other than those portions of the Trust Estate that (i) have been the subject of condemnation proceedings that have resulted in the conveyance of such portion of the Trust Estate to the Trustor or (ii) have been demolished in furtherance of the development of the Project as contemplated under the Disbursement Agreement, (g) as of the date hereof no part of the Trust Estate is the subject of condemnation proceedings and Trustor has no

knowledge of any contemplated or pending condemnation proceeding with respect to any portion of the Trust Estate; and (h) Trustor acknowledges and agrees that it presently may use, and in the past may have used, one or more of the trade or fictitious names, "Le Reve", "Wynn Collection", "Wynn Resorts" and "Desert Inn" and in each case variations thereof (collectively, the "**Enumerated Names**") in connection with the operation of the business at the Trust Estate, and Trustor further represents and warrants that the Enumerated Names are the only such trade or fictitious names Trustor has so used. For all purposes under this Deed of Trust it shall be deemed that the term "Trustor" includes all trade or fictitious names that Valvino Lamore, LLC (or any successor or assign thereof) now or hereafter uses, or has in the past used, including, without limitation, the Enumerated Names, with the same force and effect as if this Deed of Trust had been executed in all such names (in addition to "Valvino Lamore, LLC").

1.3 Compliance with Legal Requirements. Except as provided in the Guaranty, Trustor shall promptly, fully, and faithfully comply in all material respects with all Legal Requirements and shall cause all portions of the Trust Estate and its use and occupancy to fully comply in all material respects with Legal Requirements at all times, whether or not such compliance requires work or remedial measures that are ordinary or extraordinary, foreseen or unforeseen, structural or nonstructural, or that interfere with the use or enjoyment of the Trust Estate.

1.4 Taxes. Except as otherwise permitted by the Guaranty, (a) Trustor shall pay all Impositions as they become due and payable and shall deliver to Beneficiary promptly upon Beneficiary's request, evidence satisfactory to Beneficiary that the Impositions have been paid or are not delinquent; (b) Trustor shall not suffer to exist, permit or initiate the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Land as a single lien, except as may be required by law; and (c) in the event of the passage of any law deducting from the value of real property for the purposes of taxation any lien thereon, or changing in any way the taxation of deeds of trust or obligations secured thereby for state or local purposes, or the manner of collecting such taxes and imposing a tax, either directly or indirectly, on this Deed of Trust, the Guaranty or the other Loan Documents to which Trustor is a party, Trustor shall pay all such taxes.

1.5 Insurance.

(a) Hazard Insurance Requirements and Proceeds.

(1) *Hazard Insurance.* Trustor shall at its sole expense obtain for, deliver to, assign and maintain for the benefit of Beneficiary, during the term of this Deed of Trust, insurance policies insuring the Trust Estate and liability insurance policies, all in accordance with the requirements of the Guaranty. Trustor shall pay promptly when due any premiums on such insurance policies and on any renewals thereof. In the event of the foreclosure of this Deed of Trust or any other transfer of title to the Trust Estate in partial or complete extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of Beneficiary in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

(2) *Handling of Proceeds.* All Proceeds from any insurance policies shall be collected, held, handled and disbursed in accordance with the provisions of the Credit Agreement, the Guaranty and the Disbursement Agreement (while in effect). All proceeds of insurance allocable to Trustor, as owner of the Site, and attributable to business interruption insurance shall be collected, held, handled and disbursed in accordance with the provisions of the Credit Agreement, the Guaranty and the Disbursement Agreement. Any such proceeds disbursed to Beneficiary shall be applied to pay amounts then due and payable under this Deed of Trust. The balance shall be retained by Beneficiary or its designee in an interest bearing or other investment account approved by Beneficiary, which account Trustor hereby pledges to

Beneficiary to secure the Obligations. Disbursements shall be permitted from such account to pay expenses reasonably incurred by Trustor in owning and operating the Trust Estate, as reasonably approved by Beneficiary.

(b) Compliance with Insurance Policies. Trustor shall not violate or permit to be violated any of the conditions or provisions of any policy of insurance required by the Guaranty or this Deed of Trust and Trustor shall so perform and satisfy the requirements of the companies writing such policies that, at all times, companies of good standing shall be willing to write and/or continue such insurance. Trustor further covenants to promptly send to Beneficiary all notices relating to any violation of such policies or otherwise affecting Trustor's insurance coverage or ability to obtain and maintain such insurance coverage.

1.6 Condemnation. Beneficiary is hereby authorized, at its option, to commence, appear in and prosecute in its own or Trustor's name any action or proceeding relating to any condemnation and to settle or compromise any claim in connection therewith, and Trustor hereby appoints Beneficiary as its attorney-in-fact to take any action in Trustor's name pursuant to Beneficiary's rights hereunder. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Trust Estate or any portion thereof, Trustor shall notify the Trustee and Beneficiary of the pendency of such proceedings. Trustor from time to time shall execute and deliver to Beneficiary all instruments requested by it to permit such participation; provided, however, that such instruments shall be deemed as supplemental to the foregoing grant of permission to Trustee and Beneficiary, and unless otherwise required, the foregoing permission shall, without more, be deemed sufficient to permit Trustee and/or Beneficiary to participate in such proceedings on behalf of Trustor. All such compensation awards, damages, claims, rights of action and Proceeds, and any other payments or relief, and the right thereto, are, whether paid to Beneficiary or

Trustor or a third party trustee, included in the Trust Estate. Beneficiary, after deducting therefrom all its expenses, including reasonable attorneys fees, shall apply all Proceeds paid directly to it in accordance with the provisions of the Credit Agreement and the Guaranty. All Proceeds paid directly to the Trustor shall be applied, if received by Trustor prior to the Final Completion Date, in accordance with the Disbursement Agreement and, if received on or after the Final Completion Date, in accordance with the Guaranty and Credit Agreement. To the extent that any condemnation proceeds are not required to be applied towards restoration of the improvements upon the Site, then Beneficiary shall have the right to apply said condemnation proceeds towards repayment of the Obligations. Trustor hereby waives any rights it may have under NRS 37.115, as amended or recodified from time to time.

1.7 *Care of Trust Estate.*

(a) Trustor shall preserve and maintain the Trust Estate in good condition and repair. Trustor shall not permit, commit or suffer to exist any waste, impairment or deterioration of the Trust Estate or of any part thereof that in any manner materially impairs Beneficiary's security hereunder and shall not take any action which will increase the risk of fire or other hazard to the Trust Estate or to any part thereof.

(b) Except for Permitted Dispositions, no material part of the Improvements or Tangible Collateral that are part of the Trust Estate shall be removed, demolished or materially altered, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld or delayed. Trustor shall have the right, without such consent, to remove and dispose of free from the lien of this Deed of Trust any part of the Improvements or Tangible Collateral that are part of the Trust Estate as from time to time may become worn out or obsolete or otherwise not useful in connection with the operation of the Trust Estate, provided that either (i) such removal or disposition does not materially affect the value of the Trust Estate or (ii) prior to or promptly following such removal, any such property shall be replaced with other property of substantially equal utility and of a value at least substantially equal to that of the replaced property when first

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acquired and free from any security interest of any other person (subject only to Permitted Liens), and by such removal and replacement Trustor shall be deemed to have subjected such replacement property to the lien of this Deed of Trust.

(c) Notwithstanding the foregoing provisions of this *Section 1.7*, the Trustor may develop the Project in the manner contemplated by the Disbursement Agreement, the Credit Agreement, the Guaranty and the other Loan Documents.

1.8 *Leases.*

(a) Trustor represents, warrants and covenants that:

(i) except for the assignment effected hereby and in the other Financing Agreements, Trustor has not executed any assignment or pledge of any of the Space Leases, the Rents, or of Trustor's right, title and interest in the same; and

(ii) this Deed of Trust does not and will not constitute a violation or default under any Space Lease, and is and shall at all times constitute a valid lien on Trustor's interests in the Space Leases.

(b) Trustor shall not enter into any Space Lease or any modifications or amendments to any Space Lease, either orally or in writing, unless such Space Lease complies with the requirements of the Credit Agreement and the Guaranty.

(c) After an Event of Default, upon the request of Administrative Agent Trustor shall deliver to Beneficiary executed copies of all Space Leases.

1.9 *Further Encumbrance.*

(a) Trustor covenants that at all times prior to the discharge of the Obligations, except for Permitted Liens and Permitted Dispositions, Trustor shall neither make nor suffer to exist, nor enter into any agreement for, any sale, assignment, exchange, mortgage, transfer, Lien, hypothecation or encumbrance of all or any part of the Trust Estate, including, without limitation, the Rents. As used herein, "transfer" includes the actual transfer or other disposition, whether voluntary or involuntary, by law, or otherwise, except those transfers specifically permitted herein, provided, however, that "transfer" shall not include the granting of utility or other beneficial easements with respect to the Trust Estate which have been or are granted by Trustor and are reasonably necessary to the construction, maintenance or operation of the Project.

(b) Any Permitted Lien consisting of the lien of a deed of trust which is junior to the lien of the Loan Documents (including the Security Documents) (a "Subordinate Deed of Trust") shall be permitted hereunder so long as there shall have been delivered to Beneficiary, not less than thirty (30) days prior to the date thereof, a copy thereof which shall contain express covenants in form and substance satisfactory to Beneficiary to the effect that: (i) the Subordinate Deed of Trust is in all respects subject and subordinate to this Deed of Trust; (ii) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Trust Estate shall be named as a party defendant nor shall any action be taken with respect to the Trust Estate which would terminate any occupancy or tenancy of the Trust Estate, or any portion thereof, without the consent of Beneficiary; (iii) any Rents, if collected through a receiver or by the holder of the Subordinate Deed of Trust, shall be applied first to the obligations secured by this Deed of Trust, including principal and interest due and owing on or to become due and owing on the Notes, the Guaranty or the other Loan Documents, and then to the payment of maintenance expenses, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operation, and maintenance of the Trust Estate; and (iv) if any

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action or proceeding shall be brought to foreclose the Subordinate Deed of Trust, prompt notice of the commencement thereof shall be given to Beneficiary.

(c) Trustor agrees that in the event the ownership of the Trust Estate or any part thereof becomes vested in a person other than Trustor, Beneficiary may, without notice to Trustor, deal in any way with such successor or successors in interest with reference to this Deed of Trust, the Notes, the Guaranty, the other Loan Documents and other Obligations hereby secured without in any way vitiating or discharging Trustor's or any guarantor's, surety's or endorser's liability hereunder or upon the obligations hereby secured. No sale of the Trust Estate and no forbearance to any person with respect to this Deed of Trust and no extension to any person of the time for payment of the Obligations, and other sums hereby secured given by Beneficiary shall operate to release, discharge, modify, change or affect the original liability of Trustor, or such guarantor, surety or endorser either in whole or in part.

(d) If Trustor shall fail to make any payment required to be made by it under any FF&E Financing Agreement, except where Trustor is contesting such payment in good faith, then the Beneficiary shall be entitled to make such payment on Trustor's behalf and any and all sums so expended by the Beneficiary shall be secured by this Deed of Trust and shall be repaid by Trustor upon demand, together with interest thereon at the interest at the rate applicable to overdue principal set forth in the Credit Agreement from the date of advance.

1.10 *Partial Releases of Trust Estate.*

(a) Trustor may from time to time make a Permitted Disposition including, but not limited to, (i) transferring a portion of the Trust Estate (including any temporary taking) to any person legally empowered to exercise the power of eminent domain, or pursuant to dedication agreements that are now in effect or entered into in the future in connection with the development of the Project, (ii) granting utility easements reasonably necessary or desirable for the construction and/or operation of the Project, which grant or transfer is for the benefit of the Trust Estate, or (iii) transferring all or a portion of the Trust Estate as permitted pursuant to the Disbursement Agreement or the other Loan Documents. In each such case, Beneficiary shall execute and deliver any instruments necessary or appropriate to effectuate or confirm any such transfer or grant, free from the lien of this Deed of Trust, *provided, however*, that Beneficiary shall execute a lien release or subordination agreement, as appropriate, for matters described in clauses (i) and (iii) above only if:

(A) Such transfer, grant or release is not prohibited by the Credit Agreement or the Guaranty and all conditions precedent contained in the Credit Agreement and the Guaranty for such transfer, grant or release, if any, shall have been satisfied; and

(B) Beneficiary and Trustee shall have received a counterpart of the instrument pursuant to which such transfer, grant or release is to be made, and each instrument which Beneficiary or Trustee is requested to execute in order to effectuate or confirm such transfer, grant or release.

(b) Any consideration received for a transfer to any person empowered to exercise the right of eminent domain shall be subject to *Section 1.6* hereof.

1.11 *Further Assurances.*

(a) At its sole cost and without expense to Trustee or Beneficiary, and subject in all events to compliance with the Nevada Gaming Laws and other applicable Legal Requirements, Trustor shall do, execute, acknowledge and deliver any and all such further acts, deeds, conveyances, notices, requests for notices, financing statements, continuation statements, certificates, assignments, notices of assignments, agreements, instruments and further assurances, and shall mark any chattel paper,

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deliver any chattel paper or instruments to Beneficiary and take any other actions that are necessary, prudent, or reasonably requested by Beneficiary or Trustee to perfect or continue the perfection and first priority of Beneficiary's security interest in the Trust Estate, to protect the Trust Estate against the rights, claims, or interests of third persons other than holders of Permitted Liens or to effect the purposes of this Deed of Trust, including the security agreement and the absolute assignment of Rents contained herein, or for the filing, registering or recording thereof.

(b) Trustor shall forthwith upon the execution and delivery of this Deed of Trust, and thereafter from time to time, cause this Deed of Trust and each instrument of further assurance to be filed, indexed, registered, recorded, given or delivered in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the title of Trustee and/or Beneficiary to, the Trust Estate.

1.12 **Security Agreement and Financing Statements.** Trustor (as debtor) hereby grants to Beneficiary (as creditor and secured party) a present and future security interest in all Tangible Collateral, Intangible Collateral, FF&E, Improvements, all other personal property now or hereafter owned or leased by Trustor or in which Trustor has or will have any interest, to the extent that such property constitutes a part of the Trust Estate (whether or not such items are stored on the premises or elsewhere), Proceeds of the foregoing comprising a portion of the Trust Estate and all products, substitutions, and accessions thereof and thereto, subject to Beneficiary's rights to treat such property as real property as herein provided (collectively, the "**Personal Property**"). Trustor shall execute and/or deliver any and all documents and writings, including without limitation financing statements pursuant to the UCC, as may be necessary or prudent to preserve and maintain the priority of the security interest granted hereby on property which may be deemed subject to the foregoing security agreement or as Beneficiary may reasonably request, and shall pay to Beneficiary on demand any reasonable expenses incurred by Beneficiary in connection with the preparation, execution and filing of any such documents. Trustor hereby authorizes and empowers Beneficiary to file, on Trustor's behalf, all financing statements and refiling and continuations thereof as advisable to create, preserve and protect said security interest. Trustor acknowledges and agrees that it is not authorized to, and will not, authenticate or file, or authorize the filing of, any financing statements or other record with respect to the Personal Property (including any amendments thereto, or continuation or termination statements thereof), except as permitted by the Guaranty. Trustor approves and ratifies any filing or recording of records made by or on behalf of Beneficiary in connection with the perfection of the security interest in favor of Beneficiary hereunder. This Deed of Trust constitutes both a real property deed of trust and a "security agreement," within the meaning of the UCC, and the Trust Estate includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Trust Estate. Trustor by executing and delivering this Deed of Trust has granted to Beneficiary, as security of the Obligations, a security interest in the Trust Estate.

(a) **Fixture Filing.** Without in any way limiting the generality of the immediately preceding paragraph or of the definition of the Trust Estate, this Deed of Trust constitutes a fixture filing under Sections 9-334 and 9-502 of the UCC (NRS 104.9334 and 104.9502). For such purposes, (i) the "debtor" is Trustor and its address is the address given for it in the initial paragraph of this Deed of Trust; (ii) the "secured party" is Beneficiary, and its address for the purpose of obtaining information is the address given for it in the initial paragraph of this Deed of Trust; (iii) the real estate to which the fixtures are or are to become attached is Trustor's interest in the Site; and (iv) the record owner of such real estate is Trustor.

(b) **Remedies.** This Deed of Trust shall be deemed a security agreement as defined in the UCC and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall include any or all of (i) those prescribed herein, and (ii) those available under applicable law, and (iii) those available under the UCC, all at Beneficiary's sole election. In addition, a photographic or other reproduction of this Deed of Trust shall be sufficient as a

financing statement for filing wherever filing may be necessary to perfect or continue the security interest granted herein.

(c) **Derogation of Real Property.** It is the intention of the parties that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in anyway derogating from or impairing the express declaration and intention of the parties hereto as hereinabove stated that everything used in connection with the production of income from the Trust Estate and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real property encumbered by this Deed of Trust irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. It is the intention of the parties that the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Trustor's interest as lessors in any present or future Space Lease or rights to Rents, shall never be construed as in anyway altering any of the rights of Beneficiary as determined by this Deed of Trust or impugning the priority of Beneficiary's real property lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of Beneficiary in the event any court or judge shall at any time hold with respect to the matters set forth in the foregoing clauses (1), (2) and (3) that notice of Beneficiary's priority of interest to be effective against a particular class of persons, including but not limited to, the federal government and any subdivisions or entity of the federal government, must be filed in the UCC records.

(d) **Priority; Permitted Financing of Tangible Collateral.** All Personal Property of any nature whatsoever which is subject to the provisions of this security agreement shall be purchased or obtained by Trustor in its name and free and clear of any lien or encumbrance, except for Permitted Liens and the lien hereof, for use only in connection with the business and operation of the Project, and shall be and at all times remain free and clear of any lease or similar arrangement, chattel financing, installment sale agreement, security agreement and any encumbrance of like kind, so that Beneficiary's security interest shall attach to and vest in Trustor for the benefit of Beneficiary, with the priority herein specified, immediately upon the installation or use of the Personal Property at the Site and Trustor warrants and represents that Beneficiary's security interest in the Personal Property is a validly attached and binding security interest, properly perfected and prior to all other security interests therein except as otherwise permitted in this Deed of Trust. The foregoing shall not be construed as limiting Trustor's rights to transfer Personal Property pursuant to Permitted Dispositions or to obtain releases of Personal Property from the Lien of this Deed of Trust pursuant to *Section 1.10* hereof.

(e) **Preservation of Contractual Rights of Collateral.** Trustor shall, prior to delinquency, default, or forfeiture, perform all obligations and satisfy all material conditions required on its part to be satisfied to preserve its rights and privileges under any contract, lease, license, permit, or other authorization (i) under which it holds any Tangible Collateral or (ii) which constitutes part of the Intangible Collateral, except where Trustor is contesting such obligations in good faith.

(f) **Removal of Collateral.** Except for damaged or obsolete Tangible Collateral which is either no longer usable or which is removed temporarily for repair or improvement or removed for replacement on the Trust Estate with Tangible Collateral of similar function or as otherwise permitted herein, none of the Tangible Collateral shall be removed from the Trust Estate without Beneficiary's prior written consent.

(g) **Change of Name.** Trustor shall not change its corporate (or other entity) or business name, or do business within the State of Nevada under any name other than such name, or any trade name(s) other than those as to which Trustor gives prior written notice to Beneficiary of its intent to use such trade names, or any other business names (if any) specified in the financing statements delivered to Beneficiary for filing in connection with the execution hereof, without, in each case, providing Beneficiary with the additional financing statement(s) and any other similar documents deemed reasonably necessary by Beneficiary to assure that its security interest remains perfected and of undiminished priority in all such Personal Property notwithstanding such name change.

1.13 **Assignment of Leases and Rents.** Subject to Nevada Gaming Laws and other applicable Legal Requirements, the assignment of Leases and Rents set out above in Granting Clause (G) shall constitute an absolute and present assignment to Beneficiary, subject to the license herein given to Trustor to collect the Rents, and shall be fully operative without any further action on the part of any party, and specifically Beneficiary shall be entitled upon the occurrence of an Event of Default hereunder to all Rents and to enter upon the Site and the Improvements to collect such Rents, provided, however, that Beneficiary shall not be obligated to take possession of the Trust Estate, or any portion thereof. The absolute assignment contained in Granting Clause (G) shall not be deemed to impose upon Beneficiary any of the obligations or duties of Trustor provided in any such Space Lease (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease in the event that any lessee shall have been joined as a party defendant in any action to foreclose this Deed of Trust and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Trust Estate or any part thereof).

1.14 **Expenses.**

(a) Trustor shall pay when due and payable all out-of-pocket costs, including without limitation, those reasonable appraisal fees, recording fees, taxes, abstract fees, title policy fees, escrow fees, attorneys' and paralegal fees, travel expenses, fees for inspecting architect(s) and engineer(s) and all other costs and expenses of every character which may hereafter be incurred by Beneficiary or any assignee of Beneficiary in connection with the preparation and execution of the Guaranty and the other Loan Documents (including the Security Documents) to which Trustor is a party or instruments, agreements or documents of further assurance, the funding of the indebtedness secured hereby, and the enforcement of the Guaranty or any other Loan Document (including any Security Document) to which Trustor is a party. Other than costs associated with the enforcement of any Loan Document, all such costs shall be itemized in reasonable detail; and

(b) Trustor shall, upon demand by Beneficiary, reimburse Beneficiary or any assignee of Beneficiary for all such reasonable expenses which have been incurred or which shall be incurred by it; and

(c) Trustor shall indemnify Beneficiary with respect to any transaction or matter in any way connected with any portion of the Trust Estate, this Deed of Trust, including any occurrence at, in, on, upon or about the Trust Estate (including any personal injury, loss of life, or property damage), or Trustor's use, occupancy, or operation of the Trust Estate, or the filing or enforcement of any mechanic's lien, or otherwise caused in whole or in part by any act, omission or negligence occurring on or at the Trust Estate, including failure to comply with any Legal Requirement or with any requirement of this Deed of Trust that applies to Trustor, except to the extent resulting from the gross negligence, fraud or willful misconduct of Trustee or Beneficiary. If Beneficiary is a party to any litigation as to which either Trustor is required to indemnify Beneficiary (or is made a defendant in any action of any kind against Trustor or relating directly or indirectly to any portion of the Trust Estate) then, at Beneficiary's option, Trustor shall undertake Beneficiary's defense, using counsel reasonably satisfactory to Beneficiary (and any settlement shall be subject to

Beneficiary's consent, which consent shall not be unreasonably withheld), and in any case shall indemnify Beneficiary against such litigation. Trustor shall pay all reasonable costs and expenses, including reasonable legal costs, that Beneficiary pays or incurs in connection with any such litigation. Any amount payable under any indemnity in this Deed of Trust shall be a demand obligation, shall be added to, and become a part of, the secured obligations under this Deed of Trust, shall be secured by this Deed of Trust and, if not paid promptly following demand therefor (which demand shall, unless associated with Loan Document enforcement actions, set forth in reasonable detail an itemization of the amount so demanded) shall bear interest at the interest rate specified in the Credit Agreement. Such indemnity shall survive any release of this Deed of Trust and any foreclosure.

1.15 Beneficiary's Cure of Trustor's Default. If Trustor defaults hereunder in the payment of any tax, assessment, lien, encumbrance or other Imposition, in its obligation to furnish insurance hereunder, or in the performance or observance of any other covenant, condition or term of this Deed of Trust or any other Financing Agreement or any FF&E Financing Agreement, Beneficiary may, but is not obligated to, to preserve its interest in the Trust Estate, perform or observe the same, and all payments made (whether such payments are regular or accelerated payments) and reasonable costs and expenses incurred or paid by Beneficiary in connection therewith shall become due and payable immediately. The amounts so incurred or paid by Beneficiary, together with interest thereon at the interest rate applicable to overdue principal set forth in the Credit Agreement, from the date incurred until paid by Trustor, shall be added to the indebtedness and secured by the lien of this Deed of Trust. Beneficiary, is hereby empowered to enter and to authorize others to enter upon the Site or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Trustor or any person in possession holding under Trustor. No exercise of any rights under this Section 1.15 by Beneficiary shall cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

1.16 Use of Land. Trustor covenants that the Trust Estate shall be used and operated in a manner consistent with the requirements of the Loan Documents.

1.17 Compliance with Permitted Lien Agreements. Trustor shall comply with each and every material obligation contained in any agreement pertaining to a Permitted Lien.

1.18 Defense of Actions. Trustor shall appear in and defend any action or proceeding affecting or purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and shall pay all costs and expenses, including cost of title search and insurance or other evidence of title, preparation of survey, and reasonable attorneys' fees in any such action or proceeding in which Beneficiary or Trustee may appear or may be joined as a party and in any suit brought by Beneficiary based upon or in connection with this Deed of Trust, the Guaranty or any other Loan Document to which Trustor is a party. Nothing contained in this section shall, however, limit the right of Beneficiary to appear in such action or proceeding with counsel of its own choice, either on its own behalf or on behalf of Trustor.

1.19 Affiliates.

(a) **Subject to Trust Deed.** Subject to compliance with the requirements of applicable Nevada Gaming Laws, Trustor shall cause all of its Affiliates in any way involved with the operation of the Trust Estate or the Project to observe the covenants and conditions of this Deed of Trust to the extent necessary to give the full intended effect to such covenants and conditions and to protect and preserve the security of Beneficiary hereunder.

(b) **Restriction on Use of Subsidiary or Affiliate.** Except as permitted under the Credit Agreement, the Notes, the Guaranty or the other Loan Documents (including any Security

Document), Trustor shall not use any Affiliate in the operation of the Trust Estate or the Project if such use would in any way impair the security for the Obligations or circumvent any covenant or condition of this Deed of Trust, the Guaranty or of any other Loan Document.

1.20 Title Insurance. On the Closing Date, Trustor shall cause to be delivered to Trustee at Trustor's expense, one or more ALTA extended coverage Lender's Policies of Title Insurance showing fee title to the real property situated in the County of Clark, State of Nevada, more specifically described in Schedule A attached hereto, vested in Trustor and the lien of this Deed of Trust to be a perfected lien, prior to any and all encumbrances other than Permitted Encumbrances (excluding, however, any such non-Permitted Encumbrances for which the Title Insurer has agreed to provide an endorsement or affirmative coverage protecting the lien of this Deed of Trust against such non-Permitted Encumbrances).

ARTICLE TWO

GUARANTY PROVISIONS

2.1 Interaction with Guaranty

(a) **Incorporation by Reference.** All terms, covenants, conditions, provisions and requirements of the Guaranty are incorporated by reference in this Deed of Trust.

(b) **Conflicts.** In the event of any conflict or inconsistency between the provisions of this Deed of Trust and those of the Guaranty, Credit Agreement or the Disbursement Agreement, the provisions of the Guaranty, Credit Agreement or the Disbursement Agreement, as applicable, shall govern.

2.2 **Other Collateral.** This Deed of Trust is one of a number of security agreements delivered by or on behalf of Trustor and other Persons pursuant to the Credit Agreement and the other Loan Documents (including the Security Documents) and securing the Obligations secured hereunder. All potential junior Lien claimants are placed on notice that, under any of the Loan Documents (including the Security Documents) (including a separate future unrecorded agreement between Trustor and Beneficiary), other collateral for the Obligations secured hereunder (*i.e.*, collateral other than the Trust Estate) may, under certain circumstances, be released without a corresponding reduction in the total principal amount secured by this Deed of Trust. Such a release would decrease the amount of collateral securing the same indebtedness, thereby increasing the burden on the remaining Trust Estate created and continued by this Deed of Trust. No such release shall impair the priority of the lien of this Deed of Trust. By accepting its interest in the Trust Estate, each and every junior Lien claimant shall be deemed to have acknowledged the possibility of, and consented to, any such release. Nothing in this paragraph shall impose any obligation upon Beneficiary.

ARTICLE THREE

DEFAULTS

3.1 **Event of Default.** The term "Event of Default," wherever used in this Deed of Trust, shall mean any of (i) one or more of the events of default listed in the Credit Agreement or the Guaranty (ii) so long as the Disbursement Agreement is in effect, one or more of the events of default listed in the Disbursement Agreement (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) or (iii) if any "borrower" (as that term is defined in NRS 106.310) who may send a notice pursuant to NRS 106.380(1), (x) delivers, sends by mail or otherwise gives, or purports to deliver, send by mail or otherwise give, to a beneficiary under this Deeds of Trust (A) any notice of an election to terminate the operation of this Deed of Trust as security for any secured obligation, including, without limitation,

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any obligation to repay any "future advance" (as defined in NRS 106.320) of "principal" (as defined in NRS 106.345), or (B) any other notice pursuant to NRS 106.380(1), (y) records a statement pursuant to NRS 106.380(3), or (z) causes this Deed of Trust, any secured obligation, or any Secured Party to be subject to NRS 106.380(2), 106.380(3) or 106.400.

ARTICLE FOUR

REMEDIES

4.1 **Acceleration of Maturity.** If an Event of Default occurs, Beneficiary may (except that such acceleration shall be automatic if the Event of Default is caused by Borrower's or Trustor's Bankruptcy), in accordance with the Loan Documents, declare the Obligations to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become due and payable without demand, presentment, notice or other requirements of any kind (all of which Trustor waives) notwithstanding anything in this Deed of Trust or any Loan Document or applicable law to the contrary.

4.2 **Protective Advances.** If Borrower or Trustor fails to make any payment or perform any other obligation under the Notes, Credit Agreement, Guaranty or any other Financing Agreement, then without thereby limiting Beneficiary's other rights or remedies, waiving or releasing any of Trustor's obligations, or imposing any obligation on Beneficiary, Beneficiary may either advance any amount owing or perform any or all actions that Beneficiary considers necessary or appropriate to cure such default. All such advances shall constitute "Protective Advances" and shall bear interest thereon at the interest rate applicable to overdue principal set forth in the Credit Agreement from the date incurred until paid by Trustor. No sums advanced or performance rendered by Beneficiary shall cure, or be deemed a waiver of any Event of Default.

4.3 **Institution of Equity Proceedings.** If an Event of Default occurs, Beneficiary may institute an action, suit or proceeding in equity for specific performance of this Deed of Trust, the Notes, the Guaranty or any other Loan Document (including any Security Document), all of which shall be specifically enforceable by injunction or other equitable remedy. Trustor waives any defense based on laches or any applicable statute of limitations.

4.4 **Beneficiary's Power of Enforcement.**

(a) If an Event of Default occurs, Beneficiary shall be entitled, at its option and in its sole and absolute discretion, to prepare and record on its own behalf, or to deliver to Trustee for recording, if appropriate, written declaration of default and demand for sale and written Notice of Breach and Election to Sell (NRS 107.080(3)) (or other statutory notice) to cause the Trust Estate to be sold to satisfy the obligations hereof, and in the case of delivery to Trustee, Trustee shall cause said notice to be filed for record.

(b) After the lapse of such time as may then be required by law following the recordation of said Notice of Breach and Election to Sell, and notice of sale having been given as then required by law, including compliance with any applicable Nevada Gaming Laws, Trustee without demand on Trustor, shall sell the Trust Estate or any portion thereof at the time and place fixed by it in said notice, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder, of cash in lawful money of the United States payable at the time of sale. Trustee may, for any cause it deems expedient, postpone the sale of all or any portion of said property until it shall be completed and, in every case, notice of postponement shall be given by public announcement thereof at the time and place last appointed for the sale and from time to time thereafter Trustee may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall execute and deliver to the purchaser its Deed, Bill of Sale, or other instrument conveying said property so sold, but without any covenant or warranty,

express or implied. The recitals in such instrument of conveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale.

(c) After deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including, without limitation, costs of evidence of title and reasonable attorneys' fees and other legal expenses of Trustee or Beneficiary in connection with a sale, Trustee shall apply the proceeds of such sale to payment of all sums expended under the terms hereof not then repaid, with accrued interest at the rate applicable to overdue principal set forth in the Credit Agreement to the payment of all other sums then secured hereby and the remainder, if any, to the person or persons legally entitled thereto as provided in NRS 40.462.

(d) Subject to compliance with applicable Nevada Gaming Laws, if any Event of Default occurs, Beneficiary may, either with or without entry or taking possession of the Trust Estate, and without regard to whether or not the indebtedness and other sums secured hereby shall be due and without prejudice to the right of Beneficiary thereafter to bring an action or proceeding to foreclose or any other action for any default existing at the time such earlier action was commenced, proceed by any appropriate action or proceeding: (1) to enforce payment of the Obligations, to the extent permitted by law, or the performance of any term hereof or any other right; (2) to foreclose this Deed of Trust in any manner provided by law for the foreclosure of mortgages or deeds of trust on real property and to sell, as an entirety or in separate lots or parcels, the Trust Estate or any portion thereof pursuant to the laws of the State of Nevada or under the judgment or decree of a court or courts of competent jurisdiction, and Beneficiary shall be entitled to recover in any such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees in such amount as shall be awarded by the court; (3) to exercise any or all of the rights and remedies available to it under the Loan Documents; and (4) to pursue any other remedy available to it. Beneficiary shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Beneficiary may determine.

(e) The remedies described in this *Section 4.4* may be exercised with respect to all or any portion of the Personal Property, either simultaneously with the sale of any real property encumbered hereby or independent thereof. Beneficiary shall at any time be permitted to proceed with respect to all or any portion of the Personal Property in any manner permitted by the UCC. Trustor agrees that Beneficiary's inclusion of all or any portion of the Personal Property (and all personal property that is subject to a security interest in favor, or for the benefit, of Beneficiary) in a sale or other remedy exercised with respect to the real property encumbered hereby, as permitted by the UCC, is a commercially reasonable disposition of such property.

4.5 Beneficiary's Right to Enter and Take Possession, Operate and Apply Income.

(a) Subject to compliance with applicable Nevada Gaming Laws, if an Event of Default occurs, (i) Trustor, upon demand of Beneficiary, shall forthwith surrender to Beneficiary the actual possession and, if and to the extent permitted by law, Beneficiary itself, or by such officers or agents as it may appoint, may enter and take possession of all the Trust Estate including the Personal Property, without liability for trespass, damages or otherwise, and may exclude Trustor and its agents and employees wholly therefrom and may have joint access with Trustor to the books, papers and accounts of Trustor; and (ii) Trustor shall pay monthly in advance to Beneficiary on Beneficiary's entry into possession, or to any receiver appointed to collect the Rents, all Rents then due and payable.

(b) If Trustor shall for any reason fail to surrender or deliver the Trust Estate, the Personal Property or any part thereof after Beneficiary's demand, Beneficiary may obtain a judgment or decree conferring on Beneficiary or Trustee the right to immediate possession or requiring Trustor to deliver immediate possession of all or part of such property to Beneficiary or Trustee and

Trustor hereby specifically consents to the entry of such judgment or decree. Trustor shall pay to Beneficiary or Trustee, upon demand, all reasonable costs and expenses of obtaining such judgment or decree and reasonable compensation to Beneficiary or Trustee, their attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Deed of Trust.

(c) Subject to compliance with applicable Nevada Gaming Laws, upon every such entering upon or taking of possession, Beneficiary or Trustee may hold, store, use, operate, manage and control the Trust Estate and conduct the business thereof, and, from time to time in its sole and absolute discretion and without being under any duty to so act:

- (1) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;
- (2) insure or keep the Trust Estate insured;
- (3) manage and operate the Trust Estate and exercise all the rights and powers of Trustor in their name or otherwise with respect to the same;
- (4) enter into agreements with others to exercise the powers herein granted Beneficiary or Trustee, all as Beneficiary or Trustee from time to time may determine; and, subject to the absolute assignment of the Leases and Rents to Beneficiary, Beneficiary or Trustee may collect and receive all the Rents, including those past due as well as those accruing thereafter; and shall apply the monies so received by Beneficiary or Trustee in such priority as Beneficiary may determine to (1) the payment of interest and principal due and payable on the Notes or the other Loan Documents, (2) the deposits for taxes and assessments and insurance premiums due, (3) the cost of insurance, taxes, assessments and other proper charges upon the Trust Estate or any part thereof; (4) the compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary or Trustee; and (5) any other charges or costs required to be paid by Trustor under the terms hereof; and
- (5) rent or sublet the Trust Estate or any portion thereof for any purpose permitted by this Deed of Trust.

Beneficiary or Trustee shall surrender possession of the Trust Estate and the Personal Property to Trustor only when all that is due upon such interest and principal, tax and insurance deposits, and all amounts under any of the terms of the Credit Agreement or this Deed of Trust, shall have been paid and all defaults made good. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.6 **Leases.** Beneficiary is authorized to foreclose this Deed of Trust subject to the rights of any tenants of the Trust Estate, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights shall not be, nor be asserted by Trustor to be, a defense to any proceedings instituted by Beneficiary to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Trust Estate, or any portion thereof. Unless otherwise agreed by Beneficiary in writing, all Space Leases executed subsequent to the date hereof, or any part thereof, shall be subordinate and inferior to the lien of this Deed of Trust; provided, however that (i) in accordance with the terms of the Loan Documents, Beneficiary may be required to execute a non-disturbance and attornment agreement in connection with certain Space Leases; and (ii) from time to time Beneficiary may execute and record among the land records of the jurisdiction where this Deed of Trust is recorded, subordination statements with respect to such of said Space Leases as Beneficiary may designate in its sole discretion, whereby the Space Leases so designated by Beneficiary shall be made superior to the lien of this Deed of Trust for the term set forth in such subordination statement. From and after the recordation of such subordination statements, and

for the respective periods as may be set forth therein, the Space Leases therein referred to shall be superior to the lien of this Deed of Trust and shall not be affected by any foreclosure hereof. All such Space Leases shall contain a provision to the effect that the Trustor and Space Lessee recognize the right of Beneficiary to elect and to effect such subordination of this Deed of Trust and consents thereto.

4.7 **Purchase by Beneficiary.** Upon any foreclosure sale (whether judicial or nonjudicial), Beneficiary may bid for and purchase the property subject to such sale and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

4.8 **Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws.** Trustor agrees to the full extent permitted by law that if an Event of Default occurs, neither Trustor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust or the absolute sale of the Trust Estate or any portion thereof or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof, and Trustor for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Trust Estate marshalled upon any foreclosure of the lien hereof and agrees that Trustee or any court having jurisdiction to foreclose such lien may sell the Trust Estate in part or as an entirety.

4.9 **Receiver.** If an Event of Default occurs, Beneficiary, to the extent permitted by law and subject to compliance with all applicable Nevada Gaming Laws, and without regard to the value, adequacy or occupancy of the security for the indebtedness and other sums secured hereby, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Trust Estate and to collect all Rents and apply the same as the court may direct, and such receiver may be appointed by any court of competent jurisdiction upon application by Beneficiary. Beneficiary may have a receiver appointed without notice to Trustor or any third party, and Beneficiary may waive any requirement that the receiver post a bond. Beneficiary shall have the power to designate and select the Person who shall serve as the receiver and to negotiate all terms and conditions under which such receiver shall serve. Any receiver appointed on Beneficiary's behalf may be an Affiliate of Beneficiary. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Deed of Trust. The right to enter and take possession of and to manage and operate the Trust Estate and to collect all Rents, whether by a receiver or otherwise, shall be cumulative to any other right or remedy available to Beneficiary under this Deed of Trust, the Guaranty or the other Loan Documents or otherwise available to Beneficiary and may be exercised concurrently therewith or independently thereof. Beneficiary shall be liable to account only for such Rents (including, without limitation, security deposits) actually received by Beneficiary, whether received pursuant to this section or any other provision hereof. Notwithstanding the appointment of any receiver or other custodian, Beneficiary shall be entitled as pledgee to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Deed of Trust to, Beneficiary.

4.10 **Suits to Protect the Trust Estate.** Beneficiary shall have the power and authority to institute and maintain any suits and proceedings as Beneficiary, in its sole and absolute discretion, may deem advisable (a) to prevent any impairment of the Trust Estate by any acts which may be unlawful or in violation of this Deed of Trust, (b) to preserve or protect its interest in the Trust Estate, or (c) to restrain the enforcement of or compliance with any legislation or other Legal Requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Beneficiary's interest.

4.11 **Proofs of Claim.** In the case of any receivership, Insolvency, Bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Trustor, or, to the extent the same would result in an Event of Default hereunder, any Subsidiary, or any guarantor, co-maker or endorser of any of Trustor's obligations, its creditors or its property, Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim or other documents as it may deem to be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Trustor under the Loan Documents, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Trustor after such date.

4.12 **Trustor to Pay the Obligations on Any Default in Payment; Application of Monies by Beneficiary.**

(a) In case of a foreclosure sale of all or any part of the Trust Estate and of the application of the proceeds of sale to the payment of the sums secured hereby, Beneficiary shall be entitled to enforce payment from Trustor of any additional amounts then remaining due and unpaid with respect to the Obligations and to recover judgment against Trustor for any portion thereof remaining unpaid, with interest at the rate applicable to overdue principal as set forth in the Credit Agreement.

(b) Trustor hereby agrees to the extent permitted by law, that no recovery of any judgment by Beneficiary or other action by Beneficiary and no attachment or levy of any execution upon any Property of Trustor by Beneficiary (other than a foreclosure of the entire Trust Estate hereunder) shall in any way affect the Lien and security interest of this Deed of Trust upon the Trust Estate or any part thereof or any Lien, rights, powers or remedies of Beneficiary hereunder, but such Lien, rights, powers and remedies shall continue unimpaired as before.

(c) Any monies collected or received by Beneficiary under this *Section 4.12* shall be first applied to the payment of reasonable compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary, and the balance remaining shall be applied to the Obligations.

(d) The provisions of this section shall not be deemed to limit or otherwise modify the provisions of any guaranty of the indebtedness evidenced by the Notes or the other Loan Documents.

4.13 Delay or Omission; No Waiver. No delay or omission of Beneficiary or any Bank to exercise any right, power or remedy upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Beneficiary whether contained herein or in the other Loan Documents or otherwise available to Beneficiary may be exercised from time to time and as often as may be deemed expedient by Beneficiary.

4.14 No Waiver of One Default to Affect Another. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If Beneficiary or the required percentage of the Banks (as determined pursuant to the Credit Agreement), to the extent applicable under the Credit Agreement, (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Notes, the Credit Agreement, this Deed of Trust, the Guaranty, the Disbursement Agreement or any other Loan Document (including any Security Document); (d) releases any part of the Trust Estate from the lien or security interest of this Deed of Trust or any other instrument securing the Obligations; (e) consents to the filing of any map, plat or replat of the Site (to the extent such consent is required); (f) consents to the granting of any easement on the Site (to the extent such consent is required); or (g) makes or consents to any agreement changing the terms of this Deed of Trust or any other Loan Document subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability of Trustor under the Guaranty or any other Loan Document (including any Security Document) or otherwise, or any subsequent purchaser of the Trust Estate or any part thereof or any maker, co-signer, surety or guarantor. No such act or omission shall preclude Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by Beneficiary, shall the lien or security interest of this Deed of Trust be altered thereby, except to the extent expressly provided in any releases, maps, easements or subordinations described in clause (d), (e), (f) or (g) above of this Section 4.14. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Trust Estate, Beneficiary, without notice to any person, firm or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Trust Estate or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder, or waiving its right to declare such sale or transfer an Event of Default as provided herein. Notwithstanding anything to the contrary contained in this Deed of Trust or any other Loan Document (including any Security Document), (i) in the case of any non-monetary Event of Default, Beneficiary may continue to accept payments secured hereunder without thereby waiving the existence of such or any other Event of Default and (ii) in the case of any monetary Event of Default, Beneficiary may accept partial payments of any sums secured hereunder without thereby waiving the existence of such Event of Default if the partial payment is not sufficient to completely cure such Event of Default.

4.15 Discontinuance of Proceedings; Position of Parties Restored. If Beneficiary shall have proceeded to enforce any right or remedy under this Deed of Trust by foreclosure, entry of judgment or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Beneficiary, then and in every such case Trustor and Beneficiary shall be restored to their former positions and rights hereunder, and all

rights, powers and remedies of Beneficiary shall continue as if no such proceedings had occurred or had been taken.

4.16 Remedies Cumulative. No right, power or remedy, including without limitation remedies with respect to any security for Obligations, conferred upon or reserved to Beneficiary by this Deed of Trust or any other Loan Document (including any Security Document) is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or any other Loan Document (including any Security Document), now or hereafter existing at law, in equity or by statute, and Beneficiary shall be entitled to resort to such rights, powers, remedies or security as Beneficiary shall in its sole and absolute discretion deem advisable.

4.17 Interest After Event of Default. If an Event of Default shall have occurred and is continuing, all sums outstanding and unpaid under the Obligations shall, at Beneficiary's option, bear interest at the rate applicable to overdue principal set forth in the Credit Agreement until such Event of Default has been cured. Trustor's obligation to pay such interest shall be secured by this Deed of Trust.

4.18 Foreclosure; Expenses of Litigation. If Trustee forecloses, reasonable attorneys' fees for services in the supervision of said foreclosure proceeding shall be allowed to the Trustee and Beneficiary as part of the foreclosure costs. In the event of foreclosure of the lien hereof, there shall be allowed and included as additional indebtedness all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after foreclosure sale or entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and guarantees, and similar data and assurances with respect to title as Beneficiary may deem reasonably advisable either to prosecute such suit or to evidence to a bidder at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Trust Estate or any portion thereof. All expenditures and expenses of the nature in this section mentioned, and such expenses and fees as may be incurred in the protection of the Trust Estate and the maintenance of the lien and security interest of this Deed of Trust, including the fees of any attorney employed by Beneficiary in any litigation or proceeding affecting this Deed of Trust, the Guaranty or any other Loan Document (including any Security Document), the Trust Estate or any portion thereof, including, without limitation, civil, probate, appellate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Trustor, with interest thereon at the rate applicable to overdue principal set forth in the Credit Agreement, and shall be secured by this Deed of Trust. Trustee waives its right to any statutory fee in connection with any judicial or nonjudicial foreclosure of the lien hereof and agrees to accept a reasonable fee for such services.

4.19 **Deficiency Judgments.** If after foreclosure of this Deed of Trust or Trustee's sale hereunder, there shall remain any deficiency with respect to any Obligations, and Beneficiary shall institute any proceedings to recover such deficiency or deficiencies, all such amounts shall continue to bear interest at the rate applicable to overdue principal set forth in the Credit Agreement. Trustor waives any defense to Beneficiary's recovery against Trustor of any deficiency after the rate foreclosure sale of the Trust Estate. Trustor expressly waives any defense or benefits that may be derived from any statute granting Trustor any defense to any such recovery by Beneficiary. In addition, Beneficiary and Trustee shall be entitled to recovery of all of their reasonable costs and expenditures (including without limitation any court imposed costs) in connection with such proceedings, including their reasonable attorneys' fees, appraisal fees and the other costs, fees and expenditures referred to in Section 4.18 above. This provision shall survive any foreclosure or sale of the Trust Estate, any portion thereof and/or the extinguishment of the lien hereof.

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4.20 **Waiver of Jury Trial.** Beneficiary and Trustor each waive any right to have a jury participate in resolving any dispute whether sounding in contract, tort or otherwise arising out of, connected with, related to or incidental to the relationship established between them in connection with the Obligations. Any such disputes shall be resolved in a bench trial without a jury.

4.21 **Exculpation of Beneficiary.** The acceptance by Beneficiary of the assignment contained herein with all of the rights, powers, privileges and authority created hereby shall not, prior to entry upon and taking possession of the Trust Estate by Beneficiary, be deemed or construed to make Beneficiary a "mortgagee in possession"; nor thereafter or at any time or in any event obligate Beneficiary to appear in or defend any action or proceeding relating to the Space Leases, the Rents or the Trust Estate, or to take any action hereunder or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under any Space Lease or to assume any obligation or responsibility for any security deposits or other deposits except to the extent such deposits are actually received by Beneficiary, nor shall Beneficiary, prior to such entry and taking, be liable in any way for any injury or damage to person or property sustained by any Person in or about the Trust Estate.

ARTICLE FIVE

RIGHTS AND RESPONSIBILITIES OF TRUSTEE;

OTHER PROVISIONS RELATING TO TRUSTEE

Notwithstanding anything to the contrary in this Deed of Trust, Trustor and Beneficiary agree as follows.

5.1 **Exercise of Remedies by Trustee.** To the extent that this Deed of Trust or applicable law, including all applicable Nevada Gaming Laws, authorizes or empowers, or does not require approval for, Beneficiary to exercise any remedies set forth in Article Four hereof or otherwise, or perform any acts in connection therewith, Trustee (but not to the exclusion of Beneficiary unless so required under the law of the State of Nevada) shall have the power to exercise any or all such remedies, and to perform any acts provided for in this Deed of Trust in connection therewith, all for the benefit of Beneficiary and on Beneficiary's behalf in accordance with applicable law of the State of Nevada. In connection therewith, Trustee: (a) shall not exercise, or waive the exercise of, any of Beneficiary's remedies (other than any rights of Trustee to any indemnity or reimbursement), except at Beneficiary's request, and (b) shall exercise, or waive the exercise of, any or all of Beneficiary's remedies at Beneficiary's request, and in accordance with Beneficiary's directions as to the manner of such exercise or waiver. Trustee may, however, decline to follow Beneficiary's request or direction if Trustee shall be advised by counsel that the action or proceeding, or manner thereof, so directed may not lawfully be taken or waived.

5.2 **Rights and Privileges of Trustee.** To the extent that this Deed of Trust requires Trustor to indemnify Beneficiary or reimburse Beneficiary for any expenditures Beneficiary may incur, Trustee shall be entitled to the same indemnity and the same rights to reimbursement of expenses as Beneficiary, subject to such limitations and conditions as would apply in the case of Beneficiary. To the extent that this Deed of Trust negates or limits Beneficiary's liability as to any matter, Trustee shall be entitled to the same negation or limitation of liability. To the extent that Trustor, pursuant to this Deed of Trust, appoints Beneficiary as Trustor's attorney in fact for any purpose, Beneficiary or (when so instructed by Beneficiary) Trustee shall be entitled to act on Trustor's behalf without joinder or confirmation by the other.

5.3 **Resignation or Replacement of Trustee.** Trustee may resign by an instrument in writing addressed to Beneficiary, and Trustee may be removed at any time with or without cause (i.e., in Beneficiary's sole and absolute discretion) by an instrument in writing executed by Beneficiary. In case

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of the death, resignation, removal or disqualification of Trustee or if for any reason Beneficiary shall deem it desirable to appoint a substitute, successor or replacement Trustee to act instead of Trustee originally named (or in place of any substitute, successor or replacement Trustee), then Beneficiary shall have the right and is hereby authorized and empowered to appoint a successor, substitute or replacement Trustee, without any formality other than appointment and designation in writing executed by Beneficiary, which instrument shall be recorded in the Office of the Recorder of Clark County, Nevada. The law of the State of Nevada (including, without limitation, the Nevada Gaming Laws) shall govern the qualifications of any Trustee. The authority conferred upon Trustee by this Deed of Trust shall automatically extend to any and all other successor, substitute and replacement Trustee(s) successively until the obligations secured hereunder have been paid in full or the Trust Estate has been sold hereunder or released in accordance with the provisions of the Guaranty and the other Loan Documents (including the Security Documents). Beneficiary's written appointment and designation of any Trustee shall be full evidence of Beneficiary's right and authority to make the same and of all facts therein recited. No confirmation, authorization, approval or other action by Trustor shall be required in connection with any resignation or other replacement of Trustee.

5.4 **Authority of Beneficiary.** If Beneficiary is a banking corporation, state banking corporation or a national banking association and the instrument of appointment of any successor or replacement Trustee is executed on Beneficiary's behalf by an officer of such corporation, state banking corporation or national banking association, then such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of Beneficiary.

5.5 **Effect of Appointment of Successor Trustee.** Upon the appointment and designation of any successor, substitute or replacement Trustee, and subject to compliance with applicable Nevada Gaming Laws and other applicable laws, Trustee's entire estate and title in the Trust Estate shall vest in the designated successor, substitute or replacement Trustee. Such successor, substitute or replacement Trustee shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon Trustee. All references herein to Trustee shall be deemed to refer to Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder.

5.6 **Confirmation of Transfer and Succession.** Upon the written request of Beneficiary or of any successor, substitute or replacement Trustee, any former Trustee ceasing to act shall execute and deliver an instrument transferring to such successor, substitute or replacement Trustee all of the right, title, estate and interest in the Trust Estate of Trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon Trustee, and shall duly assign, transfer and deliver all properties and moneys held by said Trustee hereunder to said successor, substitute or replacement Trustee.

5.7 **Exculpation.** Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or otherwise be responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence, willful misconduct or knowing violation of law. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law). Trustee shall be under no liability for interest on any moneys received by it hereunder.

5.8 **Endorsement and Execution of Documents.** Upon Beneficiary's written request, Trustee shall, without liability or notice to Trustor, execute, consent to, or join in any instrument or agreement in connection with or necessary to effectuate the purposes of the Guaranty and the other Loan

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Documents (including the Security Documents). Trustor hereby irrevocably designates Trustee as its attorney in fact to execute, acknowledge and deliver, on Trustor's behalf and in Trustor's name, all instruments or agreements necessary to implement any provision(s) of this Deed of Trust or to further perfect the lien created by this Deed of Trust on the Trust Estate. This power of attorney shall be deemed to be coupled with an interest and shall survive any disability of Trustor.

5.9 **Multiple Trustees.** If Beneficiary appoints multiple trustees, then any Trustee, individually, may exercise all powers granted to Trustee under this instrument, without the need for action by any other Trustee(s).

5.10 **Terms of Trustee's Acceptance.** Trustee accepts the trust created by this Deed of Trust upon the following terms and conditions:

- (a) **Delegation.** Trustee may exercise any of its powers through appointment of attorney(s) in fact or agents.
- (b) **Counsel.** Trustee may select and employ legal counsel (including any law firm representing Beneficiary). Trustor shall reimburse all reasonable legal fees and expenses that Trustee may thereby incur.
- (c) **Security.** Trustee shall be under no obligation to take any action upon any Event of Default unless furnished security or indemnity, in form satisfactory to Trustee, against costs, expenses, and liabilities that Trustee may incur.
- (d) **Costs and Expenses.** Trustor shall reimburse Trustee, as part of the Obligations secured hereunder, for all reasonable disbursements and expenses (including reasonable legal fees and expenses) incurred by reason of and as provided for in this Deed of Trust, including any of the foregoing incurred in Trustee's administering and executing the trust created by this Deed of Trust, in complying with all applicable Nevada Gaming Laws and performing Trustee's duties and exercising Trustee's powers under this Deed of Trust.
- (e) **Release.** Upon full and indefeasible payment and performance of the Obligations secured hereunder, Beneficiary shall request that Trustee release this Deed of Trust. Upon receipt of such request Trustee shall release this Deed of Trust to Trustor. Trustor shall pay all costs of recordation, if any.

ARTICLE SIX

MISCELLANEOUS PROVISIONS

6.1 **Heirs, Successors and Assigns Included in Parties.** Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included, and subject to the limitations set forth in Section 1.9, all covenants and agreements contained in this Deed of Trust, by or on behalf of Trustor or Beneficiary shall bind and inure to the benefit of its heirs, successors and assigns, whether so expressed or not.

6.2 **Addresses for Notices, Etc.** Any notice, report, demand or other instrument authorized or required to be given or furnished under this Deed of Trust to Trustor or Beneficiary shall be deemed given or furnished (i) when addressed to the party intended to receive the same, at the address of such party set forth below, and delivered by hand at such address or (ii) three (3) days after the same is

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deposited in the United States mail as first class certified mail, return receipt requested, postage paid, whether or not the same is actually received by such party:

Beneficiary: Deutsche Bank Trust Company Americas
31 West 52nd Street, 7th Floor
New York, New York 10019
Attn: Jeff Baevsky

With a copy to: Latham & Watkins

701 B. Street, Suite 2100
San Diego, California 92101
Attn: Sony Ben-Moshe, Esq.

Trustor: Valvino Lamore, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Legal Department

With a copy to: Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Attn: C. Kevin McGeehan

Trustee: Nevada Title Company
2500 North Buffalo, Suite 150
Las Vegas, Nevada 89128
Attn: Robbie Graham

6.3 **Change of Notice Address.** Any Person may change the address to which any such notice, report, demand or other instrument is to be delivered or mailed to that person, by furnishing written notice of such change to the other parties, but no such notice of change shall be effective unless and until received by such other parties.

6.4 **Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Deed of Trust are for convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

6.5 **Invalid Provisions to Affect No Others.** In the event that any of the covenants, agreements, terms or provisions contained herein or in the Notes, the Credit Agreement, the Guaranty or any other Loan Document (including the Security Documents) shall be invalid, illegal or unenforceable in any respect, the validity of the lien hereof and the remaining covenants, agreements, terms or provisions contained herein or in the Notes, the Credit Agreement, the Guaranty or any other Loan Document (including the Security Documents) shall be in no way affected, prejudiced or disturbed thereby. To the extent permitted by law, Trustor waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

6.6 **Changes and Priority Over Intervening Liens.** Neither this Deed of Trust nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Trustor and Beneficiary relating to this Deed of Trust shall be superior to the rights of the holder of any intervening lien or encumbrance.

6.7 **Estoppel Certificates.** Within ten (10) Business Days after Beneficiary's written request, Trustor shall from time to time execute a certificate, in recordable form (an "Estoppel Certificate"), stating, except to the extent it would be inaccurate to so state: (a) the current amount of the Obligations secured hereunder and all elements thereof, including principal, interest, and all other

elements; (b) that Trustor has no defense, offset, claim, counterclaim, right of recoupment, deduction, or reduction against any of the Obligations secured hereunder; (c) that neither the Guaranty, this Deed of Trust nor any other Loan Documents (including the Security Documents) to which it is a party have been amended, whether orally or in writing; (d) that Trustor has no claims against Beneficiary of any kind; (e) that any power of attorney granted to Beneficiary is in full force and effect; and (f) such other matters relating to this Deed of Trust, the Guaranty or any other Loan Document (including any Security Document) to which it is a party and the relationship of Trustor and Beneficiary as Beneficiary shall request. In addition, the Estoppel Certificate shall set forth the reasons why it would be inaccurate to make any of the foregoing assurances.

6.8 **Waiver of Setoff and Counterclaim.** All Obligations shall be payable without setoff, counterclaim or any deduction whatsoever. Trustor hereby waives the right to assert a counterclaim (other than a compulsory counterclaim) in any action or proceeding brought against it by Beneficiary and/or any Bank under the Loan Documents, or arising out of or in any way connected with this Deed of Trust or the other Loan Documents (including the Security Documents) or the Obligations.

6.9 **Governing Law.** The Credit Agreement, the Notes and the Guaranty provide that they are governed by, and construed and enforced in accordance with, the laws of the State of New York. This Deed of Trust shall also be construed under and governed by the laws of the State of New York; provided, however, that (i) the terms and provisions of this Deed of Trust pertaining to the priority, perfection, enforcement or realization by Beneficiary of its respective rights and remedies under this Deed of Trust with respect to the Trust Estate shall be governed and construed and enforced in accordance with the internal laws of the State of Nevada (the "State") without giving effect to the conflicts-of-law rules and principles of the State; (ii) Trustor agrees that to the extent deficiency judgments are available under the laws of the State after a foreclosure (judicial or nonjudicial) of the Trust Estate, or any portion thereof, or any other realization thereon by Beneficiary or any Bank under the Loan Documents, Beneficiary or such Bank, as the case may be, shall have the right to seek such a deficiency judgment against Trustor in the State; and (iii) Trustor agrees that if Beneficiary or any Bank under the Loan Documents obtains a deficiency judgment in another state against Trustor, then Beneficiary or such Bank, as the case may be, shall have the right to enforce such judgment in the State to the extent permitted under the laws of the State, as well as in other states.

6.10 **Required Notices.** Trustor shall notify Beneficiary promptly of the occurrence of any of the following and shall immediately provide Beneficiary a copy of the notice or documents referred to: (i) receipt of notice from any Governmental Authority relating to all or any material part of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (ii) receipt of any notice from any tenant leasing all or any material portion of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iii) receipt of notice from the holder of any Permitted Lien relating to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iv) the commencement of any proceedings or the entry of any judgment, decree or order materially affecting all or any portion of the Trust Estate or which involve the potential liability of Trustor or its Affiliates in an amount in excess of \$25,000,000

(other than for personal injury actions and related property damage suits which are covered by such insurance); or (v) commencement of any judicial or administrative proceedings or the entry of any judgment, decree or order by or against or otherwise affecting Trustor or any Affiliate of Trustor, a material portion of the Trust Estate, or a material portion of the Personal Property, or any other action by any creditor or lessor thereof as a result of any default under the terms of any lease.

6.11 **Reconveyance.** Upon written request of Trustor when the Obligations secured hereby have been satisfied in full, Beneficiary shall cause Trustee to reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of

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the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

6.12 **Attorneys' Fees.** Without limiting any other provision contained herein, Trustor agrees to pay all costs of Beneficiary or Trustee incurred in connection with the enforcement of this Deed of Trust, the Guaranty or the other Loan Documents to which it is a party, including without limitation all reasonable attorneys' fees whether or not suit is commenced, and including, without limitation, fees incurred in connection with any probate, appellate, bankruptcy, deficiency or any other litigation proceedings, all of which sums shall be secured hereby.

6.13 **Late Charges.** By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to collect any late charge thereon or interest thereon at the interest rate on the Notes or as otherwise specified in the Credit Agreement, if so provided, not then paid or its right either to require prompt payment when due of all other sums so secured or to declare default for failure to pay any amounts not so paid.

6.14 **Cost of Accounting.** Trustor shall pay to Beneficiary, for and on account of the preparation and rendition of any accounting, which Trustor may be entitled to require under any law or statute now or hereafter providing therefor, the reasonable costs thereof.

6.15 **Right of Entry.** Subject to compliance with applicable Nevada Gaming Laws, Beneficiary may at any reasonable time or times and on reasonable prior written notice to Trustor make or cause to be made entry upon and inspections of the Trust Estate or any part thereof in person or by agent.

6.16 **Corrections.** Trustor shall, upon request of Beneficiary or Trustee, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust (including, but not limited to, in the exhibits and schedules attached hereto) or in the execution or acknowledgement hereof, and shall execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Trustee to carry out more effectively the purposes of this Deed of Trust, to subject to the lien and security interest hereby created any of Trustor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.

6.17 **Statute of Limitations.** To the fullest extent allowed by the law, the right to plead, use or assert any statute of limitations as a plea or defense or bar of any kind, or for any purpose, to any debt, demand or obligation secured or to be secured hereby, or to any complaint or other pleading or proceeding filed, instituted or maintained for the purpose of enforcing this Deed of Trust or any rights hereunder, is hereby waived by Trustor.

6.18 **Subrogation.** Should the proceeds of any loan or advance made by Beneficiary or any Bank under the Credit Agreement, repayment of which is hereby secured, or any part thereof, or any amount paid out or advanced by Beneficiary or any Bank under the Credit Agreement, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior or superior lien or encumbrance upon the Trust Estate, or any part thereof, then, as additional security hereunder, Trustee, on behalf of Beneficiary, shall be subrogated to any and all rights, superior titles, liens, and equities owned or claimed by any owner or holder of said outstanding liens, charges, and indebtedness, however remote, regardless of whether said liens, charges, and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

6.19 **Joint and Several Liability.** All obligations of Trustor hereunder, if more than one, are joint and several. Recourse for deficiency after sale hereunder may be had against the property of Trustor, without, however, creating a present or other lien or charge thereon.

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6.20 **Homestead.** Trustor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Trust Estate as against the collection of the Obligations, or any part hereof.

6.21 **Context.** In this Deed of Trust, whenever the context so requires, the neuter includes the masculine and feminine, and the singular including the plural, and vice versa.

6.22 **Time.** Time is of the essence of each and every term, covenant and condition hereof. Unless otherwise specified herein, any reference to "days" in this Deed of Trust shall be deemed to mean "calendar days."

6.23 **Interpretation.** As used in this Deed of Trust unless the context clearly requires otherwise: The terms "herein" or "hereunder" and similar terms without reference to a particular section shall refer to the entire Deed of Trust and not just to the section in which such terms appear; the term "lien" shall also mean a security interest, and the term "security interest" shall also mean a lien.

6.24 **Effect of NRS 107.030.** To the extent not inconsistent herewith, the provisions of NRS 107.030 (1), (2) (in amounts as hereinabove provided for), (3), (4) (with interest at the default rate provided for under the Credit Agreement), (5), (6), (7) (reasonable), (8) and (9) are included herein by reference and made part of this Deed of Trust.

6.25 **Amendments.** This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought and only as permitted by the provisions of the Guaranty.

6.26 **No Conflicts.** In the event that any of the provisions contained here conflict with the Guaranty, the provisions contained in the Guaranty shall prevail.

6.27 **Amendment and Restatement.** This Deed of Trust amends and restates that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing by Trustor to Trustee for the benefit of Beneficiary recorded on July 2, 2002 in Book No. 20020702 as Instrument No. 00147 of Official Records in the office of the County Recorder of Clark County, Nevada (the "**Original Deed of Trust**") in its entirety. This Deed of Trust is not intended and shall not be construed or interpreted as to affect the effectiveness or priority of the Original Deed of Trust.

ARTICLE SEVEN

POWER OF ATTORNEY

7.1 **Grant of Power.** Subject to compliance with applicable Nevada Gaming Laws, Trustor irrevocably appoints Beneficiary and any successor thereto as its attorney-in-fact, with full power and authority, including the power of substitution, exercisable only during the continuance of an Event of Default to act for Trustor in its name, place and stead as hereinafter provided:

7.1.1 **Possession and Completion.** To take possession of the Site and the Project, remove all employees, contractors and agents of Trustor therefrom, complete or attempt to complete the work of construction, and market, sell or lease the Site and the Project.

7.1.2 **Plans.** To make such additions, changes and corrections in the current Plans and Specifications as may be necessary or desirable, in Beneficiary's reasonable discretion, or as it deems proper to complete the Project.

7.1.3 **Employment of Others.** To employ such contractors, subcontractors, suppliers, architects, inspectors, consultants, property managers and other agents as Beneficiary, in its discretion, deems proper for the completion of the Project, for the protection or clearance of title to the Site or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.4 **Security Guards.** To employ watchmen to protect the Site and the Project from injury.

7.1.5 **Compromise Claims.** To pay, settle or compromise all bills and claims then existing or thereafter arising against Trustor, which Beneficiary, in its discretion, deems proper for the protection or clearance of title to the Site or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

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7.1.6 **Legal Proceedings.** To prosecute and defend all actions and proceedings in connection with the Site or the Project.

7.2 **Other Acts.** To execute, acknowledge and deliver all other instruments and documents in the name of Trustor that are necessary or desirable, to exercise Trustor's rights under all contracts concerning the Site or the Project, including, without limitation, under any Space Leases, and to do all other acts with respect to the Site or the Project that Trustor might do on its own behalf, as Beneficiary, in its reasonable discretion, deems proper.

ARTICLE EIGHT

GUARANTOR PROVISIONS

8.1 **Absolute and Unconditional Obligations.** All rights of Administrative Agent and all obligations of Trustor hereunder shall be absolute and unconditional irrespective of (i) any lack of validity, legality or enforceability of the Credit Agreement, any Note, or any other Loan Document, (ii) the failure of any Bank or any holder of any of the Obligations to assert any claim or demand or to enforce any right or remedy against Borrower, Trustor or any other Person (including any other guarantor of the Obligations) under the provisions of the Credit Agreement, any Note, any other Loan Document or otherwise or to exercise any right or remedy against any other guarantor of, or collateral securing, any of the Obligations, (iii) any change in the time, manner or place of payment of, or in any other term of, all of the Obligations, or any other extension or renewal of any Obligation, (iv) any reduction, limitation, impairment or termination of any of the Obligations for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to, and Trustor hereby waives any right to or claim of, any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, nongenuineness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, any Obligation, (v) any amendment to, rescission, waiver, or other modification of, or any consent to departure from, any of the terms of the Credit Agreement, any Note or any other Loan Document, (vi) any sale, exchange, release or surrender of, realization upon or other manner or order of dealing with any property by whomsoever pledged or mortgaged to secure or howsoever securing the Obligations or any liabilities or obligations (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof and/or any offset there against, (vii) the application of any sums by whomsoever paid or howsoever realized to any obligations and liabilities of Borrower or any other Person to the Banks under the Loan Documents in the manner provided therein regardless of what obligations and liabilities remain unpaid, (viii) any action or failure to act in any manner referred to in this Deed of Trust which may deprive Trustor of its right to subrogation against Borrower or any other Person to recover full indemnity for any payments or performances made pursuant to this Deed of Trust or of its right of contribution against any other party and (ix) any other circumstance which might otherwise constitute a defense available to, or a legal or equitable discharge of, Borrower, any other Person, Trustor, any surety or any guarantor.

8.2 **Waiver.** Trustor hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including (i) any right to require Administrative Agent or any other Bank to proceed against Borrower or any other Person or to proceed against or exhaust any security held by Administrative Agent or any other Bank at any time or to pursue any other remedy in Administrative Agent's or any other Bank's power before proceeding against Trustor, (ii) any defense that may arise by reason of the incapacity, lack of power or authority, death, dissolution, merger, termination or disability of Borrower or any other Person or the failure of Administrative Agent or any other Bank to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of Borrower or any other Person, (iii) demand, presentment, protest and notice of any kind except as provided herein, including notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Borrower, Administrative Agent, any other Bank, any endorser

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or creditor of Borrower, Trustor or on the part of any other Person under this or any other instrument in connection with any obligation or evidence of indebtedness held by Administrative Agent or any other Bank as collateral or in connection with any Obligation, (iv) any defense based upon an election of remedies by Administrative Agent or any other Bank, including an election to proceed by non-judicial rather than judicial foreclosure, which destroys or otherwise impairs the subrogation rights of Trustor, the right of Trustor to proceed against Borrower or any other Person for reimbursement, or both, (v) any defense based on any offset against any amounts which may be owed by any Person to Trustor for any reason whatsoever, (vi) any defense based on any act, failure to act, delay or omission whatsoever on the part of Borrower or any other Person of the failure by Borrower or any other Person to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the Loan Documents, (vii) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal, provided, that, upon payment or performance in full of the Obligations, this Deed of Trust shall no longer be of any force or effect, (viii) any defense, setoff or counterclaim which may at any time be available to or asserted by Borrower or any other Person against Administrative Agent, any other Bank or any other Person under the Loan Documents, (ix) any duty on the part of Administrative Agent or any other Bank to disclose to Trustor any facts Administrative Agent or any other Bank may now or hereafter know about Borrower or any other Person, regardless of whether Administrative Agent or such Bank have reason to believe that any such facts materially increase the risk beyond that which Trustor intends to assume, or have reason to believe that such facts are unknown to Trustor, or have a reasonable opportunity to communicate such facts to Trustor, since Trustor acknowledges that Trustor is fully responsible for being and keeping informed of the financial condition of Borrower and any other Person liable for the Obligations and of all circumstances bearing on the risk of non-payment or non-performance of any obligations and liabilities hereby guaranteed, (x) the fact that Trustor may at any time in the future dispose of all or part of its direct or indirect interest in Borrower or any other Person or otherwise cease to be an Affiliate of Borrower or any other Person, as the case may be, (xi) any defense based on any change in the time, manner or place of any payment or performance under, or in any other term of, the Loan Documents or any other amendment, renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of the Loan Documents, (xii) any defense arising because of Administrative Agent's or any other Bank's election, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code, and (xiii) any defense based upon any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code. To the fullest extent permitted by NRS 40.485 (1) and (2), the provisions of NRS 40.430 are waived.

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IN WITNESS WHEREOF, Trustor has executed this Amended and Restated Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing as of the day and year first above written.

TRUSTOR:

VALVINO LAMORE, LLC,
a Nevada limited liability company,

By: Wynn Resorts, Limited
a Nevada corporation, its sole member

By: /s/ MARC H. RUBINSTEIN

Name: Marc H. Rubinstein

Title: Senior Vice President, General Counsel and Secretary

QuickLinks

[Exhibit 10.40](#)

[AMENDED AND RESTATED DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING MADE BY VALVINO LAMORE, LLC, a Nevada limited liability company, as Trustor, to Nevada Title Company, a Nevada corporation, as Trustee, for the benefit of DEUTSCHE BANK TRUST COMPANY AMERICAS, in its capacity as Administrative Agent for the benefit of the Banks, as Beneficiary.](#)

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WYNN Resorts, Limited

2002 STOCK INCENTIVE PLAN

1. *Purposes of the Plan.* The purposes of this Plan are:

- (a) to attract and retain the best available personnel for positions of substantial responsibility,
- (b) to provide additional incentive to selected key Employees, Consultants and Directors, and
- (c) to promote the success of the Company's business.

2. *Definitions.* For the purposes of this Plan, the following terms will have the following meanings:

(a) "**Administrator**" means the Board or any of its Committees that administer the Plan, in accordance with Section 4.

(b) "**Applicable Laws**" means the legal requirements relating to the administration of and issuance of securities under stock incentive plans, including, without limitation, the requirements of state corporations law, federal and state securities law, federal and state tax law, and the requirements of any stock exchange or quotation system upon which the Shares may then be listed or quoted. For all purposes of this Plan, references to statutes and regulations shall be deemed to include any successor statutes and regulations, to the extent reasonably appropriate as determined by the Administrator.

(c) "**Board**" means the Board of Directors of the Company.

(d) "**Cause**" shall have the meaning set forth in a Grantee's employment or consulting agreement with the Company (if any), or if not defined therein, shall mean (i) acts or omissions by the Grantee which constitute intentional material misconduct or a knowing violation of a material policy of the Company or any of its subsidiaries, (ii) the Grantee personally receiving a benefit in money, property or services from the Company or any of its subsidiaries or from another person dealing with the Company or any of its subsidiaries, in material violation of applicable law or Company policy, (iii) an act of fraud, conversion, misappropriation, or embezzlement by the Grantee or his conviction of, or entering a guilty plea or plea of no contest with respect to, a felony, or the equivalent thereof (other than DUI), or (iv) any material misuse or improper disclosure of confidential or proprietary information of the Company.

(e) "**Code**" means the Internal Revenue Code of 1986, as amended. For all purposes of this Plan, references to Code sections shall be deemed to include any successor Code sections, to the extent reasonably appropriate as determined by the Administrator.

(f) "**Committee**" means a Committee appointed by the Board in accordance with Section 4.

(g) "**Common Stock**" means the common stock, \$0.01 par value per share, of the Company.

(h) "**Company**" means Wynn Resorts, Limited, a Nevada corporation.

(i) "**Consultant**" means any natural person, including an advisor, engaged by the Company or a Parent or Subsidiary to render bona fide services and who is compensated for such services, provided that the term "Consultant" does not include (i) Employees, (ii) Directors who are paid only a director's fee by the Company or who are not compensated by the Company for their services as Directors or (iii) any person who provides services in connection with the offer or sale of securities in a capital-raising transaction, or who directly or indirectly promotes or maintains a market for the securities of the Company.

(j) "**Continuous Status as an Employee, Director or Consultant**" means that the employment, director or consulting relationship is not interrupted or terminated by the Company, any Parent or Subsidiary, or by the Employee, Director or Consultant. Continuous Status as an Employee, Director or Consultant will not be considered interrupted in the case of: (i) any leave of absence approved by the Board or required by Applicable Law, including sick leave, military leave, or any other personal leave,

provided, that for purposes of Incentive Stock Options, any such leave may not exceed 90 days, unless reemployment upon the expiration of such leave is guaranteed by contract (including certain Company policies) or statute; (ii) transfers between locations of the Company or between the Company, its Parent, its Subsidiaries or its successor, or (iii) in the case of a Nonqualified Stock Option or Stock Award, the ceasing of a person to be an Employee while such person remains a Director or Consultant, the ceasing of a person to be a Director while such person remains an Employee or Consultant, or the ceasing of a person to be a Consultant while such person remains an Employee or Director.

(k) "**Director**" means a member of the Board.

(l) "**Disability**" means total and permanent disability as defined in Section 22(e)(3) of the Code.

(m) "**Employee**" means any person, including Officers and Directors employed as a common law employee by the Company or any Parent or Subsidiary of the Company. Neither service as a Director nor payment of a director's fee by the Company will be sufficient, in and of itself, to constitute "employment" by the Company.

(n) "**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

(o) "**Fair Market Value**" means, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation, the National Market System of NASDAQ, the Fair Market Value of a Share of Common Stock will be (A) the closing sales price for such stock (or the closing bid, if no sales are reported) as quoted on that system or exchange (or the system or exchange with the greatest volume of trading in Common Stock) on the last market trading day prior to the day of determination, or (B) any sales price for such stock (or the closing bid, if no sales are reported) as quoted on that system or exchange (or the system or exchange with the greatest volume of trading in Common Stock) on the day of determination, as the Administrator may select, as reported in the *Wall Street Journal* or any other source the Administrator considers reliable.

(ii) If the Common Stock is quoted on the NASDAQ System (but not on the NASDAQ National Market System) or is regularly quoted by recognized securities dealers but selling prices are not reported, the Fair Market Value of a Share of Common Stock will be the mean between the high bid and low asked prices for the Common Stock on (A) the last market trading day prior to the day of determination, or (B) the day of determination, as the Administrator may select, as reported in the *Wall Street Journal* or any other source the Administrator considers reliable.

(iii) If the Common Stock is not traded as set forth above, the Fair Market Value will be determined in good faith by the Administrator with reference to the earnings history, book value and prospects of the Company in light of market conditions generally, and any other factors the Administrator considers appropriate, such determination by the Administrator to be final, conclusive and binding.

(p) "**Family Member**" means any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person sharing the Grantee's household (other than a tenant or employee), a trust in which these persons (or the Grantee) control the management of assets, and any other entity in which these persons (or the Grantee) own more than fifty percent of the voting interests.

(q) "**Grant Notice**" shall mean a written notice evidencing certain terms and conditions of an individual Option grant. The Grant Notice is part of the Option Agreement.

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(r) "**Grantee**" shall mean (i) any Optionee or (ii) any Employee, Consultant or Director to whom a Stock Award has been granted pursuant to this Plan.

(s) "**Incentive Stock Option**" means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(t) "**NASDAQ**" means the National Association of Securities Dealers, Ltd. Automated Quotation System.

(u) "**Nonqualified Stock Option**" means an Option not intended to qualify as an Incentive Stock Option.

(v) "**Officer**" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(w) "**Option**" means a stock option granted under this Plan.

(x) "**Option Agreement**" means a written agreement between the Company and an Optionee evidencing the terms and conditions of an individual Option grant. Each Option Agreement is subject to the terms and conditions of this Plan.

(y) "**Option Exchange Program**" means a program in which outstanding Options are surrendered in exchange for Options with a lower exercise price.

(z) "**Optioned Stock**" means the Common Stock subject to an Option.

(aa) "**Optionee**" means an Employee, Consultant or Director who holds an outstanding Option.

(bb) "**Parent**" means a "parent corporation" with respect to the Company, whether now or later existing, as defined in Section 424(e) of the Code.

(cc) "**Plan**" means this 2002 Stock Incentive Plan.

(dd) "**Section**" means, except as otherwise specified, a section of this Plan.

(ee) "**Share**" means a share of the Common Stock, as adjusted in accordance with Section 15.

(ff) "**Stock Award**" shall mean a grant or sale by the Company of a specified number of Shares upon terms and conditions determined by the Administrator.

(gg) "**Subsidiary**" means (i) a "subsidiary corporation" with respect to the Company, whether now or later existing, as defined in Section 424(f) of the Code, or (ii) a limited liability company, whether now or later existing, which would be a "subsidiary corporation" with respect to the Company under Section 424(f) of the Code if it were a corporation.

3. *Stock Subject to the Plan.* Subject to the provisions of Section 15 of the Plan, the maximum aggregate number of Shares which may be issued under the Plan will be 9,750,000 Shares of Common Stock. The Shares may be authorized, but unissued, or reacquired Common Stock.

If an Option expires or becomes unexercisable without having been exercised in full, or is surrendered pursuant to an Option Exchange Program, or if a Stock Award shall be cancelled or surrendered or expire for any reason without having been received in full, the Shares that were not purchased or received or that were cancelled will become available for future grant or sale under the Plan (unless the Plan has terminated). If the Company repurchases Shares which were issued pursuant to the exercise of an Option or grant of a Stock Award, however, those repurchased Shares will not be available for future grant under the Plan.

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4. Administration of the Plan.

(a) Procedure.

(i) *Composition of the Administrator.* Unless the Board expressly resolves to the contrary, the Plan will be administered only by a Committee, which will then consist solely of persons appointed by the Board, each of whom are both "non-employee directors" within the meaning of Rule 16b-3 promulgated under the Exchange Act and "outside directors" within the meaning of Section 162(m) of the Code; provided, however, the failure of the Committee to be composed solely of individuals who are both "non-employee directors" and "outside directors" shall not render ineffective or void any awards or grants made by, or other actions taken by, such Committee.

(ii) *Multiple Administrative Bodies.* The Plan may be administered by different bodies with respect to Directors, Officers who are not Directors, and Employees and Consultants who are neither Directors nor Officers.

(b) *Powers of the Administrator.* Subject to the provisions of the Plan, and in the case of a Committee, subject to the specific duties delegated by the Board to that Committee, the Administrator will have the authority, in its discretion:

(i) to determine the Fair Market Value of the Common Stock, in accordance with Section 2(o);

(ii) to select the Consultants, Employees or Directors to whom Options or Stock Awards may be granted;

(iii) to determine whether and to what extent Options or Stock Awards are granted, and whether Options are intended as Incentive Stock Options or Nonqualified Stock Options;

(iv) to determine the number of Shares to be covered by each Option or Stock Award granted;

(v) to approve forms of Grant Notices, Option Agreements and agreements governing Stock Awards;

(vi) to determine the terms and conditions, not inconsistent with the terms of this Plan, of any grant of Options or Stock Awards, including, but not limited to, (A) the Options' exercise price, (B) the time or times when Options may be exercised or Stock Awards will be vested, which may be based on performance criteria or other reasonable conditions such as Continuous Status as an Employee, Director or Consultant, (C) any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Option, Optioned Stock or Stock Award, based in each case on factors that the Administrator determines in its sole discretion, including but not limited to a requirement subjecting the Optioned Stock or Shares to (1) certain restrictions on transfer (including without limitation a prohibition on transfer for a specified period of time and/or a right of first refusal in favor of the Company), and (2) a right of repurchase in favor of the Company upon termination of the Grantee's Continuous Status as an Employee, Director or Consultant;

(vii) to reduce the exercise price of any Option to the Fair Market Value at the time of the reduction, if the Fair Market Value of the Common Stock covered by that Option has declined since the date it was granted;

(viii) to accelerate the vesting or exercisability of an Option or Stock Award;

(ix) to determine the terms and restrictions applicable to Options or Stock Awards;

(x) to modify or amend each Option or Stock Award, subject to Section 17(c);

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(xi) to authorize any person to execute on behalf of the Company any instrument required to effect the grant of an Option previously granted by the Administrator;

(xii) to institute an Option Exchange Program;

(xiii) to construe and interpret the terms of this Plan;

(xiv) to prescribe, amend, and rescind rules and regulations relating to the administration of this Plan; and

(xv) to make all other determinations it considers necessary or advisable for administering this Plan.

(c) *Effect of Administrator's Decision.* The Administrator's decisions, determinations and interpretations will be final and binding on all holders of Options or Stock Awards. The Administrator shall not be required to exercise its authority or discretion on a uniform or nondiscriminatory basis.

5. *Eligibility.* Options granted under this Plan may be Incentive Stock Options or Nonqualified Stock Options, as determined by the Administrator at the time of grant. Nonqualified Stock Options and Stock Awards may be granted to Employees, Consultants and Directors. Incentive Stock Options may be granted only to Employees; provided, however, that Incentive Stock Options shall not be granted to Employees of a Subsidiary that is a limited liability company unless such limited liability company is wholly-owned by the Company or by a Subsidiary that is a corporation. If otherwise eligible, an Employee, Consultant or Director who has been granted an Option or a Stock Award may be granted additional Options or Stock Awards.

6. *Limitations on Grants of Incentive Stock Options.* Each Option will be designated in the Grant Notice as either an Incentive Stock Option or a Nonqualified Stock Option. However, notwithstanding such designations, if the Shares subject to an Optionee's Incentive Stock Options (granted under all plans of the Company or any Parent or Subsidiary), which become exercisable for the first time during any calendar year, have a Fair Market Value in excess of \$100,000, the

Options accounting for this excess will be treated as Nonqualified Stock Options. For purposes of this Section 6, Incentive Stock Options will be taken into account in the order in which they were granted, and the Fair Market Value of the Shares will be determined as of the time of grant.

7. *Limit on Annual Grants to Individuals.* From and after such time as the Company is required to be registered pursuant to Section 12 of the Exchange Act, no Optionee may receive grants, during any fiscal year of the Company or portion thereof, of Options which, in the aggregate, cover more than 1,500,000 Shares, subject to adjustment as provided in Section 15. If an Option expires or terminates for any reason without having been exercised in full, the unpurchased shares subject to that expired or terminated Option will continue to count against the maximum numbers of shares for which Options may be granted to an Optionee during any fiscal year of the Company or portion thereof.

8. *Term of the Plan.* Subject to Section 21, this Plan will become effective upon the earlier to occur of its adoption by the Board or its approval by the shareholders of the Company as described in Section 21. It will continue in effect for a term of ten years unless terminated earlier under Section 17. Unless otherwise provided in this Plan, its termination will not affect the validity of any Option or Stock Award outstanding at the date of termination, which shall continue to be governed by the terms of this Plan as though it remained in effect.

9. *Term of Option.* The term of each Option will be stated in the Option Agreement; *provided, however*, that in no event may the term be more than ten years from the date of grant. In addition, in the case of an Incentive Stock Option granted to an Optionee who, at the time the Incentive Stock Option is granted, owns stock representing more than ten percent of the voting power of all classes of capital stock of the Company or any Parent or Subsidiary, the term of the Incentive Stock Option will be five years from the date of grant or any shorter term specified in the Option Agreement.

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10. *Option Exercise Price and Consideration.*

(a) *Exercise Price of Incentive Stock Options.* The exercise price for Shares to be issued pursuant to exercise of an Incentive Stock Option will be determined by the Administrator provided that the per Share exercise price will be no less than 100% of the Fair Market Value per Share on the date of grant; provided, further that in the case of an Incentive Stock Option granted to an Employee who, at the time the Incentive Stock Option is granted, owns stock representing more than ten percent of the voting power of all classes of capital stock of the Company or any Parent or Subsidiary, the per Share exercise price will be no less than 110% of the Fair Market Value per Share on the date of grant.

(b) *Exercise Price of Nonqualified Stock Options.* In the case of a Nonqualified Stock Option, the exercise price for Shares to be issued pursuant to the exercise of any such Option will be determined by the Administrator.

(c) *Waiting Period and Exercise Dates.* At the time an Option is granted, the Administrator will fix the period within which the Option may be exercised and will determine any conditions which must be satisfied before the Option may be exercised. Exercise of an Option may be conditioned upon performance criteria or other reasonable conditions such as Continuous Status as an Employee, Director or Consultant.

(d) *Form of Consideration.* The Administrator will determine the acceptable form of consideration for exercising an Option, including the method of payment. Such consideration may consist partially or entirely of:

(i) cash;

(ii) to the extent permitted by Applicable Law, a promissory note made by the Optionee in favor of the Company;

(iii) other Shares which have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which an Option will be exercised;

(iv) delivery of a properly executed exercise notice together with any other documentation as the Administrator and the Optionee's broker, if applicable, require to effect an exercise of the Option and delivery to the Company of the sale or loan proceeds required to pay the exercise price; or

(v) any other consideration and method of payment for the issuance of Shares to the extent permitted by Applicable Laws.

11. *Exercise of Option.*

(a) *Procedure for Exercise; Rights as a Shareholder.* Any Option granted hereunder will be exercisable according to the terms of the Plan and at times and under conditions determined by the Administrator and set forth in the Option Agreement; *provided, however*, that an Option may not be exercised for a fraction of a Share.

An Option will be deemed exercised when the Company receives: (i) written notice of exercise (in accordance with the Option Agreement) from the person entitled to exercise the Option, (ii) full payment for the Shares with respect to which the Option is exercised, and (iii) all representations, indemnifications and documents reasonably requested by the Administrator. Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Option Agreement and this Plan. Shares issued upon exercise of an Option will be issued in the name of the Optionee or, if requested by the Optionee, in the name of the Optionee and his or her spouse. Until the stock certificate evidencing such Shares is issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a shareholder will exist with respect to the Optioned Stock,

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notwithstanding the exercise of the Option. Subject to the provisions of Sections 14, 18, and 19, the Company will issue (or cause to be issued) such stock certificate promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the stock certificate is issued, except as provided in Section 15 of the Plan. Notwithstanding the foregoing, the Administrator in its discretion may require the Company to retain possession of any certificate evidencing Shares of Common Stock acquired upon exercise of an Option, if those Shares remain subject to repurchase under

the provisions of the Option Agreement or any other agreement between the Company and the Optionee, or if those Shares are collateral for a loan or obligation due to the Company.

Exercising an Option in any manner will decrease the number of Shares thereafter available, both for purposes of this Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(b) *Termination of Employment or Consulting Relationship or Directorship.* If an Optionee holds exercisable Options on the date his or her Continuous Status as an Employee, Director or Consultant terminates (other than because of termination due to Cause, death or Disability), the Optionee may exercise the Options that were vested and exercisable as of the date of termination for a period of 90 days following such termination (or such other period as is set forth in the Option Agreement or determined by the Administrator). If the Optionee is not entitled to exercise his or her entire Option at the date of such termination, the Shares covered by the unexercisable portion of the Option will revert to the Plan, unless otherwise set forth in the Option Agreement or determined by the Administrator. The Administrator may determine in its sole discretion that such unexercisable portion of the Option will become exercisable at such times and on such terms as the Administrator may determine in its sole discretion. If the Optionee does not exercise an Option within the time specified above after termination, that Option will expire, and the Shares covered by it will revert to the Plan, unless otherwise set forth in the Option Agreement or determined by the Administrator.

(c) *Disability of Optionee.* If an Optionee holds exercisable Options on the date his or her Continuous Status as an Employee, Director or Consultant terminates because of Disability, the Optionee may exercise the Options that were vested and exercisable as of the date of termination for a period of 12 months following such termination (or such other period as is set forth in the Option Agreement or determined by the Administrator). If the Optionee is not entitled to exercise his or her entire Option at the date of such termination, the Shares covered by the unexercisable portion of the Option will revert to the Plan, unless otherwise set forth in the Option Agreement or determined by the Administrator. The Administrator may determine in its sole discretion that such unexercisable portion of the Option will become exercisable at such times and on such terms as the Administrator may determine in its sole discretion. If the Optionee does not exercise an Option within the time specified above after termination, that Option will expire, and the Shares covered by it will revert to the Plan, unless otherwise set forth in the Option Agreement or determined by the Administrator.

(d) *Death of Optionee.* If an Optionee holds exercisable Options on the date his or her death, the Optionee's estate or a person who acquired the right to exercise the Option by bequest or inheritance may exercise the Options that were vested and exercisable as of the date of death for a period of 12 months following the date of death (or such other period as is set forth in the Option Agreement or determined by the Administrator). If the Optionee is not entitled to exercise his or her entire Option at the date of death, the Shares covered by the unexercisable portion of the Option will revert to the Plan, unless otherwise set forth in the Option Agreement or determined by the Administrator. The Administrator may determine in its sole discretion that such unexercisable portion of the Option will become exercisable at such times and on such terms as the Administrator may determine in its sole discretion. If the Optionee's estate or a person who acquired the right to exercise the Option by bequest or inheritance does not exercise an Option within the time specified above after

termination, that Option will expire, and the Shares covered by it will revert to the Plan, unless otherwise set forth in the Option Agreement or determined by the Administrator.

(e) *Termination for Cause.* If an Optionee's Continuous Status as an Employee, Director or Consultant is terminated for Cause, then all Options (including any vested Options) held by Optionee shall immediately be terminated and cancelled.

(f) *Disqualifying Dispositions of Incentive Stock Options.* If Common Stock acquired upon exercise of any Incentive Stock Option is disposed of in a disposition that, under Section 422 of the Code, disqualifies the holder from the application of Section 421(a) of the Code, the holder of the Common Stock immediately before the disposition will comply with any requirements imposed by the Company in order to enable the Company to secure the related income tax deduction to which it is entitled in such event.

12. *Non-Transferability of Options.*

(a) *No Transfer.* An Option may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Optionee, only by the Optionee. Notwithstanding the foregoing, to the extent that the Administrator so authorizes at the time a Nonqualified Stock Option is granted or amended, (i) such Option may be assigned pursuant to a qualified domestic relations order as defined by the Code, and exercised by the spouse or former spouse of the Optionee who obtained such Option pursuant to such qualified domestic relations order, or (ii) such Option may be assigned, in whole or in part, during the Optionee's lifetime to one or more Family Members of the Optionee. Rights under the assigned portion may be exercised by the Family Member(s) who acquire a proprietary interest in such Option pursuant to the assignment. The terms applicable to the assigned portion shall be the same as those in effect for the Option immediately before such assignment and shall be set forth in such documents issued to the assignee as the Administrator deems appropriate.

(b) *Designation of Beneficiary.* An Optionee may file a written designation of a beneficiary who is to receive any Options that remain unexercised in the event of the Optionee's death. If a participant is married and the designated beneficiary is not the spouse, spousal consent will be required for the designation to be effective. The Optionee may change such designation of beneficiary at any time by written notice to the Administrator, subject to the above spousal consent requirement.

(c) *Effect of No Designation.* If an Optionee dies and there is no beneficiary validly designated and living at the time of the Optionee's death, the Company will deliver such Optionee's Options to the executor or administrator of his or her estate, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its discretion, may deliver such Options to the spouse or to any one or more dependents or relatives of the Optionee, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

(d) *Death of Spouse or Dissolution of Marriage.* If an Optionee designates his or her spouse as beneficiary, that designation will be deemed automatically revoked if the Optionee's marriage is later dissolved. Similarly, any designation of a beneficiary will be deemed automatically revoked upon the death of the beneficiary if the beneficiary predeceases the Optionee. Without limiting the generality of the preceding sentence, the interest in Options of a spouse of an Optionee who has predeceased the Optionee or (except as provided in Section 12(a) regarding qualified domestic relations orders) whose marriage has been dissolved will automatically pass to the Optionee, and will not be transferable by such spouse in any manner, including but not limited to such spouse's will, nor will any such interest pass under the laws of intestate succession.

13. *Stock Awards.*

(a) *Grant.* Subject to the express provisions and limitations of the Plan, the Administrator, in its sole and absolute discretion, may grant Stock Awards to Employees, Consultants or Directors for a number of shares of Common Stock on such terms and conditions and to such Employees, Consultants or Directors as it deems advisable and specifies in the respective grants. Subject to the limitations and restrictions set forth in the Plan, an Employee, Consultant or Director who has been granted an Option or Stock Award may, if otherwise eligible, be granted additional Options or Stock Awards if the Administrator shall so determine.

(b) *Restrictions.* The Administrator, in its sole and absolute discretion, may impose restrictions in connection with any Stock Award, including without limitation, (i) imposing a restricted period during which all or a portion of the Common Stock subject to the Stock Award may not be sold, assigned, transferred, pledged or otherwise encumbered (the "**Restricted Period**"), (ii) providing for a vesting schedule with respect to such Common Stock such that if a Grantee ceases to be an Employee, Consultant or Director during the Restricted Period, some or all of the shares of Common Stock subject to the Stock Award shall be immediately forfeited and returned to the Company. The Administrator may, at any time, reduce or terminate the Restricted Period. Each certificate issued in respect of shares of Common Stock pursuant to a Stock Award which is subject to restrictions shall be registered in the name of the Grantee, shall be deposited by the Grantee with the Company together with a stock power endorsed in blank and shall bear an appropriate legend summarizing the restrictions imposed with respect to such shares of Common Stock.

(c) *Rights As Shareholder.* Subject to the terms of any agreement governing a Stock Award, the Grantee of a Stock Award shall have all the rights of a shareholder with respect to the Common Stock issued pursuant to a Stock Award, including the right to vote such Shares; provided, however, that dividends or distributions paid with respect to any such Shares which have not vested shall be deposited with the Company and shall be subject to forfeiture until the underlying Shares have vested unless otherwise provided by the Administrator in its sole discretion. A Grantee shall not be entitled to interest with respect to the dividends or distributions so deposited.

14. *Withholding Taxes.* The Company will have the right to take whatever steps the Administrator deems necessary or appropriate to comply with all applicable federal, state, local, and employment tax withholding requirements, and the Company's obligations to deliver Shares upon the exercise of an Option or in connection with a Stock Award will be conditioned upon compliance with all such withholding tax requirements. Without limiting the generality of the foregoing, upon the exercise of an Option, the Company will have the right to withhold taxes from any other compensation or other amounts which it may owe to the Optionee, or to require the Optionee to pay to the Company the amount of any taxes which the Company may be required to withhold with respect to the Shares issued on such exercise. Without limiting the generality of the foregoing, the Administrator in its discretion may authorize the Grantee to satisfy all or part of any withholding tax liability by (a) having the Company withhold from the Shares which would otherwise be issued in connection with a Stock Award or on the exercise of an Option that number of Shares having a Fair Market Value, as of the date the withholding tax liability arises, equal to or less than the amount of the Company's withholding tax liability, or (b) by delivering to the Company previously-owned and unencumbered Shares of the Common Stock having a Fair Market Value, as of the date the withholding tax liability arises, equal to or less than the amount of the Company's withholding tax liability.

15. *Adjustments Upon Changes in Capitalization, Dissolution, Merger or Asset Sale.*

(a) *Changes in Capitalization.* Subject to any required action by the shareholders of the Company, if the outstanding shares of Common Stock are increased, decreased, changed into or exchanged for a different number or kind of shares or securities of the Company or a successor entity, or for other property (including without limitation, cash), through reorganization, recapitalization,

reclassification, stock combination, stock dividend, stock split, reverse stock split, spin off or other similar transaction, an appropriate and proportionate adjustment will be made in the maximum number and kind of shares as to which Options and Stock Awards may be granted under this Plan. A corresponding adjustment changing the number or kind of shares allocated to Stock Awards or unexercised Options which have been granted prior to any such change will likewise be made. Any such adjustment in the outstanding Options will be made without change in the aggregate purchase price applicable to the unexercised portion of the Options but with a corresponding adjustment in the price for each share or other unit of any security covered by the Option. Such adjustment will be made by the Administrator, whose determination in that respect will be final, binding, and conclusive.

Where an adjustment under this Section 15(a) is made to an Incentive Stock Option, the adjustment will be made in a manner which will not be considered a "modification" under the provisions of subsection 424(h)(3) of the Code.

(b) *Dissolution or Liquidation.* In the event of the proposed dissolution or liquidation of the Company, to the extent that an Option had not been previously exercised or a Stock Award had not previously vested, it will terminate immediately prior to the consummation of such proposed dissolution or liquidation. In such instance, the Administrator may, in the exercise of its sole discretion, declare that any Stock Award shall become vested or any Option will terminate as of a date fixed by the Administrator and give each Optionee the right to exercise his or her Option as to all or any part of the Optioned Stock, including Shares as to which the Option would not otherwise be exercisable.

(c) *Corporate Transaction.* Upon the happening of a merger, reorganization or sale of substantially all of the assets of the Company, the Administrator, may, in its sole discretion, do one or more of the following: (i) shorten the period during which Options are exercisable (provided they remain exercisable for at least 30 days after the date notice of such shortening is given to the Optionees); (ii) accelerate any vesting schedule to which an Option or Stock Award is subject; (iii) arrange to have the surviving or successor entity or any parent entity thereof assume the Stock Awards and the Options or grant replacement options with appropriate adjustments in the option prices and adjustments in the number and kind of securities issuable upon exercise or adjustments so that the Options or their replacements represent the right to purchase the shares of stock, securities or other property (including cash) as may be issuable or payable as a result of such transaction with respect to or in exchange for the number of Shares of Common Stock purchasable and receivable upon exercise of the Options had such exercise occurred in full prior to such transaction; or (iv) cancel Options or Stock Awards upon payment to the Optionees or Grantees in cash, with respect to each Option or Stock Award to the extent then exercisable or vested (including, if applicable, any Options or Stock Awards as to which the vesting schedule has been accelerated as contemplated in clause (ii) above), of an amount that is the equivalent of the excess of the Fair Market Value of the Common Stock (at the effective time of the merger, reorganization, sale or other event) over (in the case of Options) the exercise price of the Option. The Administrator may also provide for one or more of the foregoing alternatives in any particular Option Agreement or agreement governing a Stock Award.

16. *Date of Grant.* The date of grant of an Option or Stock Award will be, for all purposes, the date as of which the Administrator makes the determination granting such Option or Stock Award, or any other, later date determined by the Administrator and specified in the Option Agreement. Notice of the determination will be provided to each Grantee within a reasonable time after the date of grant.

17. *Amendment and Termination of the Plan.*

(a) *Amendment and Termination.* The Board may at any time amend, alter or suspend or terminate the Plan.

(b) *Shareholder Approval.* The Company will obtain shareholder approval of any Plan amendment that increases the number of Shares for which Options or Stock Awards may be granted,

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or to the extent necessary and desirable to comply with Section 422 of the Code (or any successor statute) or other Applicable Laws, or the requirements of any exchange or quotation system on which the Common Stock is listed or quoted. Such shareholder approval, if required, will be obtained in such a manner and to such a degree as is required by the Applicable Law or requirement.

(c) *Effect of Amendment or Termination.* No amendment, alteration, suspension or termination of the Plan will impair the rights of a Grantee, unless mutually agreed otherwise between the Grantee and the Administrator. Any such agreement must be in writing and signed by the Grantee and the Company.

18. *Conditions Upon Issuance of Shares.*

(a) *Legal Compliance.* Shares will not be issued in connection with a Stock Award or pursuant to the exercise of an Option unless the exercise of such Option and the issuance and delivery of such Shares will comply with all Applicable Laws, and will be further subject to the approval of counsel for the Company with respect to such compliance. Any securities delivered under the Plan will be subject to such restrictions, and the person acquiring such securities will, if requested by the Company, provide such assurances and representations to the Company as the Company may deem necessary or desirable to assure compliance with all Applicable Laws. To the extent permitted by Applicable Laws, the Plan and Options and Stock Awards granted hereunder will be deemed amended to the extent necessary to conform to such laws, rules and regulations.

(b) *Investment Representation.* As a condition to the exercise of an Option or grant of a Stock Award, the Company may require the person exercising such Option or receiving such Stock Award to represent and warrant at the time of any such exercise or receipt that the Shares are being acquired only for investment and without any present intention to sell, transfer, or distribute such Shares.

19. *Liability of Company.*

(a) *Inability to Obtain Authority.* If the Company cannot, by the exercise of commercially reasonable efforts, obtain authority from any regulatory body having jurisdiction for the sale of any Shares under this Plan, and such authority is deemed by the Company's counsel to be necessary to the lawful issuance of those Shares, the Company will be relieved of any liability for failing to issue or sell those Shares.

(b) *Grants Exceeding Allotted Shares.* If the Optioned Stock covered by an Option or Shares subject to a Stock Award exceed, as of the date of grant, the number of Shares which may be issued under the Plan without additional shareholder approval, that Option or Stock Award will be contingent with respect to such excess Shares, unless and until shareholder approval of an amendment sufficiently increasing the number of Shares subject to this Plan is timely obtained in accordance with Section 17(b).

(c) *Rights of Participants and Beneficiaries.* The Company will pay all amounts payable under this Plan only to the Grantee, or beneficiaries entitled thereto pursuant to this Plan. The Company will not be liable for the debts, contracts, or engagements of any Grantee or his or her beneficiaries, and rights to cash payments under this Plan may not be taken in execution by attachment or garnishment, or by any other legal or equitable proceeding while in the hands of the Company.

20. *Reservation of Shares.* The Company will at all times reserve and keep available for issuance a number of Shares sufficient to satisfy this Plan's requirements during its term.

21. *Shareholder Approval.* Continuance of this Plan will be subject to approval by the shareholders of the Company within 12 months before or after the date of its adoption. Such shareholder approval will be obtained in the manner and to the degree required under Applicable Laws. Options or Stock Awards may be granted but Options may not be exercised prior to shareholder approval of the Plan. If any Options or Stock Awards are so granted and shareholder approval is not obtained within

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12 months of the date of adoption of this Plan by the Board, those Options or Stock Awards will terminate retroactively as of the date they were granted.

22. *Legending Stock Certificates.* In order to enforce any restrictions imposed upon Common Stock issued in connection with a Stock Award or upon exercise of an Option granted under this Plan or to which such Common Stock may be subject, the Administrator may cause a legend or legends to be placed on any certificates representing such Common Stock, which legend or legends will make appropriate reference to such restrictions, including, but not limited to, a restriction against sale of such Common Stock for any period of time as may be required by Applicable Laws. Additionally, and not by way of limitation, the Administrator may impose such restrictions on any Common Stock issued pursuant to the Plan as it may deem advisable.

23. *No Employment Rights.* Neither this Plan nor any Option or Stock Award will confer upon a Grantee any right with respect to continuing the Grantee's employment or consulting relationship with the Company, or continuing service as a Director, nor will they interfere in any way with the Grantee's right or the Company's right to terminate such employment or consulting relationship or directorship at any time, with or without cause.

24. *Governing Law.* The Plan will be governed by, and construed in accordance with the laws of the State of Nevada (without giving effect to conflicts of law principles).

QuickLinks

[WYNN Resorts, Limited 2002 STOCK INCENTIVE PLAN](#)

RISK FACTORS RELATING TO INVESTING IN THE COMMON STOCK

Investing in Wynn Resorts Limited's common stock is subject to significant risks. You should carefully consider the risks described below, together with all of the other information included in the prospectus filed with the Registration Statement on Form S-1 of Wynn Resorts, Limited (File No. 333-90600) and this Current Report on Form 8-K. If any of the following risks and uncertainties or other risks and uncertainties not currently known to us or not currently considered to be material actually occur, our business, financial condition or operating results could be harmed substantially. This could cause the trading price of Wynn Resorts' common stock to decline, perhaps significantly, and you may lose all or part of your investment in Wynn Resorts' common stock.

Unless the context otherwise requires, references in "Risk Factors Relating to Investing in the Common Stock" to "we," "us" and "our" mean Wynn Resorts, Limited and its consolidated subsidiaries. References to any other entity mean that entity without any subsidiaries.

Certain statements in "Risk Factors Relating to Investing in the Common Stock" are forward-looking statements. These statements involve risks, uncertainties and other factors that may cause our or our industry's actual results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as "may," "will," "should," "would," "could," "believe," "expect," "anticipate," "estimate," "intend," "plan," "continue" or the negative of these terms or other comparable terminology.

Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. If one or more of the assumptions underlying our forward-looking statements proves incorrect, then actual results, levels of activity, performance or achievements could differ significantly from those expressed in, or implied by, the forward-looking statements contained in "Risk Factors Relating to Investing in the Common Stock". Other factors that could cause our financial performance to differ significantly from the goals, plans, objectives, intentions and expectations expressed in our forward-looking statements include the risk factors enumerated below. Therefore, we caution you not to place undue reliance on our forward-looking statements. Except as required by law, we do not intend to update or revise any of the forward-looking statements to conform these statements to actual results. All forward-looking statements attributable to us are expressly qualified by these cautionary statements.

Risks Associated with Our Construction of Le Rêve

There are significant conditions to the funding of the remaining components of the financing for the Le Rêve project.

Wynn Las Vegas, LLC has entered into agreements governing credit facilities providing for borrowings up to \$1 billion and the FF&E facility providing for additional loans up to \$188.5 million, which Wynn Las Vegas may request the FF&E lenders to increase to \$198.5 million if we purchase a replacement corporate aircraft.

Wynn Resorts has contributed \$386.7 million of the net proceeds of its initial public offering and Valvino Lamore, LLC has contributed all of its existing cash on hand to Wynn Las Vegas. Wynn Las Vegas has entered into a disbursement agreement with the agents under the credit facilities and the FF&E facility and the second mortgage note trustee. Under the disbursement agreement, Wynn Las Vegas is required to first use equity proceeds and the cash on hand that Wynn Resorts and Valvino contributed to Wynn Las Vegas, other than the funds contributed to the completion guarantor and held in the liquidity reserve account, to fund the development, construction and pre-opening costs of Le Rêve. When those funds are depleted in approximately ten to twelve months after the closing of Wynn Resorts' initial public offering, Wynn Las Vegas will be permitted to use the proceeds of the second mortgage notes. Wynn Las Vegas will not be permitted to borrow under the credit facilities or the

FF&E facility until it has applied all of the proceeds of the second mortgage notes offering, which is expected to be approximately 14 to 17 months after the closing of Wynn Resorts' initial public offering.

Wynn Las Vegas' ability to, from time to time, obtain a disbursement of the proceeds of the second mortgage notes or borrow under the credit facilities and the FF&E facility is subject to various conditions precedent. As such, a substantial portion of the equity proceeds will have been spent before we know whether the conditions to disbursement of funds under Wynn Las Vegas' debt facilities will have been satisfied. In addition to other customary conditions to funding for these types of facilities, Wynn Las Vegas' ability to obtain a disbursement of the funds under its debt instruments is subject to the following conditions:

- Wynn Las Vegas, Marnell Corrao Associates, Inc., the lenders' independent construction consultant and certain other third parties must certify as to various matters regarding the progress of construction, as to the conformity of the portions of the project then completed with the plans and specifications and that the Le Rêve project will be completed by the scheduled completion date, which may be extended in accordance with the disbursement agreement, but not beyond September 30, 2005, except for certain limited permitted extensions due to force majeure events;
- Wynn Resorts and its principal stockholders must maintain in full force and effect the existing arrangements among Wynn Resorts' stockholders to facilitate obtaining the gaming license for the Le Rêve project in the event that one of our major stockholders is unable to qualify for such license;
- the construction of Le Rêve must be "in balance," meaning that the undisbursed portions of the second mortgage note proceeds, the credit facilities and the FF&E facility, together with certain other funds available to Wynn Las Vegas, must equal or exceed the remaining costs to complete Le Rêve's construction plus a required contingency; and
- Wynn Las Vegas and the general contractor must have entered into subcontracts in respect of specified percentages of the total construction cost of Le Rêve to be managed by each of them, which percentages are to be mutually agreed upon by Wynn Las Vegas and the lenders under the credit facilities.

We cannot assure you that Wynn Las Vegas will be able to satisfy the conditions to funding at the time disbursements or drawdowns are required to make payments of our construction costs. Satisfaction of various conditions is subject to the discretion of the lenders under the credit facilities and their consultants and is therefore beyond Wynn Las Vegas' control.

Any failure to satisfy the conditions to the release of the second mortgage note proceeds or drawdowns under the credit facilities or the FF&E facility could severely impact our ability to complete Le Rêve and could arise before or after some or all of the proceeds of Wynn Resorts' initial public offering intended for the development and construction of Le Rêve have been expended on the project. We may not have access to alternative sources of funds necessary to complete Le Rêve on satisfactory terms or at all. If we seek additional equity capital as a funding alternative, the interests of Wynn Resorts' stockholders could be diluted.

The development costs of Le Rêve are estimates only, and actual development costs may be higher than expected.

Not all of the plans and specifications for Le Rêve have been finalized. We expect the total development cost of Le Rêve to be approximately \$2.4 billion, including the budgeted design and construction costs, cost of the land, capitalized interest, pre-opening expenses and all financing fees. The required cash interest payments and commitment fees on the credit facilities, FF&E facility, second mortgage notes and any other indebtedness and obligations of Wynn Las Vegas which will become due through the estimated commencement date of operations of Le Rêve have been included in our estimate of the total development cost.

While we believe that the overall budget for the development costs for Le Rêve is reasonable, these development costs are estimates and the actual development costs may be higher than expected. For example, a delay in the commencement of construction beyond the scheduled commencement date may increase the overall budget for Le Rêve and under certain circumstances we may be responsible for the increased costs. Although Wynn Las Vegas has a \$34.3 million owners' contingency, a \$50 million completion guarantee and a \$30 million liquidity reserve to cover cost overruns, these contingencies may not be sufficient to cover the full amount of such overruns. Moreover, the disbursement agreement imposes conditions on the use of these contingencies, including that the completion guarantee and the liquidity reserve are only available to Wynn Las Vegas incrementally once the project is halfway completed. If Wynn Las Vegas is unable to use these contingencies or if these contingencies are not sufficient to cover these costs, we may not have the funds required to pay the excess costs. Wynn Las Vegas' inability to pay development costs as they are incurred will negatively affect our ability to complete Le Rêve and thus may significantly impair our business operations and prospects.

Cost overruns could cause Wynn Las Vegas to be out of "balance" under the disbursement agreement and, consequently, prevent it from obtaining funds from the second mortgage note proceeds secured account or, after those funds are exhausted, to draw down under the credit facilities and the FF&E facility. If Wynn Las Vegas cannot obtain these funds, it will not be able to open Le Rêve to the general public on schedule or at all, which would have a significant negative impact on our financial condition and results of operations.

Not all of the construction costs of Le Rêve are covered by our guaranteed maximum price construction contract, and we will be responsible for any cost overruns of these excluded items.

We have entered into a guaranteed maximum price construction contract with Marnell Corrao covering approximately \$919 million of the budgeted \$1.4 billion design and construction costs for Le Rêve. We are responsible for cost overruns with respect to the remaining approximately \$488 million of the \$1.4 billion of budgeted components that are not part of the guaranteed maximum price contract. The guaranteed maximum price contract does not include items such as the costs of construction of the new golf course and the principal parking garage and approximately \$303 million in interior design and related furniture, fixtures and equipment. While we may in the future enter into other agreements that may seek to limit our exposure to construction cost increases, the actual costs for these items may exceed budgeted costs.

The guaranteed maximum price under the Marnell Corrao construction contract may increase, and we would be responsible for the amount of any increase.

Although we have a \$919 million guaranteed maximum price construction contract with Marnell Corrao, it provides that the guaranteed maximum price will be appropriately increased, and the deadline for the contractor's obligation to complete construction will be appropriately adjusted, on account of, among other things:

- changes in the architect-prepared design documents or deficiencies in the design documents;
- changes requested or directed by us in the scope of the work to be performed pursuant to the construction contract;
- changes in legal requirements;
- natural disasters, unavoidable casualties, industry-wide labor disputes affecting the general Las Vegas area and not limited to the project and other force majeure events that are unforeseeable and beyond the reasonable control of Marnell Corrao; and
- delays caused by us, including delays in completing the drawings and specifications.

Although we have determined the overall scope and general design of Le Rêve, not all of the detailed plans and specifications have been finalized. We do not have final plans for construction

components comprising approximately \$493.5 million of the approximately \$919 million Marnell Corrao construction contract. With respect to the construction components for which plans and specifications have not been finalized, the guaranteed maximum price is based on master concept plans and agreed upon design and other premises and assumptions for the detailed plans to be created. Construction will commence before completion of all drawings and specifications.

Inconsistencies between the completed drawings and specifications and the premises and assumptions on which the approximately \$919 million guaranteed maximum price was based could, under specific circumstances, cause us to be responsible for costs in excess of the guaranteed maximum price. For example, if the initial drawings, when finalized, are inconsistent with the premises and assumptions, we will be responsible for the increase, if any, in the cost to construct the work covered by those drawings over the previously agreed upon amounts designated for such work in the guaranteed maximum price. Furthermore, the premises and assumptions may not be sufficiently specific to determine, as between the contractor and us, who is responsible for cost overruns in specific situations.

The liquidated damages provision in our guaranteed maximum price construction contract likely will not be sufficient to protect us against exposure to actual damages we may suffer for delay in completion of the project.

Under the construction contract with Marnell Corrao, the guaranteed date of substantial completion is 910 calendar days from the date we direct Marnell Corrao by written notice to commence construction. The contract provides for liquidated damages in the amount of \$300,000 per day to be imposed on Marnell Corrao on a daily basis, up to a maximum of 30 days, for a maximum amount of \$9 million, if all work required by the construction contract is not substantially completed by the deadline, following a five-day grace period and subject to force majeure and other permitted extensions. We cannot assure you that construction will be completed on schedule and, if completion of the construction were delayed beyond the grace period, our actual damages would likely exceed \$300,000 per day.

In addition, if the contractor defaults under the construction contract, we may be unable to complete Le Rêve on schedule or within the amount budgeted. Failure to complete construction on schedule may have a significant negative impact on our operations and financial condition.

The financial resources of our contractor may be insufficient to fund cost overruns or liquidated damages for which it is responsible under the guaranteed maximum price contract.

Under the terms of the construction contract with Marnell Corrao, Marnell Corrao is, subject to specific conditions and limitations, responsible for all construction costs covered by the construction contract that exceed the approximately \$919 million guaranteed maximum price contained in the contract.

Austi, the parent company of the contractor, which is a private company controlled by the Anthony A. Marnell II family, has agreed to provide a continuing guaranty by which Austi guarantees Marnell Corrao's full performance under the construction contract until final payment under that contract. In addition, Marnell Corrao is obligated to obtain and provide a \$150 million contractor performance and payment bond.

We cannot assure you that Marnell Corrao and Austi will have sufficient financial resources to fund any cost overruns or liquidated damages for which Marnell Corrao is responsible under the guaranteed maximum price contract. Furthermore, neither Marnell Corrao nor Austi is contractually obligated to maintain its financial resources to cover cost overruns. If Marnell Corrao and Austi do not have the resources to meet their obligations and we are unable to obtain funds under the performance and payment bond in a timely manner, or if the performance and payment bond is insufficient to cover any shortfall, we may need to pay these excess costs in order to complete construction of Le Rêve.

Certain provisions in the construction contract with Marnell Corrao for construction of Le Rêve may be unenforceable.

Recently enacted Nevada statutes have substantially impaired, and in some cases eliminated, an owner's ability to withhold funds from a contractor or subcontractor, even when there may be defective work or a dispute about amounts owed. The new laws also limit an owner's ability to terminate, suspend or interrupt the construction, and in several circumstances, entitle the contractor and subcontractor to payment of their full unearned fee, following a brief notice period, if the owner suspends, terminates or interrupts the construction or fails to make payment or withholds amounts claimed to be due. In addition, Nevada law permits contractors and subcontractors to terminate construction contracts upon very short notice periods if any payments are not timely made to the contractors. The construction contract with Marnell Corrao contains provisions that provide us with rights and protections that in some circumstances may be inconsistent with these new laws. While it appears that some of the new laws can be waived, others expressly prohibit waiver. The effect of the new laws on the provisions of the construction contract is not completely clear. Therefore, while we have negotiated with Marnell Corrao for specific rights and obligations, including with respect to damages, termination and suspension of construction, those provisions of the construction contract may not be enforceable to the extent they conflict with non-waivable provisions of applicable laws. If the provisions of the construction contract are not enforceable, delays or suspensions in the work initiated by the owner or other events may expose us to increased costs. We cannot assure you that we will have sufficient funds to pay these increased costs.

There are significant risks associated with major construction projects that may prevent completion of Le Rêve on budget and on schedule.

Major construction projects of the scope and scale of Le Rêve entail significant risks, including:

- shortages of materials or skilled labor;
- unforeseen engineering, environmental and/or geological problems;
- work stoppages;
- weather interference;
- unanticipated cost increases; and
- unavailability of construction equipment.

Construction, equipment or staffing problems or difficulties in obtaining any of the requisite licenses, permits and authorizations from regulatory authorities could increase the total cost, delay or prevent the construction or opening or otherwise affect the design and features of Le Rêve.

We anticipate that only some of the subcontractors engaged by the contractor to perform work and/or supply materials in connection with the construction of Le Rêve will post bonds guaranteeing timely completion of a subcontractor's work and payment for all of that subcontractor's labor and materials. We cannot assure you that these bonds will be adequate to ensure completion of the work.

We cannot assure you that Le Rêve will commence operations on schedule or that construction costs for Le Rêve will not exceed budgeted amounts. Failure to complete Le Rêve on budget or on schedule may have a significant negative effect on us.

Simultaneous construction of Le Rêve and the Macau casino(s) may stretch management time and resources.

Le Rêve is scheduled to open in April 2005, and our subsidiary Wynn Macau may pursue development of its first permanent casino resort in Macau in the same time period. If both projects are being built simultaneously, members of our senior management will be involved in planning and developing both projects. Developing the Macau opportunity simultaneously with Le Rêve may divert management resources from the construction and/or opening of either project. Management's inability

to devote sufficient time and attention to either project may delay the construction or opening of either project. This type of delay could have a negative effect on our business and operations.

Risks Related to Our Substantial Indebtedness

We are highly leveraged and future cash flow may not be sufficient for our subsidiaries to meet their obligations, and we might have difficulty obtaining more financing.

As we progress toward the completion of the construction of Le Rêve, we will have a substantial amount of consolidated debt in relation to our equity, which debt will increase during the construction period. Wynn Las Vegas has entered into debt facilities that will result in total outstanding indebtedness of approximately \$1.5 billion by the time Le Rêve is completed.

Our subsidiaries' substantial indebtedness could have important consequences for you. For example:

- If Wynn Las Vegas does not complete construction of Le Rêve by the scheduled completion date, which may be extended in accordance with the disbursement agreement, but not beyond September 30, 2005, except for certain limited permitted exceptions due to force majeure events, fails to meet its payment obligations or otherwise defaults under the agreements governing the indebtedness, the lenders under those agreements will have the right to accelerate the indebtedness and exercise other rights and remedies against Wynn Las Vegas and the guarantors of the indebtedness. These rights and remedies include the rights to: repossess and foreclose upon the assets that serve as collateral, initiate judicial foreclosure against Wynn Las Vegas and the guarantors, petition a court to appoint a receiver for Wynn Las Vegas and the guarantors or for substantially all of their assets, and if they are insolvent, to initiate involuntary bankruptcy proceedings against Wynn Las Vegas and the guarantors, in each case, subject to procedural restraints and limitations applicable to secured creditors generally and also those imposed by applicable gaming laws, rules and regulations and the rules and regulations of the Public Utilities Commission of Nevada;
- Once Le Rêve is operating, Wynn Las Vegas will be required to use a substantial portion of its cash flow from operations to service and amortize its indebtedness, which will reduce the available cash flow to fund working capital, capital expenditures and other general corporate purposes and distributions up to Wynn Resorts;
- We may have a limited ability to respond to changing business and economic conditions and to withstand competitive pressures, which may affect our financial condition;
- We may have a limited ability to obtain additional financing, if needed, to fund Le Rêve's design and construction costs, working capital requirements, capital expenditures, debt service, general corporate or other obligations;
- Under the credit facilities and the FF&E facility, a substantial portion of the interest rates Wynn Las Vegas pays will fluctuate with the current market rates and, accordingly, Wynn Las Vegas' interest expense will increase if market interest rates increase;
- Our subsidiaries' substantial indebtedness will increase their vulnerability to general adverse economic and industry conditions; and
- We may be placed at a competitive disadvantage to our competitors who are not as highly leveraged.

Wynn Resorts is a guarantor of the indebtedness under the credit facilities, the FF&E facility and the second mortgage notes and as a result, Wynn Resorts is obligated to make payments to the lenders and the holders of the second mortgage notes if Wynn Las Vegas and the other guarantors of the indebtedness fail to satisfy their obligations under the credit facilities, the FF&E facilities or the second mortgage notes.

As a holding company, Wynn Resorts is entirely dependent upon the operations of its subsidiaries and their ability to make dividends or distributions to provide cash flow at Wynn Resorts.

Wynn Resorts is a holding company and its assets consist primarily of investments in its subsidiaries, including Valvino, Wynn Resorts Holdings, Wynn Las Vegas and Wynn Macau.

Our subsidiaries will conduct substantially all of our consolidated operations and own substantially all of our consolidated assets. As a result, Wynn Resorts' cash flow will depend upon:

- the cash flow of our subsidiaries; and
- the ability of those subsidiaries to provide funds to us in the form of dividends, distributions, loans or otherwise.

The credit facilities, the FF&E facility and the indenture governing the second mortgage notes will significantly restrict the ability of Wynn Las Vegas to make any dividends or distributions to Wynn Resorts. In addition, we expect that any financing arrangements entered into by Wynn Macau or one of its intermediary holding companies will contain similar restrictions. As a result of these restrictions, or for other reasons, cash flow generated by the Macau casinos operated by Wynn Macau may not be available to service the debt of the subsidiaries developing the Le Rêve project. Similarly, any cash flow generated by the Le Rêve project may not be available to service any debt of the subsidiaries developing the Macau opportunity. See also "—Risks Related Specifically to the Common Stock—Wynn Resorts has never paid dividends, does not intend to pay dividends in the foreseeable future and may not pay dividends to any unsuitable person or its affiliates."

Although Wynn Las Vegas will be permitted to distribute funds to Wynn Resorts to cover certain corporate overhead, and, following completion of Le Rêve, will be permitted to pay limited management fees to Wynn Resorts if Wynn Las Vegas achieves certain financial ratios and there is not a default under the credit facilities or the indenture governing the second mortgage notes, we do not expect to have any significant cash flow at Wynn Resorts from Wynn Las Vegas for a considerable period of time.

Our subsidiaries may not generate sufficient cash flow to meet their substantial debt service and other obligations.

Before the opening of Le Rêve, which is expected to occur in April 2005, and the possible opening of one or more casinos in Macau, we and our subsidiaries will have no material operations or earnings. Consequently, we will be dependent on the proceeds of our initial public offering, borrowings under the credit facilities and the FF&E facility and the proceeds of the second mortgage note offering to meet all of Wynn Las Vegas' construction, debt service and other obligations.

After Le Rêve opens, Wynn Las Vegas' ability to make interest payments under the credit facilities, the FF&E facility, the second mortgage notes and other indebtedness will depend on its ability to generate sufficient cash flow from operations. We cannot assure you that Wynn Las Vegas will begin operations by the scheduled opening date or at all, or that it will be able to generate sufficient cash flow to meet its expenses, including its debt service requirements. Wynn Las Vegas' ability to generate cash flow will depend upon many factors, including:

- its future operating performance;
- the demand for services that it provides;
- general economic conditions and economic conditions affecting Nevada or the casino industry in particular;
- its ability to hire and retain employees at a reasonable cost;
- competition; and
- legislative and regulatory factors affecting its operations and business.

Some of these factors are beyond our subsidiaries' control. Any inability of Wynn Las Vegas to meet its debt service obligations would have a material adverse effect on us.

Our subsidiaries' indebtedness is secured by a substantial portion of their assets.

Subject to applicable laws, including gaming laws, and certain agreed upon exceptions, the credit facilities and second mortgage notes are secured by liens on substantially all of the assets of our Nevada subsidiaries that are necessary for the development, construction or operation of Le Rêve. We expect that the financing documents for the Macau opportunity will similarly involve the granting of security in substantially all of the assets of Wynn Macau.

In the event of a default by any of our subsidiaries under their financing documents, or if certain of our subsidiaries experience insolvency, liquidation, dissolution or reorganization, the holders of indebtedness under the credit facilities, the FF&E facility, the indenture governing the second mortgage notes and any other secured debt instruments would be entitled to payment from their collateral security, and holders of the unsecured debt of both us and our subsidiaries, if any, would then be entitled to payment in full from our remaining assets before distributions, if any, were made to Wynn Resorts' stockholders.

The credit facilities, the FF&E facility and the indenture governing the second mortgage notes contain covenants that restrict our Nevada subsidiaries' ability to engage in certain transactions and may impair our ability to respond to changing business and economic conditions.

The credit facilities, the FF&E facility and the indenture governing the second mortgage notes impose operating and financial restrictions on Wynn Las Vegas, Wynn Capital and specified affiliates designated as restricted entities. The restrictions imposed under these debt instruments include, among other things, limitations on the restricted entities' ability to:

- pay dividends or distributions on their capital stock or repurchase their capital stock;
- incur additional debt;
- make investments;
- create liens on their assets to secure debt;
- enter into transactions with affiliates;
- enter into sale-leaseback transactions;
- engage in other businesses;
- merge or consolidate with another company;
- transfer and sell assets;
- issue preferred stock;
- create dividend and other payment restrictions affecting subsidiaries;
- designate restricted and unrestricted subsidiaries; and
- issue and sell equity interests in wholly owned subsidiaries.

The credit facilities require Wynn Las Vegas and the restricted entities to satisfy various financial covenants, including maximum total leverage, minimum fixed charge coverage, minimum earnings before interest, tax, depreciation and amortization and minimum net worth requirements. Future indebtedness or other

contracts could contain financial or other covenants more restrictive than those applicable to the credit facilities, the FF&E facility and the second mortgage notes.

The ability of Wynn Las Vegas and the restricted entities to comply with these provisions may be affected by general economic conditions, industry conditions, other events beyond their control and delayed completion of Le Rêve. As a result, we cannot assure you that Wynn Las Vegas and the

restricted entities will be able to comply with these covenants. Failure by Wynn Las Vegas and the restricted entities to comply with the covenants contained in the credit facilities, the FF&E facility or the indenture governing the second mortgage notes, including failure as a result of events beyond their control, could result in an event of default, which could materially and adversely affect our operating results and our financial condition. If Wynn Las Vegas and the restricted entities fail to comply with a financial covenant or other restriction contained in the credit facilities, the FF&E facility, the indenture governing the second mortgage notes or any future financing agreements, an event of default could occur, which could result in acceleration of all of Wynn Las Vegas' and the restricted entities' indebtedness.

General Risks Associated with Our Business

We have no operating history.

We were formed principally to develop and operate Le Rêve in Las Vegas and to pursue the Macau opportunity. Le Rêve and the Macau opportunity will be new developments with no history of operations. We cannot assure you that we will be able to attract a sufficient number of hotel guests, gaming customers and other visitors to Le Rêve or the Macau casino(s) to make their operations profitable, either independently in Las Vegas or Macau or as a whole.

Our operations will be subject to the significant business, economic, regulatory and competitive uncertainties and contingencies frequently encountered by new businesses in competitive environments, many of which are beyond our control. Because we have no operating history, it may be more difficult for us to prepare for and respond to these types of risks and the risks described elsewhere in "Risk Factors Relating to Investing in the Common Stock" than for a company with an established business and operating cash flow. If we are not able to manage these risks successfully, it could negatively impact our operations.

We intend to lease approximately eight of the retail spaces at Le Rêve and will own and operate the remaining approximately 18 retail spaces. We have entered into one restaurant management agreement, and we may enter into others with respect to one or more of the restaurants at Le Rêve. We have not yet entered into binding agreements with any retail tenants or other restaurant operators, and we may not be able to obtain the number or quality of retail tenants or restaurant operators for the retail and restaurant portions of Le Rêve that currently are planned. If we do not obtain tenants and operators in sufficient number or of sufficient quality, it could impair the competitive position of Le Rêve and affect our operating performance.

Until construction of Le Rêve is close to completion, we do not believe that we will require extensive operational management. Accordingly, we have kept and intend to keep our permanent management staff at relatively low levels. We will be required to undertake a major recruiting program before Le Rêve opens. However, the pool of experienced gaming and other personnel is limited and competition to recruit and retain gaming and other personnel is likely to intensify as competition in the Las Vegas hotel casino market increases. We cannot assure you that we will be able to attract and retain a sufficient number of qualified individuals to operate Le Rêve on acceptable terms.

The loss of Stephen A. Wynn could significantly harm our business.

Our ability to maintain our competitive position is dependent to a large degree on the efforts and skills of Stephen A. Wynn, the Chairman of the Board and Chief Executive Officer and one of the principal stockholders of Wynn Resorts. We have entered into an employment agreement with Mr. Wynn. However, we cannot assure you that Mr. Wynn will remain with us. If we lose the services of Mr. Wynn, or if he is unable to devote sufficient attention to our operations, our business may be significantly impaired. In addition, if Mr. Wynn is no longer either employed by us as Chief Executive Officer or serving as Chairman of the Board of Wynn Resorts, other than as a result of death or disability or other limited circumstances, it would constitute a change of control that requires us to repay the second mortgage notes and would constitute an event of default under the credit facilities and the FF&E facility.

The casino, hotel, convention and other facilities at Le Rêve will face intense competition.

Las Vegas Casino/Hotel Competition. The casino/hotel industry is highly competitive. Resorts located on or near the Las Vegas Strip compete with other Las Vegas Strip hotels and with other hotel casinos in Las Vegas on the basis of overall atmosphere, range of amenities, level of service, price, location, entertainment, theme and size. Le Rêve also will compete with a large number of other hotels and motels located in and near Las Vegas, as well as other resort destinations. Many of our competitors have established gaming operations, are subsidiaries or divisions of large public companies and may have greater financial and other resources than we do.

According to the Las Vegas Convention and Visitors Authority, there were approximately 94,277 hotel rooms on or around the Las Vegas Strip as of December 31, 2001. Competitors of Le Rêve will include resorts on the Las Vegas Strip, among which are Bally's Las Vegas, Bellagio, Caesars Palace, Harrah's Las Vegas Hotel and Casino, Luxor Hotel and Casino, Mandalay Bay Resort & Casino, MGM Grand Hotel and Casino, The Mirage, Monte Carlo Hotel and Casino, New York-New York Hotel and Casino, Paris Las Vegas, Treasure Island at The Mirage and The Venetian, and resorts off the Las Vegas Strip, such as Las Vegas Hilton, The Palms Casino Resort and Rio All-Suite Hotel & Casino. The Venetian has begun an expansion anticipated to consist of an approximately 1,000-room hotel tower on top of the resort's existing parking garage and approximately 150,000 square feet of additional meeting and conference space. The Venetian's expansion is expected to be completed by June 2003. In addition, Mandalay Bay Resort & Casino has announced that it will begin construction of a 1,122-room, all-suite tower connected to the current hotel casino resort in September 2002, with an expected opening in October 2003. Mandalay Bay Resort & Casino also is expected to open a new convention and meeting complex in January 2003, and Caesars Palace is currently constructing an approximately 4,000-seat performing arts "Colosseum," which is scheduled to be completed in the first quarter of 2003. Moreover, MGM Mirage has announced that it will begin construction in mid-2003 of an approximately 925-room "spa tower" addition to Bellagio, as well as expand Bellagio's spa and salon, meeting space and retail space, with an expected completion in December 2004.

The construction and expansion of these properties during the time that Le Rêve is being constructed may affect the availability of construction labor and supplies, resulting in increased costs. We cannot assure you that the Las Vegas market will continue to grow or that hotel casino resorts will continue to be

popular. A decline or leveling off of the growth or popularity of hotel casino resorts or the appeal of the features offered by Le Rêve would impair our financial condition and future results of operations.

Le Rêve will be different from many other Las Vegas resorts in that it will not focus on a highly themed experience. Instead, Le Rêve will offer an environment having a sophisticated, casually elegant ambience. Le Rêve's environment may not appeal to customers. In addition, customer preferences and trends can change, often without warning, and we may not be able to predict or respond to changes in customer preferences in time to adapt Le Rêve and the attractions and amenities it offers to address new trends.

Other Competition for Le Rêve. Le Rêve also will compete, to some extent, with other hotel/casino facilities in Nevada and in Atlantic City, with riverboat gaming facilities in other states, with hotel/casino facilities elsewhere in the world, with state lotteries and with Internet gaming. In addition, certain states recently have legalized, and others may or are likely to legalize, casino gaming in specific areas. Passage of the Tribal Government Gaming and Economic Self-Sufficiency Act in 1988 has led to rapid increases in Native American gaming operations. Also, in March 2000, California voters approved an amendment to the California Constitution allowing federally recognized Native American tribes to conduct and operate slot machines, lottery games and banked and percentage card games on Native American land in California. As a result, casino-style gaming on tribal lands is growing and could become a significant competitive force. The proliferation of Native American gaming in California could have a negative impact on our operations. The proliferation of gaming activities in other areas could significantly harm our business as well. In particular, the legalization of casino gaming in or near metropolitan areas, such as New York, Los Angeles, San Francisco and Boston, from which we intend to attract customers, could have a substantial negative effect on our business. In addition, new or renovated casinos in Macau or elsewhere in Asia could draw Asian gaming customers, including high-rollers, away from Las Vegas.

Because we may be entirely dependent upon a limited number of properties for all of our cash flow, we will be subject to greater risks than a gaming company with more operating properties.

We do not expect to have material assets or operations other than Le Rêve and Wynn Macau's casino(s) for the foreseeable future. As a result, we likely will be entirely dependent upon Le Rêve and the Macau casino(s) for all of our cash flow.

Given that our operations initially will only focus on one property in Las Vegas and one property in Macau, we will be subject to greater degrees of risk than a gaming company with more operating properties. The risks to which we will have a greater degree of exposure include the following:

- local economic and competitive conditions;
- inaccessibility due to inclement weather, road construction or closure of primary access routes;
- changes in local and state governmental laws and regulations, including gaming laws and regulations;
- natural and other disasters;
- an increase in the cost of electrical power for Le Rêve as a result of, among other things, power shortages in California or other western states with which Nevada shares a single regional power grid;
- a decline in the number of visitors to Las Vegas or Macau; and
- a decrease in gaming and non-gaming activities at Le Rêve or Wynn Macau's casino(s).

Any of the factors outlined above could negatively affect our subsidiaries' ability to generate sufficient cash flow to make payments on the second mortgage notes pursuant to the indenture, on borrowings under the credit facilities or the FF&E facility or with respect to our subsidiaries' other debt.

Terrorism and the uncertainty of war, as well as other factors affecting discretionary consumer spending, may harm our operating results.

The strength and profitability of our business will depend on consumer demand for hotel casino resorts in general and for the type of luxury amenities Le Rêve will offer. Changes in consumer preferences or discretionary consumer spending could harm our business. The terrorist attacks of September 11, 2001, and ongoing terrorist and war activities in the United States and elsewhere, have had a negative impact on travel and leisure expenditures, including lodging, gaming and tourism. We cannot predict the extent to which the events of September 11, 2001 may continue to affect us, directly

or indirectly, in the future. An extended period of reduced discretionary spending and/or disruptions or declines in airline travel and business conventions could significantly harm our operations. In particular, because we expect that our business will rely heavily upon high-end credit customers, particularly international customers, factors resulting in a decreased propensity to travel internationally, like the terrorist attacks of September 11, 2001, could have a negative impact on our operations.

In addition to fears of war and future acts of terrorism, other factors affecting discretionary consumer spending, including general economic conditions, disposable consumer income, fears of recession and consumer confidence in the economy, may negatively impact our business. Negative changes in factors affecting discretionary spending could reduce customer demand for the products and services we will offer, thus imposing practical limits on pricing and harming our operations.

Also, the terrorist attacks of September 11, 2001 have substantially affected the availability of insurance coverage for certain types of damages or occurrences. We do not have insurance coverage for occurrences of terrorist acts with respect to our Le Rêve project and any losses that could result from these acts. The lack of sufficient insurance for these types of acts could expose us to heavy losses in the event that any damages occur, directly or indirectly, as a result of terrorist attacks and have a significant negative impact on our operations.

Le Rêve and Wynn Macau's casino(s) will be subject to extensive state and local regulation, and licensing and gaming authorities have significant control over their operations, which could have a negative effect on our business.

The opening and operation of Le Rêve and Wynn Macau's casino(s) will be contingent upon our receipt and maintenance of all regulatory licenses, permits, approvals, registrations, findings of suitability, orders and authorizations. The laws, regulations and ordinances requiring these licenses, permits and other approvals generally relate to the responsibility, financial stability and character of the owners and managers of gaming operations, as well as persons financially interested or involved in gaming operations. The scope of the approvals required to open and operate a facility is extensive. Failure to obtain or maintain the necessary approvals could prevent or delay the completion or opening of all or part of the facility or otherwise affect the design and features of Le Rêve or the Macau casino(s). We do not currently hold any state and local licenses and related approvals necessary to conduct our planned gaming operations in Nevada and we cannot be certain that we will obtain at all, or on a timely basis, all required approvals and licenses. Failure to obtain or maintain any of the required gaming approvals and licenses could significantly impair our financial position and results of operations.

The Nevada Gaming Commission may, in its discretion, require the holder of any securities we issue, including our common stock, to file applications, be investigated and be found suitable to own Wynn Resorts' securities if it has reason to believe that the security ownership would be inconsistent with the declared policies of the State of Nevada.

In Macau, concessionaires are subject to ongoing suitability requirements in terms of background, business experience, associations and reputation, as are stockholders of 5% or more of the concessionaire's equity securities, officers, directors and key employees. The government of Macau also evaluates concessionaires in terms of financial capability to sustain a gaming business in Macau. Failure to maintain the government's requirements to own or operate a gaming concession could prevent Wynn Macau from opening or continuing to operate casinos in Macau.

Nevada regulatory authorities have broad powers to request detailed financial and other information, to limit, condition, suspend or revoke a registration, gaming license or related approval and to approve changes in our operations. Substantial fines or forfeiture of assets for violations of gaming laws or regulations may be levied. The suspension or revocation of any license which may be granted to us or the levy of substantial fines or forfeiture of assets could significantly harm our business, financial condition and results of operations. Furthermore, compliance costs associated with gaming laws, regulations and licenses are significant. Any change in the laws, regulations or licenses applicable to our business or a violation of any current or future laws or regulations applicable to our

business or gaming license could require us to make substantial expenditures or could otherwise negatively affect our gaming operations.

Wynn Resorts' articles of incorporation provide that, to the extent a gaming authority makes a determination of unsuitability or to the extent deemed necessary or advisable by the board of directors, Wynn Resorts may redeem shares of its capital stock that are owned or controlled by an unsuitable person or its affiliates. The redemption price may be paid in cash, by promissory note, or both, as required, and pursuant to the terms established by, the applicable gaming authority and, if not, as Wynn Resorts elects. See "**Risks Related Specifically to the Common Stock—We may redeem your shares due to regulatory considerations, either as required by gaming authorities or in our discretion.**"

The Nevada Gaming Commission may require the disposition of shares of certain stockholders of Wynn Resorts in a manner that may cause us to incur debt or disrupt our stock price.

Kazuo Okada is the owner of a controlling interest in Aruze Corp., the parent company of Aruze USA, Inc., referred to as Aruze USA, which owns approximately 31.5% of Wynn Resorts' common stock. Under the Nevada gaming regulations, any beneficial owner of more than 10% of Aruze Corp.'s voting securities must be licensed or found suitable in respect of Aruze USA's ownership interest in Wynn Resorts, including Kazuo Okada and his son, Tomohiro Okada. Kazuo Okada is currently licensed by the Nevada Gaming Commission to own the shares of Universal Distributing of Nevada, Inc., referred to as Universal Distributing, a gaming machine manufacturer and distributor. Kazuo Okada and his son previously sought approval from the Nevada Gaming Commission in connection with the proposed transfer of Universal Distributing to Aruze Corp. In connection with this application, the Nevada State Gaming Control Board raised certain concerns, including transactions which were then the subject of a pending tax case in Japan which involved Universal Distributing, Aruze Corp. and other related parties. The lower court in the Japanese tax case ruled in Aruze Corp.'s favor, but the Japanese tax authority has filed an appeal. It is unclear whether or how these events will affect the Nevada Gaming Commission's consideration of suitability with respect to Aruze USA's ownership of Wynn Resorts' stock.

Aruze Corp. has informed us that there are a number of outstanding issues in the Nevada State Gaming Board's investigation of the proposed transfer of Universal Distributing in addition to the issues relating to the transactions involved in the above-described tax proceeding. These issues, together with issues relating to the Japanese tax proceeding, if not satisfactorily resolved, could result in the denial of the application. No formal action of any kind has been taken by the Nevada State Gaming Control Board or the Nevada Gaming Commission in connection with these issues. The Nevada State Gaming Control Board and Aruze have agreed to defer the pursuit of the proposed transfer of Universal Distributing until or after the applications regarding Le Rêve have been acted upon. If the Nevada State Gaming Control Board or the Nevada Gaming Commission were to act adversely with respect to the pending proceeding involving Universal Distributing, that decision could adversely affect an application filed by Aruze USA, Aruze Corp., Kazuo Okada or Tomohiro Okada in respect of Wynn Resorts.

If any gaming application of Aruze USA, Aruze Corp. or Kazuo Okada concerning Aruze USA's ownership of Wynn Resorts' stock is denied by Nevada gaming authorities or requested to be withdrawn or is not filed within 90 days after the filing of Wynn Resorts' application, then, under certain circumstances, Wynn Resorts has the right to require Mr. Wynn to purchase the shares owned by Aruze USA in Wynn Resorts, including with a promissory note, or the right to purchase the shares directly with a promissory note. If we are required to purchase the shares held by Aruze USA, we may have to seek equity financing for such a purchase or issue a promissory note to Aruze USA. Any such debt obligation on our balance sheet may negatively affect the price of our common stock.

Moreover, if the Nevada Gaming Commission were to determine that Aruze USA is unsuitable to hold a promissory note issued by Wynn Resorts or Mr. Wynn, the Nevada Gaming Commission could order Aruze USA or its affiliate to dispose of its voting securities within a prescribed period of time

that may not be sufficient to dispose of the securities in an orderly manner, which could have a negative effect on the price of the stock of Wynn Resorts.

If Aruze USA or its affiliate does not dispose of its voting securities within the prescribed period of time, or if Wynn Resorts fails to pursue all lawful efforts to require Aruze USA or its affiliate to relinquish its voting securities, including, if necessary, the immediate purchase of the voting securities for cash at fair market value, the Nevada Gaming Commission could determine that Wynn Resorts was unsuitable or could take disciplinary action against Wynn Resorts. Disciplinary action could result in the limitation, conditioning, suspension or revocation of any approvals or gaming licenses held by Wynn Resorts and/or the imposition of a significant monetary fine against Wynn Resorts. Any such disciplinary action could significantly impair our operations.

Our Las Vegas business will rely on high-end, international customers to whom we may extend credit, and we may not be able to collect gaming receivables from our credit players.

We expect that a significant portion of our table game revenue at Le Rêve will be attributable to the play of a limited number of international customers. The loss or a reduction in the play of the most significant of these customers could have a substantial negative effect on our future operating results. A downturn in economic conditions in the countries in which these customers reside could cause a reduction in the frequency of visits and revenue generated by these customers.

We will conduct our gaming activities at Le Rêve on a credit as well as a cash basis. This credit will be unsecured. Table games players typically will be extended more credit than slot players, and high-stakes players typically will be extended more credit than patrons who tend to wager lower amounts. High-end gaming is more volatile than other forms of gaming, and variances in win-loss results attributable to high-end gaming may have a positive or negative impact on cash flow and earnings in a particular quarter.

In addition, the collectibility of receivables from international customers could be negatively affected by future business or economic trends or by significant events in the countries in which these customers reside. We will extend credit to those customers whose level of play and financial resources warrant, in the opinion of management, an extension of credit.

While gaming debts evidenced by a credit instrument, including what is commonly referred to as a "marker," and judgments on gaming debts are enforceable under the current laws of Nevada, and judgments on gaming debts are enforceable in all states under the Full Faith and Credit Clause of the United States Constitution, other jurisdictions may determine that direct enforcement of gaming debts is against public policy. Although courts of some foreign nations will enforce gaming debts directly and the assets in the United States of foreign debtors may be reached to satisfy a judgment, judgments on gaming debts from U.S. courts are not binding on the courts of many foreign nations. We cannot assure you that we will be able to collect the full amount of gaming debts owed to us, even in jurisdictions that enforce gaming debts. Our inability to collect gaming debts could have a significant negative impact on our operating results.

Because we own real property, we are subject to extensive environmental regulation, which creates uncertainty regarding future environmental expenditures and liabilities.

We have incurred costs and expended funds to comply with environmental requirements, such as those relating to discharges to air, water and land, the handling and disposal of solid and hazardous waste and the cleanup of properties affected by hazardous substances. Under these and other environmental requirements, we, as the owner of the property on which Le Rêve is situated, may be required to investigate and clean up hazardous or toxic substances or chemical releases at that property. As an owner or operator, we could also be held responsible to a governmental entity or third parties for property damage, personal injury and investigation and cleanup costs incurred by them in connection with any contamination.

These laws typically impose cleanup responsibility and liability without regard to whether the owner or operator knew of or caused the presence of the contaminants. The liability under those laws has been interpreted to be joint and several unless the harm is divisible and there is a reasonable basis for allocation of the responsibility. The costs of investigation, remediation or removal of those substances may be substantial, and the presence of those substances, or the failure to remediate a property properly, may impair our ability to rent or otherwise use our property.

We believe that we have remediated all material environmental risks of which we are currently aware at the Le Rêve hotel site and on the existing golf course. However, in connection with constructing the new golf course, which will require significant grading, we may discover unforeseen environmental risks which we will need to incur costs to remediate. In addition, we will incur costs associated with asbestos removal from an existing office building in the event we decide to develop the 20-acre parcel of land located north of Le Rêve along Las Vegas Boulevard that will be available for future development should it be released from the liens under the credit facilities and the second mortgage notes. We may be required to incur costs to remediate these or other potential environmental hazards or to mitigate environmental risks.

Wynn Macau will be subject to environmental laws and regulations in Macau, including laws and regulations relating to the prevention and control of noise during construction. Costs expended by Wynn Macau to comply with these Macau environmental laws and regulations, such as to implement control procedures to prevent unlawful noise levels, may have a significant negative effect on the operating results of Wynn Macau. In addition, if the government of Macau holds Wynn Macau accountable and assesses penalties or imposes restrictions on Wynn Macau for non-compliance with environmental laws or regulations, Wynn Macau's results of operations could be negatively impacted or it could lose flexibility to adapt to changes affecting the operation of its business.

If a third party successfully challenges our ownership of, or right to use, the Le Rêve service marks with respect to casino or hotel services, our business or results of operations could be harmed.

We have applied to register the "LE RÊVE" service mark with the United States Patent and Trademark Office, referred to as the PTO, for casino and hotel services, as well as for other ancillary uses. Our application for hotel services has cleared the PTO examination process, meaning that "LE RÊVE" will be registered for hotel and other related services if no member of the public formally opposes our application for registration by a published deadline. Our application for casino services remains pending, and we expect it to be published for opposition soon.

Even if we are able to obtain registration of the "LE RÊVE" mark for the above described services, such federal registration is not completely dispositive of the right to such service marks. Third parties who claim prior rights with respect to marks similar to "LE RÊVE", or the English translation "THE DREAM," may nonetheless challenge our use of "LE RÊVE" and seek to overcome the presumptions afforded by such registrations. They also could attempt to prevent our use of "LE RÊVE" and/or seek monetary damages as a result of our use. A successful challenge by a third party with respect to our ownership of, or right to use, the mark could have a material impact on our business or results of operation.

Our subsidiaries will need to recruit a substantial number of new employees before Le Rêve or Wynn Macau's Macau project(s) open and these employees may seek unionization.

Our subsidiaries will need to recruit a substantial number of new employees before Le Rêve or Wynn Macau's casino(s) open and the employees in Las Vegas and Macau may seek union representation. We cannot be certain that our subsidiaries will be able to recruit a sufficient number of qualified employees. Currently, Valvino is a party to collective bargaining agreements with several different unions, which it assumed in connection with the acquisition of the Desert Inn Resort & Casino. All of these agreements will expire before the scheduled opening of Le Rêve. However, the unions may seek to organize the workers at Le Rêve or claim that the agreements assumed in connection with Valvino's acquisition of the Desert Inn Resort & Casino obligate Wynn Las Vegas to

enter into negotiations with one or more of the unions to represent the workers at Le Rêve. In addition, any employees that Wynn Resorts' Macau-related subsidiaries might employ could also seek to collectively negotiate the terms and conditions of their employment with Wynn Resorts' Macau-related subsidiaries. Unionization, pressure to unionize or other forms of collective bargaining could increase our subsidiaries' labor costs.

We will be subject to regulatory control by the Public Utilities Commission of Nevada.

Desert Inn Improvement Co., a direct subsidiary of Desert Inn Water Company and an indirect subsidiary of Wynn Resorts, provides water service to the existing office building on the site of the former Desert Inn Resort & Casino and the remaining homes around the Desert Inn golf course. As a result of its service obligations to the remaining homes, Desert Inn Improvement Co. is a public utility under Nevada law and will be subject to typical public utility regulation. For example, if Desert Inn Improvement Co. desires to change its filed rates or tariffs or encumber, sell or lease its real property, it will likely be required to obtain the prior approval of the Public Utilities Commission of Nevada. The public utility status of Desert Inn Improvement Co. also imposes broader regulatory restrictions on us. For example, if we decide to make changes to our ownership structure, such as in a merger or acquisition transaction or a significant stock issuance, or a sale of Aruze USA's shares of Wynn Resorts' common stock in the event that Aruze USA is found to be unsuitable to own such stock, we will likely be required to obtain the prior approval of the Public Utilities Commission of Nevada. We cannot assure you that any such approvals will be obtained. Further, with respect to any other changes or transactions which we may enter into in the future, we cannot assure you that regulatory requirements will not delay or prevent us from entering into transactions or conducting our business in a manner that might be beneficial to our stockholders.

The Le Rêve golf course land may be subject to restrictions which could prevent us from constructing the new golf course in accordance with our current plans and may inhibit future development of that land.

We intend to construct the new golf course on an approximately 137-acre parcel of land located behind the hotel. Valvino acquired a portion of this parcel in connection with its purchase of the Desert Inn Resort & Casino and acquired the remainder when it purchased the residential lots located in the interior of, and some, but not all, of the lots around the former Desert Inn golf course. The residential lots, previously known as the Desert Inn Country Club Estates, were subject to various conditions, covenants and restrictions recorded against the lots in 1956 and amended from time to time since then. We believe that these conditions, covenants and restrictions were terminated in accordance with Nevada law in June 2001. However, some of the remaining homeowners have brought a lawsuit against Valvino challenging, among other things, the termination of the covenants, conditions and restrictions. If the plaintiffs prevail on their claims and the conditions, covenants and restrictions remain in effect, we may have to adjust our current plans for the construction of the golf course by redesigning some of the holes located on the periphery of the course.

In addition, at least two of the homeowners have alleged the existence of an equitable implied restriction prohibiting any alternative commercial development of the golf course. If the plaintiffs prevail on this claim, any future development of the golf course parcel for an alternative use may be restricted. Valvino is vigorously contesting the homeowners' claims and will continue to do so.

We continue to explore opportunities to develop additional gaming or related businesses that could have an adverse impact on our business if unsuccessful.

We continue to explore opportunities to develop additional gaming or related businesses in Las Vegas or other markets, whether through acquisition, investment or development. Any acquisition, investment or development could be expensive, disrupt our ongoing business, distract our management and employees and/or adversely affect our financial results. In addition, any expansion of our business through acquisition, investment or development would likely require us to obtain additional financing and/or consent from the lenders under the credit facilities and the holders of the second mortgage

notes. Acquisitions also may present other risks, such as exposing our company to potential unknown liabilities associated with acquired businesses. Any acquisition or development may not be successful in achieving our desired strategic objectives, which also would cause our business to suffer.

A downturn in general economic conditions may adversely affect our results of operations.

Our business operations will be affected by international, national and local economic conditions. A recession or downturn in the general economy, or in a region constituting a significant source of customers for our property, could result in fewer customers visiting our property, which would adversely affect our revenues.

Risks Associated with the Macau Opportunity

Wynn Macau may determine not to go forward with the Macau opportunity at any time, possibly resulting in the loss of a significant investment.

We have already invested a total of \$23.8 million in Wynn Macau. In addition, we have invested up to \$40 million of the net proceeds from Wynn Resorts' initial public offering in Wynn Macau and to arrange for significant additional financing.

Wynn Macau has begun planning the development of the initial phase of its first casino resort. However, it will not begin construction or operation of any casino in Macau until a number of objectives and conditions are met. Such objectives and conditions include, among other things, the following:

- obtaining the necessary debt and/or additional equity financing to fund the development, design and construction of any casino or casinos in Macau;
- obtaining the ability, through legislative and regulatory changes, to extend credit to gaming customers and enforce gaming debts in Macau; and
- obtaining relief, through legislative and/or executive actions, from the complementary income tax and the withholding tax on dividends imposed in Macau.

Based on discussions with Macau government officials, we understand that the Macau government will introduce proposed legislation by early 2003 that, if passed, would enable Wynn Macau to extend credit to gaming customers and enforce gaming debts in Macau, and would provide tax relief from the

complementary income tax and withholding tax on dividends imposed in Macau. However, we cannot assure you that such proposed legislative changes will be enacted.

Wynn Macau will not begin construction or operation of any casino in Macau if any of these objectives and conditions cannot be adequately resolved. If Wynn Macau determines not to go forward with the Macau opportunity, Wynn Resorts may lose its significant investment in Wynn Macau.

The concession agreement does not contain a provision permitting Wynn Macau to terminate the concession agreement unilaterally or permitting Wynn Macau to cease the development or operation of casino(s) in Macau for any of the reasons described above. The obligations under the Macau concession agreement are those of Wynn Resorts' indirect subsidiary, Wynn Macau. Accordingly, Wynn Macau might be found liable for the balance of its obligation to invest a total of 4 billion patacas (approximately US \$500 million) in Macau-related projects. Depending on the amount of Wynn Macau's liability, Wynn Macau may not have sufficient assets to satisfy such liability. In such circumstances, Wynn Resorts would lose its entire investment in Wynn Macau.

If Wynn Macau builds and operates one or more casinos in Macau, it will be subject to considerable risks, including risks related to Macau's untested regulatory framework.

Untested Foreign Regulatory Framework. If Wynn Macau constructs or operates one or more casinos in Macau, its operations will be subject to unique risks, including risks related to Macau's untested regulatory framework. In light of the untested regulatory framework, Wynn Macau may need

to develop operating procedures which are different from those used in United States casinos. Failure to adapt to the regulatory and gaming environment in Macau could result in the revocation of Wynn Macau's concession or otherwise negatively affect its operations in Macau. Moreover, Wynn Resorts would be subject to the risk that Macau's gaming regulatory framework will not develop in a way that would permit Wynn Resorts, as the parent entity of a United States gaming operator, to have its affiliates conduct operations in Macau in a manner consistent with the way in which Wynn Resorts intends, or the Nevada gaming authorities require Wynn Resorts, to conduct its operations in the United States.

Political and Economic Conditions. The success of Wynn Macau's operations in Macau would also depend on political and economic conditions in Macau. In December 1999, after approximately 450 years of Portuguese control, Portugal returned Macau to Chinese administration. The People's Republic of China re-established Macau as a special administrative region. As a result of this change in control, Macau's legislative, regulatory, legal, economic and cultural institutions are in a period of transition. We cannot predict how these systems and cultural institutions will develop or how developments would affect any gaming business Wynn Macau would conduct in Macau.

If Wynn Macau constructs and operates one or more casinos in Macau, its operations will be subject to significant political, economic and social risks inherent in doing business in an emerging market such as China. For example, fiscal decline and civil, domestic or international unrest in Macau, China or the surrounding region could significantly harm Wynn Macau's business, not only by reducing customer demand for casino resorts of the kind it would operate in Macau, but also by increasing the risk of imposition of taxes and exchange controls or other governmental restrictions that might impede its ability to repatriate funds. Some of the other risks involved in operating a business in Macau include:

- the possible taking of Wynn Macau's property without payment of fair compensation;
- the possible impositions of restrictions on foreign partnerships and alliances, foreign ownership and/or possible discrimination against foreign-owned business;
- the potential inability to implement effective controls against infiltration by persons associated with, and effective methods to protect Wynn Resorts' Macau subsidiaries from unknowingly doing business with, reputed criminal organizations;
- potential economic slowdowns in Hong Kong or China, on which Macau heavily relies for tourism and patronage of its existing casinos;
- potential conflicts between local and national governments;
- a possible competitive disadvantage due to the ownership of substantially all of the water ferry services and the helicopter shuttle service that link Macau to Hong Kong and Kowloon by Stanley Ho, who controls Sociedade de Jogos de Macau, the existing casino concessionaire and operator in Macau and one of Wynn Macau's competitors; and
- the risks inherent in construction projects.

Any potential investment in Macau could be jeopardized by future developments, and we cannot assure you that activities Wynn Macau may plan in Macau will be permitted or feasible.

Collection of Gaming Receivables. Currently, Macau law does not permit casinos to extend credit or to enforce gaming debts. Even if the law in Macau is changed to permit casino operators to extend credit to gaming customers, Wynn Macau may not be able to collect all of its gaming receivables from its credit players. We expect that if Wynn Macau obtains the right to extend credit to its gaming customers, it will be able to enforce these obligations only in a limited number of jurisdictions, including Macau. To the extent that gaming customers of Wynn Macau are expected to be visitors from other jurisdictions, Wynn Macau may not have access to a forum in which it will be able to collect all of its gaming receivables and because, among other reasons, courts of many jurisdictions do not enforce gaming debts, Wynn Macau may encounter forums that will refuse to enforce such debts. Wynn

Macau's inability to collect gaming debts could have a significant negative impact on its operating results.

Necessity of Expanding Transportation. Because of additional casino projects which may be developed in the future, the hydrofoil ferry and helicopter services which provide transportation to and from Hong Kong may need to be expanded to service the increased visitation of Macau. If transportation facilities to and from Macau are inadequate to meet the demands of an increased volume of gaming customers visiting Macau, the desirability of Macau as a gaming destination, as well as the results of operations of Wynn Macau's casino resort(s) in Macau, could be negatively impacted.

Extreme Weather Conditions. Macau's subtropical climate and location on the South China Sea are subject to extreme weather conditions including typhoons and heavy rainstorms. Unfavorable weather conditions could negatively affect the profitability of Wynn Macau's casino resort(s) by disrupting its ability to timely construct its casino project(s) and by preventing guests from traveling to Macau.

Potential Taxation of Investment in Macau. Wynn Resorts' investment in Macau is owned through a number of wholly owned and partially owned domestic and foreign entities. Although we believe that transfers to these entities of the assets and stock of Wynn Macau were accomplished on a tax-free basis, there is a risk that the Internal Revenue Service could assert that any appreciation in the transferred assets or stock was taxable at the time of such transfers.

Currency Exchange Controls and Currency Export Restrictions. Currency exchange controls and restrictions on the export of currency by certain countries may negatively impact the success of Wynn Macau. For example, there are currently existing currency exchange controls and restrictions on the export of the renminbi, the currency of China. Restrictions on the export of the renminbi may impede the flow of gaming customers from China to Macau, inhibit the growth of gaming in Macau and negatively impact Wynn Macau's gaming operations.

Foreign Corrupt Practices Act. Wynn Resorts is subject to regulations imposed by the Foreign Corrupt Practices Act, or the FCPA, which generally prohibits U.S. companies and their intermediaries from making improper payments to foreign officials for the purpose of obtaining or retaining business. Any determination that Wynn Resorts has violated the FCPA could have a material adverse effect on us.

If Wynn Macau builds and operates one or more casinos in Macau, certain Nevada gaming laws would apply to its planned gaming activities and associations in Macau.

Certain Nevada gaming laws also apply to gaming activities and associations in jurisdictions outside the State of Nevada. As Wynn Macau develops its opportunity in Macau, Wynn Resorts and its subsidiaries that are licensed to conduct gaming operations in Nevada will be required to comply with certain reporting requirements concerning gaming activities and associations in Macau proposed to be conducted by Wynn Resorts' Macau -related subsidiaries. Wynn Resorts and its licensed Nevada subsidiaries also will be subject to disciplinary action by the Nevada Gaming Commission if Wynn Resorts' Macau-related subsidiaries:

- knowingly violate any Macau laws relating to their Macau gaming operations;
 - fail to conduct the Macau operations in accordance with the standards of honesty and integrity required of Nevada gaming operations;
 - engage in any activity or enter into any association that is unsuitable for us because it poses an unreasonable threat to the control of gaming in Nevada, reflects or tends to reflect discredit or disrepute upon the State of Nevada or gaming in Nevada, or is contrary to Nevada gaming policies;
 - engage in any activity or enter into any association that interferes with the ability of the State of Nevada to collect gaming taxes and fees; or
-
- employ, contract with or associate with any person in the foreign gaming operation who has been denied a license or a finding of suitability in Nevada on the ground of unsuitability, or who has been found guilty of cheating at gambling.

Such disciplinary action could include suspension, conditioning, limitation or revocation of the registration, licenses or approvals held by Wynn Resorts and its licensed Nevada subsidiaries, including Wynn Las Vegas, and the imposition of substantial fines.

In addition, if the Nevada State Gaming Control Board determines that any actual or intended activities or associations of Wynn Resorts' Macau-related subsidiaries may be prohibited pursuant to one or more of the standards described above, the Nevada State Gaming Control Board can require Wynn Resorts and its licensed Nevada subsidiaries to file an application with the Nevada Gaming Commission for a finding of suitability of the activity or association. If the Nevada Gaming Commission finds that the activity or association in Macau is unsuitable or prohibited, Wynn Resorts' Macau-related subsidiaries will either be required to terminate the activity or association, or will be prohibited from undertaking the activity or association. Consequently, should the Nevada Gaming Commission find that Wynn Resorts' Macau-related subsidiaries' gaming activities or associations in Macau are unsuitable, those subsidiaries may be prohibited from undertaking their planned gaming activities or associations in Macau, or be required to divest their investment in Macau, possibly on unfavorable terms.

The concession agreement into which Wynn Macau has entered with the government of Macau requires Wynn Macau to inform the government in the event that a stockholder owning 5% or more of the stock of Wynn Macau is subject to an investigation by a gaming authority outside of Macau that could lead to the suspension or revocation of any gaming license. The concession agreement also requires Wynn Macau to inform the government of Macau in the event that a stockholder owning 5% or more of the stock of Wynn Macau loses a gaming license.

Macau casinos would face intense competition.

The Macau government has granted concessions to operate casinos to three companies. Sociedade de Jogos de Macau, referred to as SJM, has been granted one of the concessions. SJM is controlled by Stanley Ho, who through another entity had controlled the monopoly concession to conduct the only gaming operations in Macau for approximately 40 years. SJM has the benefit of being the established gaming enterprise already in existence at eleven locations in Macau. SJM's casinos at the Hotel Lisboa and at the converted Jai Alai fronton are the largest casino facilities in Macau. In addition, SJM is reported to be planning a major remodeling of the Hotel Lisboa and, through a related entity, a new Fisherman's Wharf development, which will include a casino, in the vicinity of the Macau ferry terminal. Galaxy Casino Company Limited, referred to as Galaxy, also has been awarded a concession to operate casinos in Macau. Galaxy is a joint venture between an affiliate of the operators of The Venetian in Las Vegas and a group of Hong Kong investors, which, according to news reports, has plans to build a major casino on Taipa, the island where Macau's international airport is located, and possibly other casinos. Although Wynn Macau's gaming business initially would compete with businesses to be operated by the two other casino concessionaires in Macau, the concession agreement into which Wynn Macau has entered with the Macau government permits the government to grant additional concessions for the operation of casinos after April 1, 2009. If the government of Macau awards additional concessions, Wynn Macau will face increased competition from local casino operators in Macau.

New or renovated casinos in Macau operated by the other concessionaires would present increased competition and could negatively impact Wynn Macau's gaming business. SJM's concession permits it to renovate its existing casinos, as well as to develop new casinos.

Mr. Ho also controls, through affiliates, substantially all of the water ferry services and the helicopter shuttle service that link Macau to Hong Kong and Kowloon. In addition, affiliates of Stanley Ho control certain real estate and other assets, such as the Mandarin Oriental Hotel in Macau. Such businesses and assets could provide a competitive advantage for SJM.

Wynn Macau's gaming business would also face significant regional competition from casinos located in Asia, as well as from other major casino destinations around the world. For example, Genting Highlands Resort, an entertainment complex just outside of Kuala Lumpur, Malaysia, which currently has five hotels, a casino, a theme park, a golf and country club and other amenities, would compete with Wynn Resorts' casinos in Macau for travelers deciding among gaming destinations in Asia. In the event that new casino projects in Asia are completed, such as the proposed large-scale casino and entertainment complex to be built in Manila, Philippines, fewer gaming customers might visit Macau and the results of operations of Wynn Macau's casinos could be negatively affected.

There are significant risks associated with construction projects that may prevent completion of Wynn Macau's casino(s) on budget and on schedule.

Wynn Macau's construction of one or more casinos in Macau would entail significant risks associated with construction projects. These risks are similar to the risks we face in constructing Le Rêve. We cannot assure you that Wynn Macau's casino(s) will commence operations on schedule or that construction costs for the Macau casino(s) will not exceed budgeted amounts. Failure to complete Wynn Macau's casino(s) on budget or on schedule could have a significant negative effect on us.

Unfavorable changes in currency exchange rates may increase Wynn Macau's obligations under the concession agreement and cause fluctuations in the value of our investment in Macau.

The currency used in Wynn Macau's concession agreement with the government of Macau is the Macau pataca. The Macau pataca, which is not a freely convertible currency, is linked to the Hong Kong dollar, and in many cases the two are used interchangeably in Macau. The Hong Kong dollar is linked to the U.S. dollar and the exchange rate between these two currencies has remained relatively stable over the past several years. However, the exchange linkages of the Hong Kong dollar and the Macau pataca, and the Hong Kong dollar and the U.S. dollar, are subject to potential changes due to, among other things, changes in Chinese governmental policies and international economic and political developments.

Because Wynn Macau's payment and expenditure obligations under the concession agreement are in Macau patacas, in the event of unfavorable Macau pataca or Hong Kong dollar rate changes, Wynn Macau's obligations, as denominated in U.S. dollars, would increase. In addition, because we expect that most of the revenue for any casino that Wynn Macau operates in Macau will be in Hong Kong dollars, we are subject to foreign exchange risk with respect to the exchange rate between the Hong Kong dollar and the U.S. dollar. We have not yet determined whether we will engage in hedging activities to protect against foreign currency risk.

Risks Related Specifically to the Common Stock

The price of our common stock may be volatile.

Before our initial public offering, our common stock had not been sold in a public market. After the offering, an active trading market in our common stock might not develop. If an active trading market develops, it may not continue. Moreover, if an active market develops, the trading price of our common stock may fluctuate widely as a result of a number of factors, many of which are outside of our control. Moreover, as construction of Le Rêve or Wynn Macau's casino progresses, developments in construction may cause fluctuation in the price of our common stock. In addition, the stock market has experienced extreme price and volume fluctuations that have affected the market prices of many companies. These broad market fluctuations could negatively affect the market price of our common stock. A significant decline in our stock price could result in substantial losses for individual stockholders and could lead to costly and disruptive securities litigation.

Substantial amounts of our common stock could be sold in the near future, which could depress our stock price.

We cannot predict the effect, if any, that market sales of shares of common stock or the availability of shares of common stock for sale will have on the market price of our common stock prevailing from time to time. In addition, if Wynn Resorts is required by the Nevada gaming regulators to purchase securities owned or controlled by an unsuitable person or its affiliate, including Aruze USA, we may fund this purchase by the resale of all or some of these securities in a secondary offering. Aruze USA holds approximately 31.5% of our issued and outstanding common stock. A sale of all or some of Aruze USA's shares in a secondary offering could significantly reduce the market price of the common stock.

We expect that up to 40,000,000 shares of restricted securities under the Securities Act belonging to officers, directors and other stockholders will be eligible for sale in the public market at prescribed times pursuant to Rule 144 under the Securities Act, or otherwise. We expect that 38,002,915 shares of these restricted securities, which are held by our affiliates, will be eligible for sale in the public market pursuant to Rule 144 under the Securities Act, or otherwise, beginning in September 2003. Sales of a significant number of these shares of common stock in the public market could reduce the market price of our common stock.

Wynn Resorts has never paid dividends, does not intend to pay dividends in the foreseeable future and may not pay dividends to any unsuitable person or its affiliates.

Wynn Resorts has never paid dividends and does not anticipate paying any cash dividends on our common stock in the foreseeable future. We intend to retain our earnings, if any, to use in our growth and ongoing operations. In addition, Wynn Resorts is a holding company and, as a result, its ability to pay dividends is dependent on its subsidiaries' ability to provide funds to it. However, the terms of the credit facilities, the FF&E facility and the indenture governing the second mortgage notes restrict Wynn Resorts' subsidiaries' ability to provide funds to it. Wynn Resorts' board of directors has the authority to issue one or more series of preferred stock without action of the stockholders. The issuance of preferred stock could have the effect of limiting dividends on the common stock. Wynn Resorts' articles of incorporation also prohibit the payment of dividends to anyone who is an unsuitable person or any affiliate of an unsuitable person.

The officers, directors and substantial stockholders of Wynn Resorts may be able to exert significant control over its future direction.

Mr. Wynn and Aruze USA each own approximately 31.5% of Wynn Resorts' outstanding common stock. As a result, Mr. Wynn and Aruze USA, to the extent they vote their shares in a similar manner, effectively will be able to control all matters requiring Wynn Resorts' stockholders' approval, including the approval of significant corporate transactions.

In addition, Mr. Wynn and Aruze USA, together with Baron Asset Fund, have entered into a stockholders agreement. Under the stockholders agreement, Mr. Wynn and Aruze USA have agreed to vote their shares of Wynn Resorts' common stock for a slate of directors, a majority of which will be designated by

Mr. Wynn, of which at least two will be independent directors, and the remaining members of which will be designated by Aruze USA.

As a result of this voting arrangement, Mr. Wynn will, as a practical matter, control Wynn Resorts' board of directors. The concentration of ownership and representation on Wynn Resorts' board of directors may delay, prevent or deter a change in control, could deprive Wynn Resorts' stockholders of an opportunity to receive a premium for their common stock as part of a sale of Wynn Resorts or its assets and might reduce the market price of Wynn Resorts' common stock.

Investors may incur further dilution depending on how we decide to finance Wynn Macau's opportunity in Macau.

It is expected that significant financing, in addition to the initial public offering, will be needed to fund the development, construction and operation of one or more casinos in Macau. Wynn Macau has begun preliminary discussions to arrange the additional financing, and is considering different alternatives, including debt financing or additional equity financing at the Wynn Macau level or at the level of one of Wynn Macau's intermediary holding companies. If additional equity is raised at the Wynn Macau or intermediary holding company level, you would indirectly hold a smaller interest in Wynn Macau as the minority interest in the Macau-related entities increases. If Wynn Resorts decides to raise additional equity at the Wynn Resorts level to fund the Macau opportunity, you would suffer dilution of your interest in Wynn Resorts.

Our anti-takeover provisions or provisions of Nevada law could prevent or delay a change in control of Wynn Resorts, even if a change of control would benefit our stockholders.

Provisions of our articles of incorporation and bylaws, as well as provisions of Nevada law, could discourage, delay or prevent a merger, acquisition or other change in control of Wynn Resorts, even if a change in control would benefit our stockholders. These provisions:

- classify our board of directors so that only one-third of the directors are elected each year and require the vote of 66²/3% of the outstanding stock entitled to vote in the election of directors to amend these provisions;
- authorize our board of directors to issue "blank check" preferred stock to increase the number of outstanding shares and thwart a takeover attempt;
- eliminate the ability of an individual holder of our common stock to call special meetings of stockholders;
- prohibit stockholder action by written consent and require that all stockholder actions be taken at a meeting of our stockholders;
- establish advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted upon by stockholders at stockholder meetings; and
- require a super-majority directors' approval of the sale of all or substantially all of our assets, a voluntary dissolution or liquidation by us, or the filing of a voluntary petition of bankruptcy.

In addition, the Nevada Revised Statutes contain provisions governing the acquisition of a controlling interest in certain publicly held Nevada corporations. These laws provide generally that any person that acquires 20% or more of the outstanding voting shares of certain publicly held Nevada corporations, which we expect will include Wynn Resorts, in the secondary public or private market must follow certain formalities before such acquisition or they may be denied voting rights, unless a majority of the disinterested stockholders of the corporation elects to restore such voting rights in whole or in part. These laws provide that a person acquires a "controlling interest" whenever a person acquires shares of a subject corporation that, but for the application of these provisions of the Nevada Revised Statutes, would enable that person to exercise (1) one-fifth or more, but less than one-third, (2) one-third or more, but less than a majority or (3) a majority or more, of all of the voting power of the corporation in the election of directors.

After we become a registered company under Nevada's gaming laws, approval of the Nevada Gaming Commission must be obtained with respect to changes in control. A person that seeks to acquire control of a registered company must satisfy the Nevada gaming authorities before assuming control of a registered company. The Nevada gaming authorities may also require controlling stockholders, officers, directors and other persons having a material relationship or involvement with a person proposing to acquire control to be investigated and licensed as part of the approval process relating to the transaction.

Nevada law also provides that directors may resist a change or potential change in control if the directors determine that the change is opposed to, or not in the best interest of, the corporation.

We may redeem your shares due to regulatory considerations, either as required by gaming authorities or in our discretion.

Wynn Resorts' articles of incorporation provide that, to the extent a gaming authority determines that you or your affiliates are unsuitable or to the extent deemed necessary or advisable by the board of directors, Wynn Resorts may redeem shares of its capital stock that you or your affiliates own or control. The redemption price will be the amount, if any, required by the gaming authority or, if the gaming authority does not determine the price, the sum deemed to be the fair value by the board of directors. If Wynn Resorts determines the redemption price, the redemption price will be capped at the closing price of the shares on the principal national securities exchange on which the shares are listed on the trading date on the day before the redemption notice is given. If the shares are not listed on a national securities exchange, the redemption price will be capped at the closing sale price of the shares as quoted on The Nasdaq National Market or SmallCap Market, or if the closing price is not reported, the mean between the bid and asked prices, as quoted by any other generally recognized reporting system. The redemption price may be paid in cash, by promissory note, or both, as required, and pursuant to the terms established by, the applicable gaming authority and, if not, as Wynn Resorts elects. However, if the gaming authorities were to find you or your affiliate unsuitable to own the voting securities of Wynn Resorts, it could also determine that you or your affiliate is unsuitable to hold a promissory note for the purchase of such voting securities by Wynn Resorts, and could determine not to approve the issuance of the promissory note to you or your affiliate.

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[RISK FACTORS RELATING TO INVESTING IN THE COMMON STOCK](#)

RISK FACTORS RELATING TO INVESTING IN THE SECOND MORTGAGE NOTES

Investing in Wynn Las Vegas, LLC's and Wynn Las Vegas Capital Corp.'s second mortgage notes is subject to significant risks inherent in our business. You should carefully consider the risks described below, together with all of the other information included in the prospectus filed with each of the Registration Statement on Form S-1 of Wynn Las Vegas, Wynn Capital and the other registrants (File Nos. 333-98369 and 333-10082) and this Current Report on Form 8-K. If any of the following risks and uncertainties or other risks and uncertainties not currently known to us or not currently considered to be material actually occur, our business, financial condition or operating results could be harmed substantially. In that event, Wynn Las Vegas and the guarantors of the second mortgage notes may be unable to meet their obligations under the second mortgage notes and you may lose all or part of your investment in the second mortgage notes.

Unless the context otherwise requires, references in "Risk Factors Relating to Investing in the Second Mortgage Notes" to "we," "our" and "us" mean, collectively, Wynn Las Vegas, LLC, Valvino Lamore, LLC and its subsidiaries that are guaranteeing the second mortgage notes. References to any other entity mean that entity without any subsidiaries. References to the restricted entities or the restricted group mean Valvino, Wynn Resorts Holdings, LLC, Wynn Design & Development, LLC, World Travel, LLC, Las Vegas Jet, LLC, Desert Inn Water Company, LLC and Palo, LLC.

Certain statements in "Risk Factors Relating to Investing in the Second Mortgage Notes" are forward-looking statements. These statements involve risks, uncertainties and other factors that may cause our or our industry's actual results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as "may," "will," "should," "would," "could," "believe," "expect," "anticipate," "estimate," "intend," "plan," "continue" or the negative of these terms or other comparable terminology.

Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. If one or more of the assumptions underlying our forward-looking statements proves incorrect, then actual results, levels of activity, performance or achievements could differ significantly from those expressed in, or implied by, the forward-looking statements contained in "Risk Factors Relating to Investing in the Second Mortgage Notes". Other factors that could cause our financial performance to differ significantly from the goals, plans, objectives, intentions and expectations expressed in our forward-looking statements include the risk factors enumerated below. Therefore, we caution you not to place undue reliance on our forward-looking statements. Except as required by law, we do not intend to update or revise any of the forward-looking statements to conform these statements to actual results. All forward-looking statements attributable to us are expressly qualified by these cautionary statements.

Risks Associated with Our Construction of Le Rêve

There are significant conditions to the funding of the remaining components of the financing for the Le Rêve project.

We have entered into credit facilities providing for borrowings up to \$1 billion and the FF&E facility providing for additional loans up to \$188.5 million, which Wynn Las Vegas may request the FF&E lenders to increase to \$198.5 million if we purchase a replacement corporate aircraft. Wynn Resorts has contributed \$386.7 million of the net proceeds of its initial public offering and Valvino has contributed all of its existing cash to Wynn Las Vegas.

We have entered into a disbursement agreement with the agents under the credit facilities and the FF&E facility and the second mortgage note trustee. Under the disbursement agreement, we are required to first use the equity contributions from Wynn Resorts and Valvino, other than the funds

contributed to the completion guarantor and held in the liquidity reserve account, to fund the development, construction and pre-opening costs of Le Rêve. When those funds are depleted in approximately ten to twelve months after the closing of the second mortgage note offering, we will be permitted to use the proceeds of the second mortgage notes. We will not be permitted to borrow under the credit facilities or the FF&E facility until we have applied all of the proceeds of the second mortgage note offering, other than amounts sufficient to pay interest on the notes on the two ensuing payment dates, which is expected to be approximately 14 to 17 months after the closing of the second mortgage note offering.

Our ability to borrow under the credit facilities and the FF&E facility is subject to various conditions precedent. As such, substantially all of the proceeds from the second mortgage note offering will have been spent before we know whether the conditions to disbursement of funds under the credit facilities and the FF&E facility will have been satisfied. In addition to other customary conditions to funding for these types of facilities, our ability to draw on the credit facilities and the FF&E facility is subject to the following conditions:

- Wynn Las Vegas, Marnell Corrao Associates, Inc., the lenders' independent construction consultant, and certain other third parties must certify as to various matters regarding the progress of construction, as to the conformity of the portions of the project then completed with the plans and specifications and that the Le Rêve project will be completed by the scheduled completion date, which may be extended in accordance with the disbursement agreement, but not beyond September 30, 2005, except for certain limited permitted extensions due to force majeure events;
- Wynn Resorts and its principal stockholders must maintain in full force and effect the existing arrangements among Wynn Resorts' stockholders to facilitate obtaining the gaming license for the Le Rêve project in the event that one of Wynn Resorts' major stockholders is unable to qualify for such license;
- the construction of Le Rêve must be "in balance," meaning that the undisbursed portions of the second mortgage note proceeds, the credit facilities and the FF&E facility, together with certain other funds available to us, must equal or exceed the remaining costs to complete Le Rêve's construction plus a required contingency; and
- we and our general contractor must have entered into subcontracts in respect of specified percentages of the total construction cost of Le Rêve to be managed by each of us which percentages are to be mutually agreed upon by us and the lenders under the credit facilities.

We cannot assure you that we will be able to satisfy the conditions to funding at the time disbursements or drawdowns are required to make payments of our construction costs. Satisfaction of various conditions is subject to the discretion of our lenders under the credit facilities and their consultants and is therefore

beyond our control.

Although these conditions must also be satisfied before we may draw funds from the second mortgage notes secured account, the lenders under our credit facilities and the FF&E facility will not confirm that, from their perspective, any conditions have been satisfied until we request draws under their respective facilities.

Any failure to satisfy the conditions to drawdowns under the credit facilities or the FF&E facility could severely impact our ability to complete Le Rêve and could arise after some or all of the proceeds of the second mortgage note offering, or before or after any of the borrowings under the credit facilities and the FF&E facility, have been expended on the project. If this failure occurs after we have made our initial borrowings under these facilities, and if this failure causes a default under the agreements governing these facilities, any recovery by the second mortgage note holders, other than from the secured proceeds account, effectively would be subordinated to the lenders under these facilities, given that these facilities are secured by liens that are prior to the liens securing the second mortgage notes. Neither we nor Wynn Resorts may have access to alternative sources of funds necessary to complete Le Rêve on satisfactory terms or at all.

The development costs of Le Rêve are estimates only, and actual development costs may be higher than expected.

Not all of the plans and specifications for Le Rêve have been finalized. We expect the total development cost of Le Rêve to be approximately \$2.4 billion, including the budgeted design and construction costs, cost of the land, capitalized interest, pre-opening expenses and all financing fees. The required cash interest payments and commitment fees on the credit facilities, FF&E facility, second mortgage notes and any other indebtedness and obligations of ours which will become due through the estimated commencement date of operations of Le Rêve have been included in our estimate of the total development cost.

While we believe that the overall budget for the development costs for Le Rêve is reasonable, these development costs are estimates and the actual development costs may be higher than expected. For example, a delay in the commencement of construction beyond the scheduled commencement date may increase the overall budget for Le Rêve and under certain circumstances we may be responsible for the increased costs. Although we have a \$34.3 million owners' contingency, a \$50 million completion guarantee and a \$30 million liquidity reserve to cover cost overruns, these contingencies may not be sufficient to cover the full amount of such overruns. Moreover, the disbursement agreement imposes conditions on the use of these contingencies, including that the completion guarantee and the liquidity reserve are only available to us incrementally once the project is halfway completed. If we are unable to use these contingencies or if these contingencies are not sufficient to cover these costs, we may not have the funds required to pay the excess costs. Our inability to pay development costs as they are incurred will negatively affect our ability to complete Le Rêve and thus may significantly impair our business operations and prospects.

Cost overruns could cause us to be out of "balance" under the disbursement agreement and, consequently, prevent us from obtaining funds from the second mortgage note proceeds secured account or, after those funds are exhausted, to draw down under the credit facilities and the FF&E facility. If we cannot obtain these funds, we will not be able to open Le Rêve to the general public on schedule or at all, which would have a significant negative impact on our financial condition and results of operations and our ability to satisfy our obligations under the second mortgage notes.

Not all of the construction costs of Le Rêve are covered by our guaranteed maximum price construction contract, and we will be responsible for any cost overruns of these excluded items.

We have entered into a guaranteed maximum price construction contract with Marnell Corrao covering approximately \$919 million of the budgeted \$1.4 billion design and construction costs for Le Rêve. We are responsible for cost overruns with respect to the remaining approximately \$488 million of the \$1.4 billion of budgeted components that are not part of the guaranteed maximum price contract. The guaranteed maximum price contract does not include items such as the costs of construction of the new golf course and the principal parking garage and approximately \$303 million in interior design and related furniture, fixtures and equipment. While we may in the future enter into other agreements that may seek to limit our exposure to construction cost increases, the actual costs for these items may exceed budgeted costs.

The guaranteed maximum price under the Marnell Corrao construction contract may increase, and we would be responsible for the amount of any increase.

Although we have a \$919 million guaranteed maximum price construction contract with Marnell Corrao, it provides that the guaranteed maximum price will be appropriately increased, and the deadline for the contractor's obligation to complete construction will be appropriately adjusted, on account of, among other things:

- changes in the architect-prepared design documents or deficiencies in the design documents;
 - changes requested or directed by us in the scope of the work to be performed pursuant to the construction contract;
-
- changes in legal requirements;
 - natural disasters, unavoidable casualties, industry-wide labor disputes affecting the general Las Vegas area and not limited to the project and other force majeure events that are unforeseeable and beyond the reasonable control of Marnell Corrao; and
 - delays caused by us, including delays in completing the drawings and specifications.

Although we have determined the overall scope and general design of Le Rêve, not all of the detailed plans and specifications have been finalized. We do not have final plans for construction components comprising approximately \$493.5 million of the approximately \$919 million Marnell Corrao construction contract. With respect to the construction components for which plans and specifications have not been finalized, the guaranteed maximum price is based on master concept plans and agreed upon design and other premises and assumptions for the detailed plans to be created. Construction will commence before completion of all drawings and specifications.

Inconsistencies between the completed drawings and specifications and the premises and assumptions on which the approximately \$919 million guaranteed maximum price was based could, under specific circumstances, cause us to be responsible for costs in excess of the guaranteed maximum price. For example, if the initial drawings, when finalized, are inconsistent with the premises and assumptions, we will be responsible for the increase, if any, in the cost to construct the

work covered by those drawings over the previously agreed upon amounts designated for such work in the guaranteed maximum price. Furthermore, the premises and assumptions may not be sufficiently specific to determine, as between the contractor and us, who is responsible for cost overruns in specific situations.

The liquidated damages provision in our guaranteed maximum price construction contract likely will not be sufficient to protect us against exposure to actual damages we may suffer for delay in completion of the project.

Under the construction contract with Marnell Corrao, the guaranteed date of substantial completion is 910 calendar days from the date we direct Marnell Corrao by written notice to commence construction. The contract provides for liquidated damages in the amount of \$300,000 per day to be imposed on Marnell Corrao on a daily basis, up to a maximum of 30 days, for a maximum amount of \$9 million, if all work required by the construction contract is not substantially completed by the deadline, following a five-day grace period and subject to force majeure and other permitted extensions. We cannot assure you that construction will be completed on schedule and, if completion of the construction were delayed beyond the grace period, our actual damages would likely exceed \$300,000 per day.

In addition, if the contractor defaults under the construction contract, we may be unable to complete Le Rêve on schedule or within the amount budgeted. Failure to complete construction on schedule may have a significant negative impact on our operations and financial condition and ability to satisfy our obligations under the second mortgage notes.

The financial resources of our contractor may be insufficient to fund cost overruns or liquidated damages for which it is responsible under the guaranteed maximum price contract.

Under the terms of the construction contract with Marnell Corrao, Marnell Corrao is, subject to specific conditions and limitations, responsible for all construction costs covered by the construction contract that exceed the approximately \$919 million guaranteed maximum price contained in the contract.

Austi, the parent company of the contractor, which is a private company controlled by the Anthony A. Marnell II family, has agreed to provide a continuing guaranty by which Austi guarantees Marnell Corrao's full performance under the construction contract until final payment under that contract. In addition, Marnell Corrao is obligated to obtain and provide a \$150 million contractor performance and payment bond.

We cannot assure you that Marnell Corrao and Austi will have sufficient financial resources to fund any cost overruns or liquidated damages for which Marnell Corrao is responsible under the guaranteed maximum price contract. Furthermore, neither Marnell Corrao nor Austi is contractually obligated to maintain its financial resources to cover cost overruns. If Marnell Corrao and Austi do not have the resources to meet their obligations and we are unable to obtain funds under the performance and payment bond in a timely manner, or if the performance and payment bond is insufficient to cover any shortfall, we may need to pay these excess costs in order to complete construction of Le Rêve.

Certain provisions in the construction contract with Marnell Corrao for construction of Le Rêve may be unenforceable.

Recently enacted Nevada statutes have substantially impaired, and in some cases eliminated, an owner's ability to withhold funds from a contractor or subcontractor, even when there may be defective work or a dispute about amounts owed. The new laws also limit an owner's ability to terminate, suspend or interrupt the construction, and in several circumstances, entitle the contractor and subcontractor to payment of their full unearned fee, following a brief notice period, if the owner suspends, terminates or interrupts the construction or fails to make payment or withholds amounts claimed to be due. In addition, Nevada law permits contractors and subcontractors to terminate construction contracts upon very short notice periods if any payments are not timely made to the contractors. The construction contract with Marnell Corrao contains provisions that provide us with rights and protections that in some circumstances may be inconsistent with these new laws. While it appears that some of the new laws can be waived, others expressly prohibit waiver. The effect of the new laws on the provisions of the construction contract is not completely clear. Therefore, while we have negotiated with Marnell Corrao for specific rights and obligations, including with respect to damages, termination and suspension of construction, those provisions of the construction contract may not be enforceable to the extent they conflict with non-waivable provisions of applicable laws. If the provisions of the construction contract are not enforceable, delays or suspensions in the work initiated by the owner or other events may expose us to increased costs. We cannot assure you that we will have sufficient funds to pay these increased costs.

There are significant risks associated with major construction projects that may prevent completion of Le Rêve on budget and on schedule.

Major construction projects of the scope and scale of Le Rêve entail significant risks, including:

- shortages of materials or skilled labor;
- unforeseen engineering, environmental and/or geological problems;
- work stoppages;
- weather interference;
- unanticipated cost increases; and
- unavailability of construction equipment.

Construction, equipment or staffing problems or difficulties in obtaining any of the requisite licenses, permits and authorizations from regulatory authorities could increase the total cost, delay or prevent the construction or opening or otherwise affect the design and features of Le Rêve.

We anticipate that only some of the subcontractors engaged by the contractor to perform work and/or supply materials in connection with the construction of Le Rêve will post bonds guaranteeing timely completion of a subcontractor's work and payment for all of that subcontractor's labor and materials. We cannot assure you that these bonds will be adequate to ensure completion of the work.

We cannot assure you that Le Rêve will commence operations on schedule or that construction costs for Le Rêve will not exceed budgeted amounts. Failure to complete Le Rêve on budget or on

schedule may have a significant negative effect on us and on our ability to make payments on the second mortgage notes.

Simultaneous construction of Le Rêve and the Macau casino(s) may stretch management time and resources.

Le Rêve is scheduled to open in April 2005, and Wynn Resorts' subsidiary Wynn Macau may pursue development of its first permanent casino resort in Macau in the same time period. If both projects are being built simultaneously, members of Wynn Resorts' senior management will be involved in planning and developing both projects. Developing the Macau opportunity simultaneously with Le Rêve may divert management resources from the construction and/or opening of Le Rêve. Management's inability to devote sufficient time and attention to the Le Rêve project may delay the construction or opening of Le Rêve. This type of delay could have a negative effect on our business and operations.

Risks Related to Our Substantial Indebtedness

We are highly leveraged and future cash flow may not be sufficient to meet our obligations, including our obligations under the second mortgage notes, and we might have difficulty obtaining more financing.

As we progress toward the completion of the construction of Le Rêve, we will have a substantial amount of debt in relation to our equity, which debt will increase during the construction period. We have entered into debt facilities that will result in total outstanding indebtedness of approximately \$1.5 billion, including the second mortgage notes, by the time Le Rêve is completed.

Our substantial indebtedness could have important consequences for you. For example:

- It could make it more difficult for us to satisfy our obligations with respect to the second mortgage notes;
- If we do not complete construction of Le Rêve by the scheduled completion date, which may be extended in accordance with the disbursement agreement, but not beyond September 30, 2005, except for certain limited permitted extensions due to force majeure events, fail to meet our payment obligations or otherwise default under the agreements governing our other indebtedness, the lenders under those agreements will have the right to accelerate the indebtedness and exercise other rights and remedies against us. These rights and remedies include the rights to: repossess and foreclose upon the assets that serve as collateral, initiate judicial foreclosure against us, petition a court to appoint a receiver for us or for substantially all of our assets, and if we are insolvent, to initiate involuntary bankruptcy proceedings against us, in each case, subject to procedural restraints and limitations applicable to secured creditors generally and also those imposed by applicable gaming laws, rules and regulations and the rules and regulations of the Public Utilities Commission of Nevada;
- The credit facilities and the FF&E facility are secured by liens that are senior to the liens securing the second mortgage notes and, as such, will need to be repaid in full before any proceeds of the collateral may be applied to repay the second mortgage notes. We cannot assure you that upon exercise of remedies by our lenders, our assets will be sufficient to repay all or any portion of the second mortgage notes;
- Once Le Rêve is operating, we will be required to use a substantial portion of our cash flow from operations to service and amortize our indebtedness, which will reduce the available cash flow to fund working capital, capital expenditures and other general corporate purposes;
- We may have a limited ability to respond to changing business and economic conditions and to withstand competitive pressures, which may affect our financial condition;
- We may have a limited ability to obtain additional financing, if needed, to fund Le Rêve's design and construction costs, working capital requirements, capital expenditures, debt service, general

corporate or other obligations, including our obligations with respect to the second mortgage notes;

- Under the credit facilities and the FF&E facility, a substantial portion of the interest rates we pay will fluctuate with the current market rates and, accordingly, our interest expense will increase if market interest rates increase;
- Our substantial indebtedness will increase our vulnerability to general adverse economic and industry conditions; and
- We may be placed at a competitive disadvantage to our competitors who are not as highly leveraged.

Under the terms of the indenture, our credit facilities and our FF&E facility, we are permitted to incur additional indebtedness, which is limited under our credit facilities and FF&E facility to \$71 million, of which up to \$60 million may be secured senior indebtedness. We are also permitted to incur additional secured senior indebtedness in an amount sufficient to acquire up to ten indentified parcels of land adjacent to the golf course land at fair market value. If we incur additional indebtedness, the risks described above will be exacerbated.

We may not generate sufficient cash flow to meet our substantial debt service and other obligations, including our obligations under the second mortgage notes.

Before the opening of Le Rêve, which is expected to occur in April 2005, we will have no material operations or earnings. Consequently, we are dependent on the proceeds of the second mortgage note offering, borrowings under the credit facilities and the FF&E facility and the proceeds of Wynn Resorts' offering of common stock to meet all of our construction, debt service and other obligations.

After Le Rêve opens, our ability to make interest payments under the credit facilities, the FF&E facility, the second mortgage notes and other indebtedness will depend on our ability to generate sufficient cash flow from operations. We cannot assure you that we will begin operations by the scheduled opening date or at all, or that we will be able to generate sufficient cash flow to meet our expenses, including our debt service requirements. Our ability to generate cash flow will depend upon many factors, including:

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our future operating performance;

- the demand for services that we provide;
- general economic conditions and economic conditions affecting Nevada or the casino industry in particular;
- our ability to hire and retain employees at a reasonable cost;
- competition; and
- legislative and regulatory factors affecting our operations and business.

Some of these factors are beyond our control. Any inability to meet our debt service obligations would have a material adverse effect on us. In addition, future financing documents for the Macau opportunity may contain restrictions or prohibitions on the distribution to Wynn Resorts of any cash flow generated by the casino(s). Any cash flow generated by one or more Macau casinos operated by Wynn Macau will not be generated by entities which are guarantors of our indebtedness. Thus, any cash flow generated by the Macau casinos may not be available to service our debt service obligations.

The second mortgage notes have a junior lien on a substantial portion of our assets, and have no liens on certain assets.

Although the holders of the second mortgage notes have a first priority lien on the net proceeds of the second mortgage note offering, once those proceeds are disbursed pursuant to the disbursement agreement for the construction of the Le Rêve project, they have only a second priority lien on the

assets comprising the project and a third priority lien on the furniture, fixtures and equipment that are purchased under the FF&E facility. None of the assets of Wynn Resorts will secure its guarantee of the second mortgage notes, unless Wynn Resorts grants specified liens to secure other guarantees or indebtedness and is required to grant second priority liens on the same assets to secure the second mortgage notes.

The holders of the second mortgage notes do not have a lien on our gaming license because under the Nevada gaming laws it may not be pledged as collateral. In addition, we must seek approval from the Public Utilities Commission of Nevada before we may grant any liens in the water rights which would be used for general irrigation purposes, irrigation of the golf course and to supply water for the L^ê Reve lake. Currently, we do not have such approval and may not obtain such approval before we begin disbursing the second mortgage notes proceeds or at all. The credit facilities, the FF&E facility and the second mortgage notes will not be secured by any assets related to Wynn Macau's planned operations in Macau.

The guarantors of the second mortgage notes likely will not be able to contribute to any payments with respect to the second mortgage notes.

The primary purpose of the guarantees (except the unsecured guarantee of Wynn Resorts) is to provide second priority liens on the assets of the guarantors, including the golf course, the Phase II land, and equity interests in their subsidiaries. While Valvino and its subsidiaries hold assets that are integral to Le Rêve, they are not expected to have operations that generate significant cash flows. As such, you should not expect Valvino or any of the other guarantors to contribute to any payments of principal, interest or other amounts required to be made on the second mortgage notes.

Wynn Resorts will be able to contribute to payments of principal, interest or other amounts required to be made on the second mortgage notes only to the extent it has unrestricted funds from other sources. The subsidiaries of Wynn Resorts have no obligation to make payments or distributions to Wynn Resorts to enable Wynn Resorts to make payments under its guarantee. In addition, the subsidiaries of Wynn Resorts may be parties to financing or other agreements that restrict their ability to make any payments or distributions to Wynn Resorts.

The credit facilities, the FF&E facility and the indenture governing the second mortgage notes contain covenants that restrict our ability to engage in certain transactions and may impair our ability to respond to changing business and economic conditions.

The credit facilities, the FF&E facility and the indenture governing the second mortgage notes impose operating and financial restrictions on us and specified affiliates designated as restricted entities. The restrictions imposed under these debt instruments include, among other things, limitations on our ability to:

- pay dividends or distributions on capital stock or repurchase capital stock;
- incur additional debt;
- make investments;
- create liens on assets to secure debt;
- enter into transactions with affiliates;
- enter into sale-leaseback transactions;
- engage in other businesses;
- merge or consolidate with another company;
- transfer and sell assets;
- issue preferred stock;

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create dividend and other payment restrictions affecting subsidiaries;

- designate restricted and unrestricted subsidiaries; and
- issue and sell equity interests in wholly owned subsidiaries.

The credit facilities require us to satisfy various financial covenants, including maximum total leverage, minimum fixed charge coverage, minimum earnings before interest, tax, depreciation and amortization and minimum net worth requirements. Future indebtedness or other contracts could contain financial or other covenants more restrictive than those applicable to the credit facilities, the FF&E facility and the second mortgage notes.

Our ability to comply with these provisions may be affected by general economic conditions, industry conditions, other events beyond our control and delayed completion of Le Rêve. As a result, we cannot assure you that we will be able to comply with these covenants. Our failure to comply with the covenants contained in the credit facilities, the FF&E facility or the indenture governing the second mortgage notes, including failure as a result of events beyond our control, could result in an event of default, which could materially and adversely affect our operating results and our financial condition.

If there were an event of default under one of our debt instruments, the holders of the defaulted debt could cause all amounts outstanding with respect to that debt to be due and payable immediately. We cannot assure you that our assets or cash flow would be sufficient to fully repay borrowings under our outstanding debt instruments, including the indenture governing the second mortgage notes, if accelerated upon an event of default, or that we would be able to repay, refinance or restructure the payments on those debt securities. Further, if we are unable to repay, refinance or restructure our indebtedness under our credit facilities and the FF&E facility, the lenders under those facilities could proceed against the collateral securing that indebtedness. In that event, any proceeds received upon a realization of the collateral would be applied first to amounts due under our credit facilities and, with respect to the collateral securing the FF&E facility, applied first to amounts due under the FF&E facility before any proceeds would be available to make payments on the second mortgage notes. See "—Risks Related Specifically to the Second Mortgage Notes—The liens securing the indebtedness under the credit facilities and FF&E facility generally are senior to the liens securing the second mortgage notes."

General Risks Associated with Our Business

We have no operating history.

We were formed principally to develop and operate Le Rêve in Las Vegas. Le Rêve will be a new development which has no history of operations. We cannot assure you that we will be able to attract a sufficient number of hotel guests, gaming customers and other visitors to Le Rêve to make our operations profitable.

Our operations will be subject to the significant business, economic, regulatory and competitive uncertainties and contingencies frequently encountered by new businesses in competitive environments, many of which are beyond our control. Because we have no operating history, it may be more difficult for us to prepare for and respond to these types of risks and the risks described elsewhere in "Risk Factors Relating to Investing in the Second Mortgage Notes" than for a company with an established business and operating cash flow. If we are not able to manage these risks successfully, it could negatively impact our operations.

We intend to lease approximately eight of the retail spaces at Le Rêve and will own and operate the remaining approximately 18 retail spaces. We have entered into one restaurant management agreement, and we may enter into others with respect to one or more of the restaurants at Le Rêve. We have not yet entered into binding agreements with any retail tenants or other restaurant operators, and we may not be able to obtain the number or quality of retail tenants or restaurant operators for the retail and restaurant portions of Le Rêve that currently are planned. If we do not obtain tenants

and operators in sufficient number or of sufficient quality, it could impair the competitive position of Le Rêve and affect our operating performance.

Until construction of Le Rêve is close to completion, we do not believe that we will require extensive operational management. Accordingly, we have kept and intend to keep our permanent management staff at relatively low levels. We will be required to undertake a major recruiting program before Le Rêve opens. However, the pool of experienced gaming and other personnel is limited and competition to recruit and retain gaming and other personnel is likely to intensify as competition in the Las Vegas hotel casino market increases. We cannot assure you that we will be able to attract and retain a sufficient number of qualified individuals to operate Le Rêve on acceptable terms.

The loss of Stephen A. Wynn could significantly harm our business.

Our ability to maintain our competitive position is dependent to a large degree on the efforts and skills of Stephen A. Wynn, the Chairman of the Board and Chief Executive Officer and one of the principal stockholders of Wynn Resorts. Wynn Resorts has entered into an employment agreement with Mr. Wynn. However, we cannot assure you that Mr. Wynn will remain with us. If Wynn Resorts loses the services of Mr. Wynn or if he is unable to devote sufficient attention to our operations, our business may be significantly impaired. In addition, if Mr. Wynn is no longer either employed by Wynn Resorts as Chief Executive Officer or serving as Chairman of the Board of Wynn Resorts, other than as a result of death or disability or other limited circumstances, it would constitute a change of control that requires us to repay the second mortgage notes and would constitute an event of default under the credit facilities and the FF&E facility.

The casino, hotel, convention and other facilities at Le Rêve will face intense competition.

Las Vegas Casino/Hotel Competition. The casino/hotel industry is highly competitive. Resorts located on or near the Las Vegas Strip compete with other Las Vegas Strip hotels and with other hotel casinos in Las Vegas on the basis of overall atmosphere, range of amenities, level of service, price, location, entertainment, theme and size. Le Rêve also will compete with a large number of other hotels and motels located in and near Las Vegas, as well as other resort destinations. Many of our competitors have established gaming operations, are subsidiaries or divisions of large public companies and may have greater financial and other resources than we do.

According to the Las Vegas Convention and Visitors Authority, there were approximately 94,277 hotel rooms on or around the Las Vegas Strip as of December 31, 2001. Competitors of Le Rêve will include resorts on the Las Vegas Strip, among which are Bally's Las Vegas, Bellagio, Caesars Palace, Harrah's Las Vegas Hotel and Casino, Luxor Hotel and Casino, Mandalay Bay Resort & Casino, MGM Grand Hotel and Casino, The Mirage, Monte Carlo Hotel and Casino, New York-New York Hotel and Casino, Paris Las Vegas, Treasure Island at The Mirage and The Venetian, and resorts off the Las Vegas Strip, such as Las

Vegas Hilton, The Palms Casino Resort and Rio All-Suite Hotel & Casino. The Venetian has begun an expansion anticipated to consist of an approximately 1,000-room hotel tower on top of the resort's existing parking garage and approximately 150,000 square feet of additional meeting and conference space. The Venetian's expansion is expected to be completed by June 2003. In addition, Mandalay Bay Resort & Casino has announced that it will begin construction of a 1,122-room, all-suite tower connected to the current hotel casino resort in September 2002, with an expected opening in October 2003. Mandalay Bay Resort & Casino also is expected to open a new convention and meeting complex in January 2003, and Caesars Palace is currently constructing an approximately 4,000-seat performing arts "Colosseum," which is scheduled to be completed in the first quarter of 2003. Moreover, MGM Mirage has announced that it will begin construction in mid-2003 of an approximately 925-room "spa tower" addition to Bellagio, as well as expand Bellagio's spa and salon, meeting space and retail space, with an expected completion in December 2004.

The construction and expansion of these properties during the time that Le Rêve is being constructed may affect the availability of construction labor and supplies, resulting in increased costs. We cannot assure you that the Las Vegas market will continue to grow or that hotel casino resorts will continue to be popular. A decline or leveling off of the growth or popularity of hotel casino resorts or the appeal of the features offered by Le Rêve would impair our financial condition and future results of operations.

Le Rêve will be different from many other Las Vegas resorts in that it will not focus on a highly themed experience. Instead, Le Rêve will offer an environment having a sophisticated, casually elegant ambience. Le Rêve's environment may not appeal to customers. In addition, customer preferences and trends can change, often without warning, and we may not be able to predict or respond to changes in customer preferences in time to adapt Le Rêve and the attractions and amenities it offers to address new trends.

Other Competition for Le Rêve. Le Rêve also will compete, to some extent, with other hotel/casino facilities in Nevada and in Atlantic City, with riverboat gaming facilities in other states, with hotel/casino facilities elsewhere in the world, with state lotteries and with Internet gaming. In addition, certain states recently have legalized, and others may or are likely to legalize, casino gaming in specific areas. Passage of the Tribal Government Gaming and Economic Self-Sufficiency Act in 1988 has led to rapid increases in Native American gaming operations. Also, in March 2000, California voters approved an amendment to the California Constitution allowing federally recognized Native American tribes to conduct and operate slot machines, lottery games and banked and percentage card games on Native American land in California. As a result, casino-style gaming on tribal lands is growing and could become a significant competitive force. The proliferation of Native American gaming in California could have a negative impact on our operations. The proliferation of gaming activities in other areas could significantly harm our business as well. In particular, the legalization of casino gaming in or near metropolitan areas, such as New York, Los Angeles, San Francisco and Boston, from which we intend to attract customers, could have a substantial negative effect on our business. In addition, new or renovated casinos in Macau or elsewhere in Asia could draw Asian gaming customers, including high-rollers, away from Las Vegas.

Because we may be entirely dependent upon one property for all of our cash flow, we will be subject to greater risks than a gaming company with more operating properties.

We do not expect to have material assets or operations other than Le Rêve for the foreseeable future. As a result, we likely will be entirely dependent upon Le Rêve for all of our cash flow. The Macau-related entities are not guarantors of our indebtedness and their stock and assets are not collateral for our obligations or for Wynn Resorts' guarantee. In addition, the financing documents for the Macau opportunity may contain restrictions or prohibitions on the distribution to Wynn Resorts of any cash flow generated by these projects. Accordingly, cash flow generated by those Macau casino(s) will not be available to service our indebtedness, including our obligations under the second mortgage notes, or support our operations. See "—Risks Related to Our Substantial Indebtedness—We may not generate sufficient cash flow to meet our substantial debt service and other obligations, including our obligations under the second mortgage notes."

Given that our operations initially will only focus on one property in Las Vegas, we will be subject to greater degrees of risk than a gaming company with more operating properties. The risks to which we will have a greater degree of exposure include the following:

- local economic and competitive conditions;
- changes in local and state governmental laws and regulations, including gaming laws and regulations;
- natural and other disasters;
- an increase in the cost of electrical power for Le Rêve as a result of, among other things, power shortages in California or other western states with which Nevada shares a single regional power grid;
- a decline in the number of visitors to Las Vegas; and
- a decrease in gaming and non-gaming activities at Le Rêve.

Also, although we have obtained title insurance policies to protect the lenders under our credit facilities and the note holders against defects in title of the Le Rêve property, the amount of our debt

will be so large that any losses due to defects in title may exceed the resources of the title insurance companies.

Any of the factors outlined above could negatively affect our ability to generate sufficient cash flow to make payments on the second mortgage notes pursuant to the indenture, on borrowings under the credit facilities or the FF&E facility or with respect to our other debt.

Wynn Resorts' ownership and management of both Le Rêve and a second resort developed on either the 20-acre parcel or the golf course land could negatively impact Le Rêve.

Wynn Resorts' ownership of both Le Rêve and additional resorts developed on the 20-acre parcel adjacent to the site of Le Rêve and/or the golf course parcel may result in conflicting business goals because, once released from the liens under the credit facilities and second mortgage notes, a Phase II or other project developed on either site would likely be developed through an entity that is not part of the restricted group and could potentially compete with Le Rêve. For example, if Wynn Resorts or a subsidiary outside the restricted group develops a Phase II resort on either the golf course land or the 20-acre parcel, it could offer discounts and other incentives for visitors to stay at a Phase II resort, which might result in a competitive advantage for the Phase II resort over Le Rêve. In

addition, that entity also may choose to allocate certain business opportunities, such as potential restaurant, dining and entertainment tenants or requests for room reservations, to the Phase II resort instead of Le Rêve. Although Wynn Resorts' common ownership of both Le Rêve and Phase II resort may result in economies of scale, efficiencies and joint business opportunities for the two resorts, if the Phase II resort is owned by an entity that is not part of the restricted group, then Le Rêve may, in certain circumstances, bear the greater burden of the expenses that are shared by both resorts. In addition, management's time may be split between overseeing the operation of the resorts. In certain circumstances, management may devote more time to the ownership and operational responsibilities of the Phase II resort than those of Le Rêve.

Terrorism and the uncertainty of war, as well as other factors affecting discretionary consumer spending, may harm our operating results.

The strength and profitability of our business will depend on consumer demand for hotel casino resorts in general and for the type of luxury amenities Le Rêve will offer. Changes in consumer preferences or discretionary consumer spending could harm our business. The terrorist attacks of September 11, 2001, and ongoing terrorist and war activities in the United States and elsewhere, have had a negative impact on travel and leisure expenditures, including lodging, gaming and tourism. We cannot predict the extent to which the events of September 11, 2001 may continue to affect us, directly or indirectly, in the future. An extended period of reduced discretionary spending and/or disruptions or declines in airline travel and business conventions could significantly harm our operations. In particular, because we expect that our business will rely heavily upon high-end credit customers, particularly international customers, factors resulting in a decreased propensity to travel internationally, like the terrorist attacks of September 11, 2001, could have a negative impact on our operations.

In addition to fears of war and future acts of terrorism, other factors affecting discretionary consumer spending, including general economic conditions, disposable consumer income, fears of recession and consumer confidence in the economy, may negatively impact our business. Negative changes in factors affecting discretionary spending could reduce customer demand for the products and services we will offer, thus imposing practical limits on pricing and harming our operations.

Also, the terrorist attacks of September 11, 2001 have substantially affected the availability of insurance coverage for certain types of damages or occurrences. We do not have insurance coverage for occurrences of terrorist acts with respect to our Le Rêve project and any losses that could result from these acts. The lack of sufficient insurance for these types of acts could expose us to heavy losses in the event that any damages occur, directly or indirectly, as a result of terrorist attacks and have a significant negative impact on our operations.

Le Rêve will be subject to extensive state and local regulation, and licensing and gaming authorities have significant control over our operations, which could have a negative effect on our business.

The opening and operation of Le Rêve will be contingent upon our receipt and maintenance of all regulatory licenses, permits, approvals, registrations, findings of suitability, orders and authorizations. The laws, regulations and ordinances requiring these licenses, permits and other approvals generally relate to the responsibility, financial stability and character of the owners and managers of gaming operations, as well as persons financially interested or involved in gaming operations. The scope of the approvals required to open and operate a facility is extensive. Failure to obtain or maintain the necessary approvals could prevent or delay the completion or opening of all or part of the facility or otherwise affect the design and features of Le Rêve. We do not currently hold any state and local licenses and related approvals necessary to conduct our planned gaming operations in Nevada and we cannot be certain that we will obtain at all, or on a timely basis, all required approvals and licenses. Failure to obtain or maintain any of the required gaming approvals and licenses could significantly impair our financial position and results of operations.

The Nevada Gaming Commission may, in its discretion, require the holder of any securities we issue, including the second mortgage notes, to file applications, be investigated and be found suitable to own Wynn Resorts' securities if it has reason to believe that the security ownership would be inconsistent with the declared policies of the State of Nevada.

Nevada regulatory authorities have broad powers to request detailed financial and other information, to limit, condition, suspend or revoke a registration, gaming license or related approval and to approve changes in our operations. Substantial fines or forfeiture of assets for violations of gaming laws or regulations may be levied. The suspension or revocation of any license which may be granted to us or the levy of substantial fines or forfeiture of assets could significantly harm our business, financial condition and results of operations. Furthermore, compliance costs associated with gaming laws, regulations and licenses are significant. Any change in the laws, regulations or licenses applicable to our business or a violation of any current or future laws or regulations applicable to our business or gaming license could require us to make substantial expenditures or could otherwise negatively affect our gaming operations.

Wynn Resorts' articles of incorporation provide that, to the extent a gaming authority makes a determination of unsuitability or to the extent deemed necessary or advisable by the board of directors, Wynn Resorts may redeem shares of its capital stock that are owned or controlled by an unsuitable person or its affiliates. The redemption price may be paid in cash, by promissory note, or both, as required, and pursuant to the terms established by, the applicable gaming authority and, if not, as Wynn Resorts elects.

Nevada gaming regulatory issues may arise regarding the licensing of owners of Wynn Resorts, which may cause us to incur additional debt.

Kazuo Okada is the owner of a controlling interest in Aruze Corp., the parent company of Aruze USA, Inc., referred to as Aruze USA, which owns approximately 31.5% of Wynn Resorts' common stock. Under the Nevada gaming regulations, any beneficial owner of more than 10% of Aruze Corp.'s voting securities must be licensed or found suitable in respect of Aruze USA's ownership interest in Wynn Resorts, including Kazuo Okada and his son, Tomohiro Okada. Kazuo Okada is currently licensed by the Nevada Gaming Commission to own the shares of Universal Distributing of Nevada, Inc., referred to as Universal Distributing, a gaming machine manufacturer and distributor. Kazuo Okada and his son previously sought approval from the Nevada Gaming Commission in connection with the proposed transfer of Universal Distributing to Aruze Corp. In connection with this application, the Nevada State Gaming Control Board raised certain concerns, including transactions which were then the subject of a pending tax case in Japan which involved Universal Distributing, Aruze Corp. and other related parties. The lower court in the Japanese tax case ruled in Aruze Corp.'s favor, but the Japanese tax authority has filed an appeal. It is unclear whether or how these events will

affect the Nevada Gaming Commission's consideration of suitability with respect to Aruze USA's ownership of Wynn Resorts' stock.

Aruze Corp. has informed us that there are a number of outstanding issues in the Nevada State Gaming Board's investigation of the proposed transfer of Universal Distributing in addition to the issues relating to the transactions involved in the above-described tax proceeding. These issues, together with issues

relating to the Japanese tax proceeding, if not satisfactorily resolved, could result in the denial of the application. No formal action of any kind has been taken by the Nevada State Gaming Control Board or the Nevada Gaming Commission in connection with these issues. The Nevada State Gaming Control Board and Aruze have agreed to defer the pursuit of the proposed transfer of Universal Distributing until or after the applications regarding Le Rêve have been acted upon. If the Nevada State Gaming Control Board or the Nevada Gaming Commission were to act adversely with respect to the pending proceeding involving Universal Distributing, that decision could adversely affect an application filed by Aruze USA, Aruze Corp., Kazuo Okada or Tomohiro Okada in respect of Wynn Resorts.

If any gaming application of Aruze USA, Aruze Corp. or Kazuo Okada concerning Aruze USA's ownership of Wynn Resorts' stock is denied by Nevada gaming authorities or requested to be withdrawn or is not filed within 90 days after the filing of Wynn Resorts' application, then, under certain circumstances, Wynn Resorts has the right to require Mr. Wynn to purchase the shares owned by Aruze USA in Wynn Resorts, including with a promissory note, or the right to purchase the shares directly with a promissory note. If Wynn Resorts is required to purchase the shares held by Aruze USA, it may have to issue a promissory note to Aruze USA. Any such debt obligation on Wynn Resorts' balance sheet may negatively affect our financial condition.

Moreover, if the Nevada Gaming Commission were to determine that Aruze USA is unsuitable to hold a promissory note issued by Wynn Resorts or Mr. Wynn, the Nevada Gaming Commission could order Aruze USA or its affiliate to dispose of its voting securities within a prescribed period of time that may not be sufficient.

If Aruze USA or its affiliate does not dispose of its voting securities within the prescribed period of time, or if Wynn Resorts fails to pursue all lawful efforts to require Aruze USA or its affiliate to relinquish its voting securities, including, if necessary, the immediate purchase of the voting securities for cash at fair market value, the Nevada Gaming Commission could determine that Wynn Resorts was unsuitable or could take disciplinary action against Wynn Resorts. Disciplinary action could result in the limitation, conditioning, suspension or revocation of any approvals or gaming licenses held by Wynn Resorts (and, as a result, Wynn Las Vegas) and/or the imposition of a significant monetary fine against Wynn Resorts. Any such disciplinary action could significantly impair our operations.

If Wynn Macau builds and operates one or more casinos in Macau, certain Nevada gaming laws would apply to its planned gaming activities and associations in Macau.

Certain Nevada gaming laws also apply to gaming activities and associations in jurisdictions outside the State of Nevada. As Wynn Macau develops its opportunity in Macau, Wynn Resorts and its subsidiaries that are licensed to conduct gaming operations in Nevada, including Wynn Las Vegas, Wynn Capital, Wynn Resorts Holdings and Valvino, will be required to comply with certain reporting requirements concerning gaming activities and associations in Macau proposed to be conducted by Wynn Resorts' Macau-related subsidiaries. Wynn Resorts and its licensed Nevada subsidiaries, including Wynn Las Vegas, also will be subject to disciplinary action by the Nevada Gaming Commission if Wynn Resorts' Macau-related subsidiaries:

- knowingly violate any Macau laws relating to their Macau gaming operations;
- fail to conduct the Macau operations in accordance with the standards of honesty and integrity required of Nevada gaming operations;
- engage in any activity or enter into any association that is unsuitable because it poses an unreasonable threat to the control of gaming in Nevada, reflects or tends to reflect discredit or

disrepute upon the State of Nevada or gaming in Nevada, or is contrary to Nevada gaming policies;

- engage in any activity or enter into any association that interferes with the ability of the State of Nevada to collect gaming taxes and fees; or
- employ, contract with or associate with any person in the foreign gaming operation who has been denied a license or a finding of suitability in Nevada on the ground of unsuitability, or who has been found guilty of cheating at gambling.

Such disciplinary action could include suspension, conditioning, limitation or revocation of the registration, licenses or approvals held by Wynn Resorts and its licensed Nevada subsidiaries, including Wynn Las Vegas, and the imposition of substantial fines.

Our business will rely on high-end, international customers to whom we may extend credit, and we may not be able to collect gaming receivables from our credit players.

We expect that a significant portion of our table game revenue at Le Rêve will be attributable to the play of a limited number of international customers. The loss or a reduction in the play of the most significant of these customers could have a substantial negative effect on our future operating results. A downturn in economic conditions in the countries in which these customers reside could cause a reduction in the frequency of visits and revenue generated by these customers.

We will conduct our gaming activities at Le Rêve on a credit as well as a cash basis. This credit will be unsecured. Table games players typically will be extended more credit than slot players, and high-stakes players typically will be extended more credit than patrons who tend to wager lower amounts. High-end gaming is more volatile than other forms of gaming, and variances in win-loss results attributable to high-end gaming may have a positive or negative impact on cash flow and earnings in a particular quarter.

In addition, the collectibility of receivables from international customers could be negatively affected by future business or economic trends or by significant events in the countries in which these customers reside. We will extend credit to those customers whose level of play and financial resources warrant, in the opinion of management, an extension of credit.

While gaming debts evidenced by a credit instrument, including what is commonly referred to as a "marker," and judgments on gaming debts are enforceable under the current laws of Nevada, and judgments on gaming debts are enforceable in all states under the Full Faith and Credit Clause of the United States Constitution, other jurisdictions may determine that direct enforcement of gaming debts is against public policy. Although courts of some foreign nations will enforce gaming debts directly and the assets in the United States of foreign debtors may be reached to satisfy a judgment, judgments on gaming debts from U.S. courts are not binding on the courts of many foreign nations. We cannot assure you that we will be able to collect the full amount of gaming debts owed to us, even in jurisdictions that enforce gaming debts. Our inability to collect gaming debts could have a significant negative impact on our operating results.

Because we own real property, we are subject to extensive environmental regulation, which creates uncertainty regarding future environmental expenditures and liabilities.

We have incurred costs and expended funds to comply with environmental requirements, such as those relating to discharges to air, water and land, the handling and disposal of solid and hazardous waste and the cleanup of properties affected by hazardous substances. Under these and other environmental requirements, we, as the owner of the property on which Le Rêve is situated, may be required to investigate and clean up hazardous or toxic substances or chemical releases at that property. As an owner or operator, we could also be held responsible to a governmental entity or third parties for property damage, personal injury and investigation and cleanup costs incurred by them in connection with any contamination.

These laws typically impose cleanup responsibility and liability without regard to whether the owner or operator knew of or caused the presence of the contaminants. The liability under those laws has been interpreted to be joint and several unless the harm is divisible and there is a reasonable basis for allocation of the responsibility. The costs of investigation, remediation or removal of those substances may be substantial, and the presence of those substances, or the failure to remediate a property properly, may impair our ability to rent or otherwise use our property.

We believe that we have remediated all material environmental risks of which we are currently aware at the Le Rêve hotel site and on the existing golf course. However, in connection with constructing the new golf course, which will require significant grading, we may discover unforeseen environmental risks which we will need to incur costs to remediate. In addition, we will incur costs associated with asbestos removal from an existing office building in the event we decide to develop the 20-acre parcel of land located north of Le Rêve along Las Vegas Boulevard that will be available for future development should it be released from the liens under the credit facilities and the second mortgage notes. We may be required to incur costs to remediate these or other potential environmental hazards or to mitigate environmental risks.

If a third party successfully challenges our ownership of, or right to use, the Le Rêve service marks with respect to casino or hotel services, our business or results of operations could be harmed.

We have applied to register the "LE RÊVE" service mark with the United States Patent and Trademark Office, referred to as the PTO, for casino and hotel services, as well as for other ancillary uses. Our application for hotel services has cleared the PTO examination process, meaning that "LE RÊVE" will be registered for hotel and other related services if no member of the public formally opposes our application for registration by a published deadline. Our application for casino services remains pending, and we expect it to be published for opposition soon.

Even if we are able to obtain registration of the "LE RÊVE" mark for the above described services, such federal registration is not completely dispositive of the right to such service marks. Third parties who claim prior rights with respect to marks similar to "LE RÊVE" or the English translation "THE DREAM," may nonetheless challenge our use of "LE RÊVE" and seek to overcome the presumptions afforded by such registrations. They also could attempt to prevent our use of "LE RÊVE" and/or seek monetary damages as a result of our use. A successful challenge by a third party with respect to our ownership of, or right to use, the mark could have a material impact on our business or results of operation.

We will need to recruit a substantial number of new employees before Le Rêve opens and our employees may seek unionization.

We will need to recruit a substantial number of new employees before Le Rêve opens and our employees may seek union representation. We cannot be certain that we will be able to recruit a sufficient number of qualified employees. Currently, Valvino is a party to collective bargaining agreements with several different unions, which it assumed in connection with the acquisition of the Desert Inn Resort & Casino. All of these agreements will expire before the scheduled opening of Le Rêve. However, the unions may seek to organize the workers at Le Rêve or claim that the agreements assumed in connection with Valvino's acquisition of the Desert Inn Resort & Casino obligate Wynn Las Vegas to enter into negotiations with one or more of the unions to represent the workers at Le Rêve. Unionization, pressure to unionize or other forms of collective bargaining could increase our labor costs.

Certain of Wynn Las Vegas' affiliates will be subject to regulatory control by the Public Utilities Commission of Nevada.

Desert Inn Improvement Co., a direct subsidiary of Desert Inn Water Company and an indirect subsidiary of Valvino, provides water service to the existing office building on the site of the former Desert Inn Resort & Casino and the remaining homes around the Desert Inn golf course. As a result

of its service obligations to the remaining homes, Desert Inn Improvement Co. is a public utility under Nevada law and will be subject to typical public utility regulation. For example, if Desert Inn Improvement Co. desires to change its filed rates or tariffs or encumber, sell or lease its real property, it will likely be required to obtain the prior approval of the Public Utilities Commission of Nevada. The public utility status of Desert Inn Improvement Co. also imposes broader regulatory restrictions on us. For example, if Wynn Resorts decides to make changes to our or its ownership structure, such as in a merger or acquisition transaction or a significant stock issuance, or a sale of Aruze USA's shares of Wynn Resorts' common stock in the event that Aruze USA is found to be unsuitable to own such stock, Wynn Resorts will likely be required to obtain the prior approval of the Public Utilities Commission of Nevada. We cannot assure you that any such approvals will be obtained. Further, with respect to any other changes or transactions which we may enter into in the future, we cannot assure you that regulatory requirements will not delay or prevent us from entering into transactions or conducting our business in a manner that might be beneficial to our operations.

The Le Rêve golf course land may be subject to restrictions which could prevent us from constructing the new golf course in accordance with our current plans and may inhibit future development of that land.

We intend to construct the new golf course on an approximately 137-acre parcel of land located behind the hotel. Valvino acquired a portion of this parcel in connection with its purchase of the Desert Inn Resort & Casino and acquired the remainder when it purchased the residential lots located in the interior of, and some, but not all, of the lots around the former Desert Inn golf course. The residential lots, previously known as the Desert Inn Country Club Estates, were subject to various conditions, covenants and restrictions recorded against the lots in 1956 and amended from time to time since then. We believe that these conditions, covenants and restrictions were terminated in accordance with Nevada law in June 2001. However, some of the remaining homeowners have brought a lawsuit against Valvino challenging, among other things, the termination of the covenants, conditions and restrictions. If the plaintiffs prevail on their claims and the conditions, covenants and restrictions remain in effect, we may have to adjust our current plans for the construction of the golf course by redesigning some of the holes located on the periphery of the course.

In addition, at least two of the homeowners have alleged the existence of an equitable implied restriction prohibiting any alternative commercial development of the golf course. If the plaintiffs prevail on this claim, any future development of the golf course parcel for an alternative use may be restricted. Valvino is vigorously contesting the homeowners' claims and will continue to do so. See "Business—Legal Proceedings."

A downturn in general economic conditions may adversely affect our results of operations.

Our business operations will be affected by international, national and local economic conditions. A recession or downturn in the general economy, or in a region constituting a significant source of customers for our property, could result in fewer customers visiting our property, which would adversely affect our revenues.

Risks Related Specifically to the Second Mortgage Notes

The liens securing the indebtedness under the credit facilities and FF&E facility generally are senior to the liens securing the second mortgage notes.

The second mortgage notes are secured by:

- a first priority lien on the proceeds of the second mortgage note offering,
- a second priority lien on substantially all of our other existing and future assets, subject to regulatory limitations and specified exceptions, and
- a third priority lien on the assets securing our FF&E facility.

The lenders under our credit facilities have first priority liens on substantially all of our assets. The lenders under our FF&E facility have first priority liens on furniture, fixtures and equipment, including assets that are integral to the operation of Le Rêve, such as elevators, escalators, heating, vacuum and air conditioning equipment and gaming equipment. However, the guarantee of the second mortgage notes by Wynn Resorts will not be secured by any assets of Wynn Resorts, unless Wynn Resorts grants specified liens to secure other guarantees or indebtedness.

Because the Macau-related subsidiaries of Wynn Resorts are owned by Wynn Resorts, which will not grant liens on any Macau-related assets to secure its guarantee of the second mortgage notes, the assets consisting of Wynn Resorts' Macau project(s) will not be included in the collateral, and the holders of the second mortgage notes will have no claim against those assets. The second mortgage notes are also not be secured by the aircraft assets.

Because the liens securing the indebtedness under the credit facilities are generally be prior to the liens securing the second mortgage notes, the second mortgage notes are effectively subordinated to the indebtedness under our \$1.0 billion credit facilities. In addition, the liens on the collateral securing our \$188.5 million FF&E facility are prior to the liens securing the credit facilities and the second mortgage notes upon the FF&E collateral. We are also permitted, under the indenture governing the second mortgage notes, to incur additional indebtedness, which may increase the amount of our credit facilities or FF&E facility. The indenture also permits our unrestricted subsidiaries to incur debt, without limitation, provided certain conditions are met, which indebtedness will be structurally senior to the second mortgage notes, as we only have a claim against the equity in our subsidiaries, and not against their assets.

The liens granted by the guarantors (except Wynn Resorts, which has guaranteed the second mortgage notes on a senior unsecured basis) to secure their guarantees of the credit facilities are also senior to the liens securing the second mortgage note guarantees, and, therefore, the second mortgage note guarantees are also effectively subordinated to the guarantees of the indebtedness under the credit facilities and all of our guarantors' (except Wynn Resorts's) other senior indebtedness secured by higher priority liens.

If there is a default, the value of the collateral may not be sufficient to repay both the higher priority creditors and the holders of the second mortgage notes.

The value of the collateral in the event of liquidation will depend on market and economic conditions, the availability of buyers and other factors. We cannot assure you that the proceeds from the sale or sales of all of such collateral would be sufficient to satisfy the amounts outstanding under the second mortgage notes and other obligations secured by the junior liens, if any, after payment in full of all of the obligations secured by the higher priority liens on the collateral. If these proceeds were not sufficient to repay amounts outstanding under the notes, then holders of the second mortgage notes, to the extent not repaid from the proceeds of the sale of the collateral, would only have unsecured claims against our remaining assets, which claims would rank equally with all of our general unsecured indebtedness and obligations, including trade payables.

At the completion of Le Rêve, we expect to have approximately \$718.5 million outstanding under the revolving credit facility, \$250 million outstanding under the delay draw term loan facility and \$188.5 million outstanding under the FF&E facility. We also expect to have at such time approximately \$28.5 million of borrowing availability under the revolving credit facility. Under the indenture governing the second mortgage notes, we are permitted to incur additional indebtedness that is secured by first priority liens on the second mortgage note collateral.

Our intercreditor agreements limit the ability of the holders of the second mortgage notes to control decisions regarding the collateral and to take enforcement action.

The trustee under the indenture governing the second mortgage notes has entered into a project lenders intercreditor agreement with the agent for the lenders under the credit facilities and an FF&E intercreditor agreement with the agent for the lenders under the credit facilities and the agent for

lenders under the FF&E facility. The intercreditor agreements provide for the allocation of rights among the trustee and these lenders with respect to their respective interests in the collateral and the enforcement of their rights. Until the indebtedness under the credit facilities, including any refinancings, has been satisfied in full, the lenders under the credit facilities have the exclusive right to determine the circumstances and manner in which the collateral securing the second mortgage notes and the credit facilities may be disposed of subject, in the case of the FF&E collateral, to the rights of the lenders under the FF&E facility. Similarly, until the indebtedness under the FF&E facility, including any refinancing, has been satisfied in full, the lenders under the FF&E facility have the exclusive rights to determine the circumstances and manner in which the collateral that secures the FF&E facility, the credit facilities and the second mortgage notes may be disposed. As a result, the lenders under the credit facilities may take actions with respect to the collateral securing the second mortgage notes which holders of the second mortgage notes may disagree with or which may be contrary to the best interests of the holders of the second mortgage notes. In addition:

- the intercreditor agreements permit the agent under the credit facilities, without consent of the holders of the second mortgage notes, to amend the disbursement agreement or waive any defaults or conditions precedent to funding thereunder in various circumstances; which could result in a reduction of the scope which we are required to build and in funding additional amounts which effectively are senior to the second mortgage

notes, in each case, to the detriment of the holders of second mortgage notes;

- the intercreditor agreements permit the agent under the credit facilities, without consent of the holders of the second mortgage notes, to amend various terms of the security documents and waive defaults thereunder; and
- the intercreditor agreements give the lenders under the credit facilities the right to determine whether to foreclose on the collateral and the terms of any foreclosure following an event of default under the second mortgage notes or the credit facilities.

In addition, pursuant to the intercreditor agreements, the trustee has agreed not to object to a number of important matters and actions taken by the lenders under our credit facilities and the FF&E facility following the filing of a bankruptcy petition. After such filing, the value of your collateral could materially deteriorate, and you would be unable to raise an objection.

The lenders under the FF&E facility similarly have the right, without the consent of the second mortgage note holders, to waive conditions to funding under the FF&E facility and to exercise, or not exercise, any remedies with respect to the furniture, fixtures and equipment securing the FF&E facility in such manner and upon such terms as the lenders under the FF&E facility determine.

The intercreditor agreements also permit the lenders under the credit facilities and the FF&E facility to make advances under their respective loan facilities to protect, preserve, repair and maintain Le Rêve and their respective security interests. Any advanced amounts will be included in the amounts secured by the liens in favor of an advancing lender with the same priority as regular advances made by the lender under the disbursement agreement. Although these provisions may cause these lenders to make advances which otherwise might not be made and thus facilitate completion of Le Rêve to the benefit of the holders of the second mortgage notes, these advances also could increase both the periodic amounts payable on our secured indebtedness and the amounts secured by claims effectively senior the claims of the second mortgage note holders.

Under the intercreditor agreements, so long as the credit facilities and the FF&E facility remain outstanding, the holders of the second mortgage notes are restrained from exercising their remedies following a default. As such, the lenders under the credit facilities and the FF&E facility are permitted to exercise their remedies and foreclose their respective liens on the note collateral before holders of the second mortgage notes could enforce their liens. We cannot assure you that any proceeds of foreclosure sales would be sufficient to make any payments on the second mortgage notes after repaying in full the credit facilities and the FF&E facility.

Gaming laws will impose additional restrictions on foreclosure.

As a result of gaming restrictions, in any foreclosure sale of Le Rêve or the gaming equipment constituting collateral securing the second mortgage notes, the purchaser or the operator of the facility and/or such gaming equipment would need to be licensed to operate the resort's casino under the Nevada gaming laws and regulations. If the trustee acting on behalf of the holders of the second mortgage notes or the lenders under the credit facilities or the FF&E facility purchases Le Rêve and/or such equipment at a foreclosure sale, the trustee or such lenders would not be permitted to continue gaming operations at Le Rêve unless it retained an entity licensed under the Nevada gaming laws to conduct gaming operations at the facility. The holders of the second mortgage notes may have to be licensed or found suitable in any event.

Because potential bidders who wish to operate the casino must satisfy these gaming regulatory requirements, the number of potential bidders in a foreclosure sale could be less than in foreclosures of other types of facilities, and this requirement may delay the sale of, and may reduce the sales price for, the collateral. The ability to take possession and dispose of the collateral securing the second mortgage notes upon acceleration of the second mortgage notes is likely to be significantly impaired or delayed by applicable bankruptcy law if a bankruptcy case is commenced by or against us prior to a taking of possession or disposition of the collateral securing the second mortgage notes by the trustee for the benefit of the holders of the second mortgage notes.

The Public Utilities Commission of Nevada will impose additional restrictions on foreclosure.

As a result of restrictions under Nevada law relating to public utilities, it is likely that the Public Utilities Commission of Nevada would first need to approve any action to take possession of and foreclose upon or otherwise dispose of assets that serve as collateral consisting of real property or goods held by Desert Inn Improvement Co., including, without limitation, water rights. We cannot assure you that we will be able to obtain this approval.

The liens encumbering the collateral securing the second mortgage notes may be eliminated if the liens securing the credit facilities or, in the case of the collateral securing the FF&E facility, the liens securing the FF&E facility, are foreclosed first.

Pursuant to the intercreditor agreements, the lenders under our credit facilities are permitted to foreclose on the liens securing such facilities before the second mortgage notes holders. Similarly, the lenders under our FF&E facility are permitted to foreclose on the liens securing such facility before the second mortgage note holders. If the liens securing the credit facilities are foreclosed before the liens securing the second mortgage notes, the liens securing the second mortgage notes on the foreclosed collateral will be terminated. Similarly, if the liens securing the FF&E facility are foreclosed before the liens securing the second mortgage notes, the liens securing the second mortgage notes on the furniture, fixtures and equipment that secures the FF&E facility will be terminated. To prevent foreclosure, we may be motivated to commence voluntary bankruptcy proceedings, or the holders of the second mortgage notes and/or various other interested persons may be motivated to institute bankruptcy proceedings against us. The commencement of such bankruptcy proceedings would expose the holders of the second mortgage notes to additional risks, including additional restrictions on exercising rights against collateral. See "—Bankruptcy laws may significantly impair your rights to repossess and dispose of collateral securing the second mortgage notes." The second mortgage notes trustee will agree not to challenge the validity, enforceability or priority of liens on any collateral granted to any lender that is a party to the disbursement agreement.

Because we have multiple lenders, holders of the second mortgage notes may be disadvantaged by actions taken by one or more of our other lenders.

Multiple parties are providing financing for the construction and development of Le Rêve, including the lenders under the credit facilities and under the FF&E facility and the holders of the second mortgage notes. Our lenders have entered into agreements, including the disbursement

agreement and the intercreditor agreements, to govern the relationships among them. These agreements may limit the rights of the second mortgage note holders.

For example, under the disbursement agreement, the construction consultant engaged by the lenders will review disbursement requests and other matters under the disbursement agreement to assess compliance or non-compliance with the requirements under the disbursement agreement. Accordingly, such construction consultant will be making judgments from time to time which will affect, and may impair, the interests of the holders of the second mortgage notes.

Subject to specified conditions, the disbursement agreement also requires each lender to fund its proportionate share of each disbursement. However, we cannot assure you that each lender will always perform its obligations under the disbursement agreement. If any lender fails to fund its share of the amounts to be advanced under the disbursement agreement, we may not have sufficient funds to complete Le Rêve.

Further, given that we are required to expend all of the proceeds of the second mortgage notes, other than amounts sufficient to pay interest on the notes on the two ensuing payment dates, before obtaining any loans under the credit facilities or the FF&E facility, the second mortgage note holders would be fully exposed if, at any time, the lenders under our credit facilities or under our FF&E facility failed to fund as required under the disbursement agreement.

In addition, financing by multiple lenders with security interests in common collateral or collateral that is interrelated by use or location may increase complexity and reduce flexibility in a debt restructuring of our indebtedness. In particular, the FF&E lenders will have control of assets that are required for the ordinary course operations of Le Rêve. Thus, notwithstanding the relatively small portion of Le Rêve's indebtedness that is held by the FF&E lenders, upon the occurrence of a default under the FF&E facility, the FF&E lenders may be able to prevent Le Rêve from operating. However, the lenders under the FF&E facility have agreed in the intercreditor agreement with the lenders under our credit facilities and the holders of the second mortgage notes, subject to specified limitations, upon default under such facility, not to exercise remedies for a period of up to 60 days before completion of Le Rêve or 45 days after completion of Le Rêve. However, we cannot assure you that the lenders under the FF&E facility will respect such obligations or, even if they do respect such obligations, that such standstill period will be sufficient to restructure our indebtedness.

We may not be able to fulfill our repurchase obligations with respect to the second mortgage notes upon a change of control.

If we experience certain specific change of control events, we are required to offer to repurchase all outstanding second mortgage notes at 101% of the principal amount of the second mortgage notes plus accrued and unpaid interest to the date of repurchase. We cannot assure you that we will have available funds sufficient to pay the change of control purchase price for any or all of the second mortgage notes that might be delivered by holders of the second mortgage notes seeking to accept the change of control offer. Moreover, under the indenture governing the second mortgage notes, certain important corporate events, such as leveraged recapitalizations that would increase the level of our indebtedness, would not constitute a "change of control" and thus would not give rise to any repurchase rights.

In addition, the credit facilities contain, and any future credit agreement likely will contain, restrictions or prohibitions on our ability to repurchase the second mortgage notes under certain circumstances. If these change of control events occur at a time when we are prohibited from repurchasing the second mortgage notes, we may seek the consent of our lenders to purchase the second mortgage notes or could attempt to refinance the borrowings that contain these prohibitions or restrictions. If we do not obtain our lenders' consent or refinance these borrowings, we will not be able to repurchase the second mortgage notes. Accordingly, the holders of the second mortgage notes may not receive the change of control purchase price for their second mortgage notes in the event of a sale or other change of control, which will give the trustee and the holders of the second mortgage notes the right to declare an event of default and accelerate the repayment of the second mortgage notes.

Bankruptcy laws may significantly impair your rights to repossess and dispose of collateral securing the second mortgage notes.

If a bankruptcy case were to be commenced by or against us prior to the repossession and disposition of note collateral, the right of the indenture trustee to repossess and dispose of the note collateral upon the occurrence of an event of default under the indenture is likely to be significantly impaired by applicable bankruptcy law. A bankruptcy case may be commenced by us, a holder of second mortgage notes, the lenders under the credit facilities or the FF&E facility or any other creditors, including junior creditors.

The "automatic stay" under applicable bankruptcy law prohibits secured creditors, such as the holders of the second mortgage notes and the lenders under the credit facilities and the FF&E facility, from repossessing their security from a debtor in a bankruptcy case, or from disposing of collateral in their possession, without bankruptcy court approval. Moreover, applicable bankruptcy law permits the debtor to continue to retain and use the collateral even though the debtor is in default under the applicable debt instruments, provided that the secured creditor is given "adequate protection."

The meaning of the term "adequate protection" may vary according to circumstances, but it is generally intended to protect the value of the secured creditor's interest in the collateral from diminution as a result of the stay of repossession or disposition or any use of the collateral by the debtor during the pendency of the bankruptcy case. "Adequate protection" may include cash payments or the granting of additional security, of such type, at such time and in such amount as the court may determine. For example, the debtor could be permitted use the funds in the second mortgage notes proceeds account as cash collateral if the debtor provided adequate protection for such use by granting replacement liens on other collateral, which might not consist of liquid assets.

In view of the lack of a precise definition of the term "adequate protection," the broad discretionary powers of a bankruptcy court and the possible complexity of valuation issues, it is impossible to predict how long payments under the second mortgage notes could be delayed following commencement of a bankruptcy case, whether or when the trustee could repossess or dispose of the collateral or whether or to what extent, through the requirement of "adequate protection," the holders of the second mortgage notes would be compensated for any delay in payment or loss of value of the collateral.

Factors that might bear on the recovery by the holders of the second mortgage notes in these circumstances, among others, would include:

- a debtor in a bankruptcy case does not have the ability to compel performance of a "financial accommodation," including the funding of various undrawn loans contemplated to fund construction of Le Rêve;
- lenders with higher priority liens may seek, and perhaps receive, relief from the automatic stay to foreclose their respective liens; and
- the cost and delay of developing a confirmed Chapter 11 plan could reduce the present value of revenues.

In addition, pursuant to the intercreditor agreements, the trustee has agreed not to object to a number of important matters and actions taken by the lenders under our credit facilities and the FF&E facility following the filing of a bankruptcy petition. After such filing, the value of your collateral could materially deteriorate, and you would be unable to raise an objection. The agreements of the trustee include that the trustee and the second mortgage note holders will not

assert the lack of adequate protection of their liens and the collateral securing the second mortgage notes as a basis for opposing a motion or other relief approved by the lenders under the credit facilities.

Contract rights under agreements serving as collateral for the second mortgage notes may be rejected in bankruptcy.

Among other things, contract rights under certain of our agreements serve as collateral for the second mortgage notes, including rights that stem from the agreements to which we are a party, such as the Marnell Corrao construction contract. If a bankruptcy case were to be commenced by or against Marnell Corrao, it is possible that all or part of the Marnell Corrao construction contract could be rejected by that party or a trustee appointed in the bankruptcy case pursuant to Section 365 or Section 1123 of the United States Bankruptcy Code and thus not be specifically enforceable. Additionally, to the extent any rejected agreement constitutes a lease of real property, the resulting claim of the lessor for damages resulting from termination may be capped pursuant to Section 502(b)(6) of the bankruptcy code.

In addition, in a bankruptcy proceeding, the court would have broad discretion to approve transactions that could disadvantage the holders of the second mortgage notes. For example, under certain circumstances, a court could approve our or third parties' motions for sales of collateral on terms unfavorable to us, require you to accept subordinated or other securities in exchange for the second mortgage notes, or substantive consolidation of us with Wynn Resorts in a bankruptcy in which Wynn Resorts was debtor. Regardless of the ultimate disposition of any of these or other motions or claims, we cannot assure you that during litigation of these issues our payments on the second mortgage notes would be paid in full or on time.

In the event that a bankruptcy court orders the substantive consolidation of Wynn Las Vegas and Wynn Capital with certain affiliated parties, payments on the second mortgage notes could be delayed or reduced.

We believe that we have observed and will observe certain formalities and operating procedures that are generally recognized requirements for maintaining the separate existence of the issuers and that the issuers' assets and liabilities can be readily identified as distinct from those of Wynn Resorts, Valvino and their respective subsidiaries other than Wynn Las Vegas and Wynn Capital. However, we cannot assure you that a bankruptcy court would agree in the event that any of Wynn Resorts, Valvino or any such other affiliates becomes a debtor under the bankruptcy code, particularly in light of the guarantee by these affiliates of the obligations of the issuers under the second mortgage notes and the obligations of Wynn Las Vegas under the credit facilities and the FF&E facility. If a bankruptcy court concludes that substantive consolidation of Wynn Las Vegas or Wynn Capital with any affiliated party referred to in this paragraph is warranted, the risks described above under "—Bankruptcy laws may significantly impair your rights to repossess and dispose of collateral securing the second mortgage notes" and "—Contract rights under agreements serving as collateral may be rejected in bankruptcy" would apply as a result of such bankruptcy filing, whether or not that Wynn Las Vegas was then successfully operating Le Rêve and is able to pay its obligations as they become due. If substantive consolidation is ordered, noteholders should expect payments on the second mortgage notes to be delayed and/or reduced.

If the lenders under the credit facilities release their security interests in the Phase II land or in some portions of the golf course land, the second mortgage note holders' security interests in that land will be automatically released. The interests of the lenders may be different than those of the second mortgage note holders.

The liens securing the second mortgage notes in the Phase II land and in certain portions of the golf course land will be automatically released if the lenders under the credit facilities release their first priority liens on the Phase II land or those portions of the golf course land. Although the credit facilities specify earnings tests that need to be satisfied before the lenders can release their liens in that collateral, the lenders under the credit facilities are free to amend or waive those tests at any time. The interests of the lenders may be different than those of the second mortgage note holders, and investors should not rely on the lenders to act in the note holders' interests.

If earnings or leverage and ratings tests specified in the second mortgage notes indenture are met, the note holders' liens on some of the real property collateral will be released.

The liens on all of the golf course land and certain related water permits will be released after the third anniversary of commencing operations at Le Rêve if we achieve a ratio of total debt to earnings before interest, tax, depreciation and amortization of 3.0 to 1.0 or less, the indebtedness under our credit facilities is rated BB+ or higher by Standard & Poor's and Ba1 or higher by Moody's Investors Service both before and after giving effect to the release of those liens and we satisfy specified conditions relating to water required for the Le Rêve casino water features and the golf course.

The security interests in two acres of the golf course land will be released to allow the construction of a home for Mr. Wynn if the purchase price paid by Mr. Wynn is at least equal to the fair market value of that land, the sale proceeds are contributed by Wynn Resorts Holdings to Wynn Las Vegas as a capital contribution, the construction of Mr. Wynn's home will not interfere with the design, construction, operation or use of the remainder of the golf course land as a golf course and we satisfy specified conditions relating to water required for the Le Rêve casino water features and the golf course.

Once the security interests in the Phase II land, the golf course land and the related water permits are released, the note holders will have only a second priority lien on the assets comprising the hotel and casino and the equity interests of the restricted subsidiaries of Valvino, and a third priority lien on the FF&E facility collateral. See "—Risks Related to Our Substantial Indebtedness—The second mortgage notes have a junior lien on a substantial portion of our assets, and have no liens on certain assets."

Federal and state statutes allow courts, under specific circumstances, to avoid guarantees and the liens securing the guarantees and to require second mortgage note holders to return payments received from us or the guarantors.

Our creditors or the creditors of our guarantors could challenge the second mortgage note guarantees and the liens securing those guarantees as fraudulent conveyances or on other grounds. Under the federal bankruptcy law and comparable provisions of state fraudulent transfer laws, the delivery of the guarantees and the grant of the second priority liens securing the guarantees could be avoided as fraudulent transfers if a court determined that the guarantor, at the time it incurred the indebtedness evidenced by its guarantee or granted its lien:

- delivered the guarantee or granted the lien with the intent to hinder, delay or defraud its existing or future creditors; or
-

received less than reasonably equivalent value or did not receive fair consideration for the delivery of the guarantee and the incurrence of the lien, and if the guarantor:

- was insolvent or rendered insolvent at the time it delivered the guarantee or granted the lien;
- was engaged in a business or transaction for which the guarantor's remaining assets constituted unreasonably small capital; or
- intended to incur, or believed that it would incur, debts beyond its ability to pay such debts as they mature.

If the guarantees were avoided or limited under fraudulent transfer or other laws, any claim you may make against us for amounts payable on the second mortgage notes would be effectively subordinated to all of the indebtedness and other obligations of our guarantors, including trade payables and any subordinated indebtedness. If the granting of liens to secure the guarantees were avoided or limited under fraudulent transfer or other laws, the guarantees would become unsecured claims to the extent of the avoidance or limitation, ranking equally with all general unsecured claims of the guarantors.

The measures of insolvency for purposes of these fraudulent transfer laws will vary depending upon the law applied in any proceeding to determine whether a fraudulent transfer has occurred. Generally, however, a guarantor would be considered insolvent if:

- the sum of its debts, including contingent liabilities, was greater than the fair saleable value of all of its assets;
- if the present fair saleable value of its assets was less than the amount that would be required to pay its probable liability on its existing debts, including contingent liabilities, as they become absolute and mature; or
- it could not pay its debts as they become due.

We cannot be sure what standard a court would apply in making these determinations or, regardless of the standard, that a court would not avoid the guarantees or that any guarantee would not be subordinated to a guarantor's other indebtedness.

Any additional guarantees or liens on collateral provided after the second mortgage notes are issued could also be avoided as preferential transfers.

The second mortgage notes indenture provides that certain future restricted subsidiaries will guarantee the second mortgage notes and secure their guarantees with liens on their assets. The second mortgage notes indenture also requires us to grant liens on certain assets that we and the existing guarantors acquire after the second mortgage notes are issued, and under certain circumstances, Wynn Resorts will be required to grant second priority liens on the same assets to secure its guarantee of the second mortgage notes. If any new guarantor, or Wynn Resorts or any other issuer or guarantor providing new collateral for the second mortgage notes, is insolvent or anticipates insolvency at the time the guarantee or lien is granted, the guarantee or lien, as applicable, could be avoided as a preferential transfer.

We are permitted to create unrestricted subsidiaries, which generally will not be subject to any of the covenants in the indenture, and we may not be able to rely on the cash flow or assets of those unrestricted subsidiaries to pay our indebtedness.

Unrestricted subsidiaries generally are not subject to the covenants under the second mortgage notes indenture, and their assets are not available as security for the second mortgage notes. Unrestricted subsidiaries may enter into financing arrangements that limit their ability to make loans or other payments to fund payments in respect of the second mortgage notes. Accordingly, we may not be able to rely on the cash flow or assets of unrestricted subsidiaries to pay any of our indebtedness, including the second mortgage notes.

The collateral securing the second mortgage notes includes real property and, as a result, holders of the second mortgage notes may be subject to certain environmental risks.

Real property pledged as security may be subject to known and unknown environmental risks or liabilities which can adversely affect the property's value. In addition, under the federal Comprehensive Environmental Response Compensation and Liability Act, as amended, referred to as CERCLA, a secured lender may be held liable, in certain limited circumstances, for the costs of remediating a release of, or preventing a threatened release of, hazardous substances at a mortgaged property. There may be similar risks under state laws or common law theories.

Under CERCLA, a person "who, without participating in the management of a... facility, holds indicia of ownership primarily to protect his security interest" is not a property owner, and thus not a responsible person under CERCLA. Lenders seldom have been held liable under CERCLA. The lenders who have been found liable generally have been found to have been sufficiently involved in the mortgagor's operations so that they have "participated in the management of the borrower." CERCLA does not specify the level of actual participation in management. CERCLA was amended in 1996 to provide certain "safe harbors" for foreclosing lenders. However, the courts have not yet issued any

definitive interpretations of the extent of these safe harbors. There currently is no controlling authority on this matter.

Original issue discount and limitation of claims.

The notes have been issued with original issue discount. As a result, the aggregate face amount of the notes was \$370 million, but the gross proceeds received by the issuers for the sale of the notes was only approximately \$343.3 million.

In a bankruptcy case, the claim of a noteholder may be less than the face amount. Unmatured interest may be excluded and the claim may be valued as the sum of the ratable share of the gross proceeds attributable to the holder's notes, plus a portion of the original issue discount, based on the time elapsed since issuance.

In addition, upon an event of default under the notes, the indenture will limit the noteholders' recovery to the then-outstanding principal amount.

Prior to the second mortgage note offering, there was no public market for the second mortgage notes, and we cannot assure you that a market for the second mortgage notes will develop.

The second mortgage notes were a new issue of securities for which there was no active trading market. We did not file an application to have the second mortgage notes listed on any securities exchange or included for quotation on any automated dealer quotation system. Although the underwriters have informed us that they intend to make a market in the second mortgage notes as over-the-counter securities that are not traded on an exchange, they have no obligation to do so and may discontinue their market-making activity at any time without notice.

If any of the second mortgage notes are traded after their initial issuance, they may trade at a discount from their initial offering price, depending upon prevailing interest rates, the market for similar securities and other factors, including general economic conditions, our financial condition, performance and prospects and prospects for companies in our industry generally. In addition, the liquidity of the trading market in the second mortgage notes and the market prices quoted for the second mortgage notes may be negatively affected by changes in the overall market for high-yield securities. As a result, we cannot assure you that an active trading market will develop for the second mortgage notes.

The officers, directors and substantial stockholders of Wynn Resorts may be able to exert significant control over its and our future direction.

Wynn Capital is a wholly owned subsidiary of Wynn Las Vegas. Wynn Las Vegas is a Nevada limited liability company, the sole member of which is Wynn Resorts Holdings. Valvino is the sole member of Wynn Resorts Holdings and Wynn Resorts is the sole member of Valvino. As a result, Wynn Resorts, through its subsidiaries, controls Wynn Las Vegas and Wynn Capital.

Mr. Wynn and Aruze USA each own approximately 31.5% of Wynn Resorts' outstanding common stock. As a result, Mr. Wynn and Aruze USA, to the extent they vote their shares in a similar manner, effectively will be able to control all matters requiring Wynn Resorts' stockholders' approval, including the approval of significant corporate transactions.

In addition, Mr. Wynn and Aruze USA, together with Baron Asset Fund, have entered into a stockholders agreement. Under the stockholders agreement, Mr. Wynn and Aruze USA have agreed to vote their shares of Wynn Resorts' common stock for a slate of directors, a majority of which will be designated by Mr. Wynn, of which at least two will be independent directors, and the remaining members of which will be designated by Aruze USA. As a result of this voting arrangement, Mr. Wynn will, as a practical matter, control Wynn Resorts' board of directors.

We may redeem your second mortgage notes due to regulatory considerations, either as required by gaming authorities or in our discretion.

The indenture grants us the power to redeem the second mortgage notes that you own or control if any governmental gaming authority requires you, or a beneficial owner of the second mortgage notes, to be licensed, qualified or found suitable under any applicable gaming law and:

- you or such beneficial owner fails to apply for a license, qualification or finding of suitability within 30 days after being requested to do so (or such lesser period as required by the relevant governmental gaming authority) or
- you or such beneficial owner is determined by a governmental gaming authority to be unsuitable to own or control the second mortgage notes.

Under the foregoing circumstances, under the indenture, we will be able to redeem, and if required by the applicable gaming authority, we must redeem, your second mortgage notes to the extent required by the gaming authority or deemed necessary or advisable by us. The redemption price will be, in each case, together with accrued and unpaid interest on the second mortgage note, equal to:

- the price determined by the governmental gaming authority or
- if the governmental gaming authority does not determine a price, the lesser of (1) the principal amount of the second mortgage notes and (2) the price that you or the beneficial owner paid for the second mortgage notes.

QuickLinks

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